

**NEW ISSUE-BOOK ENTRY ONLY****RATINGS: S&P “BBB+”  
Fitch “A-”**

*In the opinion of Hodgson Russ LLP, Bond Counsel, based on existing statutes, regulations, rulings and court decisions and assuming compliance with certain covenants and the accuracy of certain representations, (1) interest on the Series 2022A Bonds is excluded from gross income for federal income tax purposes, and is not an “item of tax preference” for purposes of the individual and corporate alternative minimum taxes imposed by the Internal Revenue Code of 1986, as amended (the “Code”), except that (a) the Institution or another Person, by failing to comply with certain requirements contained in the Code, may cause interest on the Series 2022A Bonds to become subject to federal income taxation and certain other taxes from the date of issuance thereof and (b) interest on the Series 2022A Bonds may be included in the tax base for purposes of computing the branch profits tax imposed on foreign corporations doing business in the United States under Section 884 of the Code, (2) so long as interest on the Series 2022A Bonds is excluded from gross income for federal income tax purposes, interest on the Series 2022A Bonds is exempt under existing law from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York) and (3) for tax years beginning after December 31, 2022, interest on the Series 2022A Bonds will be included in the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. Interest on the Series 2022B Bonds is not excludable from gross income for federal income tax purposes and is not exempt under existing law from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York). For a more complete discussion, including certain other tax considerations, see “TAX MATTERS” herein.*



Albany College of Pharmacy  
AND HEALTH SCIENCES

**\$9,315,000****CITY OF ALBANY CAPITAL RESOURCE CORPORATION****\$6,505,000****Tax-Exempt Revenue Bonds**

**(Albany College of Pharmacy and Health  
Sciences Refunding Project), Series 2022A**

**\$2,810,000****Taxable Revenue Bonds**

**(Albany College of Pharmacy and Health  
Sciences Refunding Project), Series 2022B**

**Dated: Date of Delivery****Due: as shown on inside cover**

The Tax-Exempt Revenue Bonds (Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022A (the “Series 2022A Bonds”) and Taxable Revenue Bonds (Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022B (the “Series 2022B Bonds”) and together with the Series 2022A Bonds, the “Series 2022 Bonds”) are special obligations of the City of Albany Capital Resource Corporation (the “Issuer”) payable from and secured by a pledge of the payments to be made under the Loan Agreement (the “Loan Agreement”), dated as of November 1, 2022, by and between the Issuer and Albany College of Pharmacy and Health Sciences (the “Institution”) and the funds and accounts (except the Rebate Fund) held by the Trustee under the Series 2022 Indenture (as such terms are defined below).

Principal and semiannual interest on the Series 2022 Bonds will be paid by Manufacturers and Traders Trust Company, as trustee for the Series 2022 Bonds (the “Trustee”). So long as DTC or its nominee, Cede & Co., is the Bondholder, such payments will be made to Cede & Co., which in turn will remit such payments to the DTC Participants (as defined herein) and DTC Indirect Participants (as defined herein) for subsequent disbursement to the beneficial owners of the Series 2022 Bonds. Interest will be payable on June 1, 2023 and semiannually thereafter on each December 1 and June 1. The Series 2022 Bonds will be issued pursuant to the terms of a Trust Indenture, by and between the Issuer and the Trustee, dated as of November 1, 2022 (the “Series 2022 Indenture”).

The Series 2022 Bonds are issuable only as fully registered bonds without coupons in minimum denominations of \$5,000 plus any integral multiple of \$5,000. When issued, the Series 2022 Bonds will be registered in the name of Cede & Co., as nominee for The Depository Trust Company (“DTC”), New York, New York. DTC will act as securities depository for the Series 2022 Bonds. Purchases of the Series 2022 Bonds will be made in book-entry form. Purchasers will not receive certificates representing their interest in Series 2022 Bonds purchased. So long as Cede & Co. is the Bondholder, as nominee of DTC, references herein to the Bondholders or registered owners shall mean Cede & Co., as aforesaid, and shall not mean the beneficial owners of the Series 2022 Bonds.

THE SERIES 2022 BONDS ARE SPECIAL AND LIMITED OBLIGATIONS OF THE ISSUER. THE SERIES 2022 BONDS AND THE INTEREST THEREON ARE PAYABLE SOLELY OUT OF THE REVENUES AND FUNDS PLEDGED THEREFOR OR OTHERWISE AVAILABLE TO THE TRUSTEE FOR THE PAYMENT THEREOF, INCLUDING REVENUES DERIVED UNDER THE LOAN AGREEMENT. THE SERIES 2022 BONDS DO NOT CONSTITUTE A DEBT OR INDEBTEDNESS OF THE STATE OF NEW YORK, THE CITY OF ALBANY, NEW YORK OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF NEW YORK, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK, THE CITY OF ALBANY, NEW YORK OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF NEW YORK IS PLEDGED TO THE PAYMENT OF THE SERIES 2022 BONDS. THE ISSUER HAS NO TAXING POWER.

The Series 2022 Bonds will be subject to redemption prior to maturity, as more fully described herein. See “The Series 2022 Bonds - Redemption Provisions” herein. The Series 2022 Bonds are offered when, as and if issued by the Issuer and received by the Underwriter, subject to prior sale, withdrawal or modification of the offer without notice, and subject to the approval of certain legal matters relating to the issuance of the Series 2022 Bonds by Hodgson Russ LLP, Albany, New York, Bond Counsel. Certain legal matters will be passed upon for the Issuer by Corporation Counsel of the City of Albany, counsel for the Issuer, and certain legal matters will be passed upon for the Institution by Bond, Schoeneck & King PLLC, Albany, New York, counsel to the Institution. Certain legal matters will be passed upon for the Underwriter by Orrick, Herrington & Sutcliffe LLP, New York, New York, counsel to the Underwriter. The Series 2022 Bonds are expected to be available for delivery in definitive form through DTC in New York, New York, on or about November 30, 2022.

**KeyBanc Capital Markets**

Dated: November 1, 2022

**\$9,315,000**  
**CITY OF ALBANY CAPITAL RESOURCE CORPORATION**

**\$6,505,000 Tax-Exempt Revenue Bonds**  
**(Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022A**

5.250% Term Bonds due December 1, 2038, Yield 5.360%, Price 98.827, CUSIP<sup>†</sup> 012432DW7

**\$2,810,000 Taxable Revenue Bonds**  
**(Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022B**

6.750% Term Bonds due December 1, 2035, Yield 7.250%, Price 95.835, CUISIP<sup>†</sup> 012432DX5

---

<sup>†</sup> The CUSIP numbers listed above are being provided solely for the convenience of Bondholders only at the time of issuance of the Bonds and neither the Issuer, the Institution, the Underwriter nor the Trustee makes any representation with respect to such numbers or undertake any responsibility for their accuracy now or at any time in the future.

## REGARDING THIS OFFICIAL STATEMENT

*No dealer, broker, salesperson or other person has been authorized by the Institution or the Underwriter to give any information or to make any representations with respect to the Series 2022 Bonds, other than the information and representations contained in this Official Statement. If given or made, such information or representations must not be relied upon as having been authorized by either of the foregoing.*

*This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be a sale of the Series 2022 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation, or sale.*

*The Series 2022 Bonds have not been registered under the Securities Act of 1933, as amended, and the Series 2022 Indenture has not been qualified under the Trust Indenture Act of 1939, as amended, in reliance upon exemptions contained in such acts. The registration or qualification of the Series 2022 Bonds in accordance with applicable provisions of securities laws of the states in which the Series 2022 Bonds have been registered or qualified and the exemption from registration or qualification in other states cannot be regarded as a recommendation thereof. Neither these states nor any of their agencies have passed upon the merits of the Series 2022 Bonds or the accuracy or completeness of this Official Statement. Any representation to the contrary may be a criminal offense.*

*All information contained herein has been obtained from the Issuer, the Institution and other sources which are believed to be reliable. Such other information is not guaranteed as to accuracy or completeness by, and is not to be relied upon as or construed as a promise or representation by the Institution or the Issuer.*

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

*References in this Official Statement to the Series 2022 Indenture, the Loan Agreement, the Pledge and Security Agreement and the Intercreditor Agreement do not purport to be complete. Refer to the Series 2022 Indenture, the Loan Agreement, the Pledge and Security Agreement and the Intercreditor Agreement for full and complete details of their provisions. Copies of the Series 2022 Indenture, the Loan Agreement, the Pledge and Security Agreement and the Intercreditor Agreement are on file with the Trustee.*

*The order and placement of material in this Official Statement, including its appendices, are not to be deemed a determination of relevance, materiality or importance, and all material in this Official Statement, including the appendices, must be considered in its entirety.*

*Under no circumstances shall the delivery of this Official Statement, or any sale made after its delivery, create any implication that the affairs of the Institution have remained unchanged after the date of this Official Statement.*

*IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2022 BONDS AT A LEVEL WHICH MIGHT NOT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.*

## **CAUTIONARY STATEMENTS REGARDING PROJECTIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS IN THIS OFFICIAL STATEMENT**

*Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements.” Such statements generally are identifiable by the terminology used, such as “plan,” “expect,” “estimate,” “budget” or other similar words. Such forward-looking statements include but are not limited to certain statements contained in the information under the captions and “BONDHOLDER’S RISKS” in the forepart of this Official Statement and in APPENDIX A to this Official Statement.*

*The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. The Institution does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.*

[THIS PAGE INTENTIONALLY LEFT BLANK]

## TABLE OF CONTENTS

	<b>Page</b>
INTRODUCTION .....	1
Purpose of the Official Statement.....	1
Authorization of Issuance .....	1
Purpose of the Issue .....	1
The Issuer.....	3
The Institution.....	3
The Series 2022 Bonds .....	3
Payment of the Series 2022 Bonds .....	3
Security for the Series 2022 Bonds.....	4
THE ISSUER.....	8
THE SERIES 2022 BONDS.....	8
Description of the Series 2022 Bonds.....	8
Redemption Provisions .....	10
Book Entry Only System .....	12
SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2022 BONDS.....	15
Payment of the Series 2022 Bonds .....	15
Security for the Series 2022 Bonds.....	16
THE INSTITUTION.....	17
THE PLAN OF REFUNDING .....	17
ESTIMATED SOURCES AND USES OF FUNDS .....	18
ANNUAL DEBT SERVICE REQUIREMENTS.....	19
BONDHOLDER’S RISKS .....	19
General.....	19
Risks of Early Payment.....	20
Competition.....	20
No Debt Service Reserve Fund.....	20
Parity Liens on Pledged Revenues.....	20
Financial Assistance.....	21
Changes in Law.....	21
Event of Taxability .....	21

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Maintenance of 501(c)(3) Status.....	21
Tax Audits.....	22
Secondary Market for the Series 2022 Bonds.....	22
Default by the Institution or the Issuer .....	22
Enforceability of Remedies; Bankruptcy.....	23
Redemption or Acceleration of Series 2022 Bonds Without Premium .....	23
<b>TAX MATTERS</b> .....	23
Opinion of Bond Counsel .....	24
Tax Requirements .....	25
Certain Collateral Federal Tax Consequences .....	26
Information Reporting and Backup Withholding .....	27
Future Legislation or Other Post-Issuance Events.....	27
Discount Series 2022A Bonds .....	28
Premium Series 2022A Bonds .....	29
New York State Taxes .....	30
Tax Risks - Loss of Federal Tax Exemption .....	30
Form of Opinion of Bond Counsel .....	30
<b>UNDERWRITING</b> .....	30
<b>RATINGS</b> .....	30
<b>CONTINUING DISCLOSURE OBLIGATIONS</b> .....	31
<b>INDEPENDENT AUDITORS</b> .....	31
<b>FINANCIAL ADVISORS</b> .....	31
<b>LITIGATION</b> .....	32
The Issuer.....	32
The Institution.....	32
<b>APPROVAL OF LEGAL PROCEEDINGS</b> .....	32
<b>OTHER MATTERS</b> .....	32
<b>APPENDIX A</b> Albany College of Pharmacy and Health Sciences .....	A-1
<b>APPENDIX B</b> Financial Statements of Albany College of Pharmacy and Health Sciences for the Years Ended June 30, 2022 and 2021 .....	B-1



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
APPENDIX C Definitions of Certain Terms.....	C-1
APPENDIX D Summary of Certain Provisions of the Series 2022 Indenture .....	D-1
APPENDIX E Summary of Certain Provisions of the Loan Agreement.....	E-1
APPENDIX F Form of Continuing Disclosure Undertaking .....	F-1
APPENDIX G Form of Bond Counsel Opinion .....	G-1

**WITH THE EXCEPTION OF THE INFORMATION SET FORTH UNDER THE HEADING “THE ISSUER” AND, TO THE EXTENT SUCH INFORMATION RELATES TO THE ISSUER, UNDER THE HEADINGS “INTRODUCTION”, “THE ISSUER” AND “LITIGATION”, THE INFORMATION IN THIS OFFICIAL STATEMENT HAS BEEN PROVIDED BY THE INSTITUTION OR OTHERS AND NOT BY THE ISSUER, WHICH MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION IT DID NOT FURNISH.**

[THIS PAGE INTENTIONALLY LEFT BLANK]

## **OFFICIAL STATEMENT**

**Relating to**

**\$9,315,000**

**CITY OF ALBANY CAPITAL RESOURCE CORPORATION**

**\$6,505,000 Tax-Exempt Revenue Bonds  
(Albany College of Pharmacy and Health  
Sciences Refunding Project), Series 2022A**

**\$2,810,000 Taxable Revenue Bonds  
(Albany College of Pharmacy and Health  
Sciences Refunding Project), Series 2022B**

## **INTRODUCTION**

### **Purpose of the Official Statement**

The purpose of this Official Statement, which includes the cover page hereof, the inside front cover page hereof and the Appendices hereto, is to provide information about the City of Albany Capital Resource Corporation (the “Issuer”) and Albany College of Pharmacy and Health Sciences (the “Institution”) in connection with the issuance and sale by the Issuer of its \$6,505,000 Tax-Exempt Revenue Bonds (Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022A (the “Series 2022A Bonds”) and \$2,810,000 Taxable Revenue Bonds (Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022B (the “Series 2022B Bonds”) and together with the Series 2022A Bonds, the “Series 2022 Bonds”).

The following is a brief description of certain information concerning the Series 2022 Bonds, the Issuer and the Institution. A more complete description of such information and additional information that may affect decisions to invest in the Series 2022 Bonds is contained throughout this Official Statement, which should be read in its entirety. Capitalized terms used in this Official Statement shall have the meanings specified in APPENDIX C attached hereto. Terms not otherwise defined in this Official Statement have the meanings provided in the specific documents.

### **Authorization of Issuance**

The Series 2022 Bonds are authorized to be issued pursuant to the purposes and powers contained within Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Act”), the certificate of incorporation of the Issuer (the “Certificate”), and a resolution of the Issuer adopted on October 20, 2022 (the “Bond Resolution”). The Series 2022 Bonds will be issued by the Issuer pursuant to a Trust Indenture (the “Series 2022 Indenture”), dated as of November 1, 2022, by and between the Issuer and Manufacturers and Traders Trust Company, as trustee (the “Trustee”). The Trustee is also acting as Bond Registrar and Paying Agent for the Series 2022 Bonds.

### **Purpose of the Issue**

The Series 2022 Bonds are being issued to refund of all or a portion of the following bonds (the “Prior Bonds”) previously issued by the City of Albany Industrial Development Agency (the “Prior Issuer”): (1) Civic Facility Revenue Bonds (CHF-Holland Suites, L.L.C. Project – Letter of

Credit Secured), Series 2007A in the original aggregate principal amount of \$12,780,000 (the “Series 2007A Bonds”), which Series 2007A Bonds were issued on May 3, 2007 for the purpose of financing a portion of the costs of a project (the “Series 2007 Project”) consisting of the following: (a) the acquisition of a leasehold interest (the “2007 Lease Interest”) and a license interest (the “2007 License Interest”, and collectively with the 2007 Lease Interest, the “2007 Initial Land”) in (i) a portion (the “2007 Leased Building Portion”) of an existing building (the “Existing Building”) located on an approximately 7.1 acres parcel of land (the “Institution Parcel”) owned by the Institution and located at 84 Holland Avenue in the City of Albany, Albany County, New York, (ii) approximately 177 parking spaces (the “Leased Parking Spaces”) located on the Institution Parcel and designated from time to time by the Institution and CHF-Holland Suites, L.L.C. (the “Company”) and (iii) any improvements located in or on the 2007 Leased Building Portion or the Leased Parking Spaces (the “Leased Improvements”) (the 2007 Leased Building Portion, the Leased Parking Spaces and the Leased Improvements being sometimes collectively referred to as the “Leased Premises”), (b) the renovation of the Leased Premises (the “Initial Improvements”) (the Leased Premises as improved by the Initial Improvements being sometimes referred to as the “2007 Initial Facility”), and (c) the acquisition and installation thereon and therein of various furniture, fixtures, machinery and equipment (the “2007 Initial Equipment”) (the 2007 Initial Land, the 2007 Initial Facility and the 2007 Initial Equipment hereinafter collectively referred to as the “2007 Initial Project Facility”), all of the foregoing to constitute a facility to be owned by the Company and operated as a dormitory for college and university students of certain educational institutions, including, but not limited to, the Institution, and (2) Tax-Exempt Civic Facility Revenue Bonds (CHF-Holland Suites II, L.L.C. Project – Letter of Credit Secured), Series 2008A in the original aggregate principal amount of \$6,495,000 (the “Series 2008A Bonds”), which Series 2008A Bonds were issued on January 25, 2008 for the purpose of financing a portion of the costs of a project (the “Series 2008 Project”) consisting of the following: (a) the acquisition of a leasehold interest (the “2008 Lease Interest”) and a license interest (the “2008 License Interest”, and collectively with the 2008 Lease Interest, the “2008 Initial Land”) in an approximately 36,000 square foot portion (the “2008 Leased Building Portion”) of the Existing Building located on the Institution’s Parcel, (b) the renovation of the 2008 Leased Building Portion (the 2008 Leased Building Portion, as renovated being referred to as the “2008 Initial Facility”), and (c) the acquisition and installation thereon and therein of various furniture, fixtures, machinery and equipment (the “2008 Initial Equipment”) (the 2008 Initial Land, the 2008 Initial Facility and the 2008 Initial Equipment hereinafter collectively referred to as the “2008 Initial Project Facility” and collectively with the 2007 Initial Project Facility, the “Initial Project Facility”), all of the foregoing to constitute a facility to be owned and operated by CHF-Holland Suites II, L.L.C. (“CHF II”) as a dormitory for college and university students of certain educational institutions, including, but not limited to, the Institution; (B) the financing of all or a portion of the costs of the foregoing by the issuance of tax-exempt/taxable revenue bonds of the Issuer in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Initial Project, together with necessary incidental costs in connection therewith, in an amount then estimated to be approximately \$8,500,000 and in any event not to exceed \$12,000,000 (the “Obligations”); (C) the paying of a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations, any hedge termination fees and any reserve funds as may be necessary to secure the Obligations and (D) the making of a loan (the “Loan”) of the proceeds of the Obligations to the Institution or such other person as may be designated by the Institution and agreed upon by the Issuer.

Upon redemption of the Prior Bonds, the Company and CHF II will convey title to the Initial Project Facility to the Institution.

### **The Issuer**

The Issuer was established by the City of Albany, New York in accordance with the provisions of Section 1411 of the Act as a local development corporation pursuant to the Act and the Certificate as a public instrumentality of the City of Albany, New York to carry out essential governmental functions for the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest. See “THE ISSUER” herein.

### **The Institution**

Albany College of Pharmacy and Health Sciences is a New York not-for-profit corporation of higher learning, located in the City of Albany, New York. The Institution was founded in 1881 and is authorized by the Board of Regents of the State of New York to operate as a college. Certain information appearing herein relating to the Institution has been furnished by the Institution and other sources which are believed to be reliable and neither the Issuer nor the Underwriter makes any representation or warranty with respect to the accuracy or completeness of such information.

See “ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES” herein and APPENDIX A hereto for a more detailed description of the Institution, and APPENDIX B hereto, which contains the audited financial statements of the Albany College of Pharmacy and Health Sciences for the years ended June 30, 2022 and 2021.

### **The Series 2022 Bonds**

The Series 2022 Bonds will be issued in book-entry form as fully registered bonds without coupons and when issued will be registered to Cede & Co., as nominee of the Depository Trust Company (the “DTC”), New York, New York, which will act as the securities depository. Purchases will be made in denominations of \$5,000 or any integral multiple thereof.

The Series 2022 Bonds will be dated the date of delivery, and interest thereon will be payable on June 1 and December 1 of each year, commencing June 1, 2023. So long as Cede & Co. is the registered owner of the Series 2022 Bonds, principal and premium, if any, will be payable by the Trustee to Cede & Co., as nominee for DTC. The Series 2022 Bonds are subject to optional and mandatory redemption (including scheduled sinking fund redemptions) and to acceleration prior to maturity, all as described herein. See “THE SERIES 2022 BONDS” herein.

### **Payment of the Series 2022 Bonds**

The Series 2022 Bonds will be special obligations of the Issuer payable solely from (i) the amounts on deposit in the funds and accounts (excluding the Rebate Fund) held by the Trustee under the Series 2022 Indenture and (ii) certain payments to be made by the Institution under the Loan Agreement, dated as of November 1, 2022, by and between the Institution and the Issuer (the “Loan Agreement”) which payments will be pledged and assigned to the Trustee pursuant to the

Series 2022 Assignment (as defined herein). As further security for the Series 2022 Bonds, the Institution will execute and deliver the Guaranty (as defined herein) and the Pledge and Security Agreement (as defined herein). See “SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2022 BONDS” herein.

## **Security for the Series 2022 Bonds**

### *General*

The Series 2022 Bonds will be equally and ratably secured as to principal, premium, if any, and interest by the Series 2022 Indenture. The Series 2022 Indenture constitutes a first Lien on the Trust Estate, which consists of property that may from time to time become subject to the Lien of the Series 2022 Indenture.

As security for the Series 2022 Bonds, the Issuer will assign to the Trustee the Issuer’s rights under the Loan Agreement (except the Unassigned Rights), pursuant to a Pledge and Assignment, dated as of November 1, 2022, from the Issuer to the Trustee (the “Series 2022 Assignment”).

### *The Pledged Revenues and Intercreditor Agreement*

The Series 2022 Bonds are secured in part by a security interest in and lien on the Pledged Revenues pursuant to the Pledge and Security Agreement dated as of November 1, 2022 (the “Pledge and Security Agreement”) by and between the Institution and the Trustee. Pursuant to the terms of the Pledge and Security Agreement and the Intercreditor Agreement dated as of October 1, 2014 (the “Intercreditor Agreement”), by and among Regions Bank, as trustee for the City of Albany Capital Resource Corporation \$16,025,000 original principal amount Tax-Exempt Revenue Refunding Bonds (Albany College of Pharmacy and Health Sciences Project), Series 2014A (the “Series 2014A Bonds”) and NBT Bank, N.A., as holder of the City of Albany Capital Resource Corporation \$7,330,000 original principal amount Tax-Exempt Revenue Refunding Bonds (Albany College of Pharmacy and Health Sciences Project), Series 2014B (the “Series 2014B Bonds”), the lien on the Pledged Revenues granted to secure the Series 2022 Bonds is on a parity basis with the lien granted to secure the Series 2014A Bonds and the Series 2014B Bonds. See “SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2022 BONDS” herein.

### *Guaranty*

The (A) Institution’s obligation (i) to make all Loan Payments under the Loan Agreement and (ii) to perform all obligations related thereto and (B) the Issuer’s obligation to repay the Series 2022 Bonds is secured by a Guaranty, dated as of November 1, 2022 (the “Guaranty”), from the Institution to the Trustee.

### *Negative Pledge*

The Institution has covenanted in the Guaranty that it shall not, by operation of law or otherwise, mortgage, encumber, hypothecate, grant a security interest in, grant an assignment of the rents, issues, profits or leases, nor sell, convey, transfer or assign ownership or control of all or any part of the Initial Project Facility (whether voluntary or involuntary, or, by outright

conveyance, deed, mortgage or deed of trust, lease, stock transfer, land installment contract or otherwise).

### *Springing Mortgage*

The Series 2022 Bonds are not initially secured by a mortgage. If, however, subsequent to the issuance of the Initial Bonds, the Institution incurs any additional Indebtedness that is secured by a mortgage lien on Institution real property (each such mortgage is hereinafter referred to as a “Future Obligation Mortgage”), the Institution has covenanted in the Guaranty that, on the date the Institution enters into such Future Obligation Mortgage, it will execute and deliver to the Trustee, or execute and deliver to the Issuer for assignment to the Trustee, a mortgage securing the Institution's obligations under the Loan Agreement (each, a “Series 2022 Bond Mortgage”). Each Series 2022 Bond Mortgage shall grant a mortgage lien on and security interest in the same Property encumbered by the Future Obligation Mortgage, on a *pari passu* basis with the lien of the Future Obligation Mortgage, and shall have substantially the same terms and conditions as the Future Obligation Mortgage. The Institution and the Trustee shall enter into an intercreditor agreement with holders of any additional Indebtedness secured by a Future Obligation Mortgage to provide for a sharing of net proceeds from any recovery under the Future Obligation Mortgage and Series 2022 Bond Mortgage on an equal and ratable basis without regard to order of priority.

If at any time after the Institution executes and delivers a Series 2022 Bond Mortgage there shall no longer be outstanding any Indebtedness secured by a mortgage lien on the Property encumbered by that Series 2022 Bond Mortgage, then that Series 2022 Bond Mortgage shall be terminated and discharged of record and shall be of no further force or effect.

### *Financial Covenants*

#### **Debt Service Coverage Ratio**

The Institution has covenanted in the Guaranty that so long as any Series 2022 Bonds are outstanding, it will charge and collect in each fiscal year of the Institution sufficient revenues to achieve and maintain the Debt Service Coverage Ratio (as defined herein) at 1.0. Failure to achieve and maintain the Debt Service Coverage Ratio shall not, however, constitute an Event of Default under the Guaranty unless such Debt Service Coverage Ratio is not achieved and maintained for two (2) consecutive fiscal years of the Institution, *provided, however*, upon the repayment, defeasance, and/or redemption of the Series 2014A Bonds and the Series 2014B Bonds, the Institution's obligation to maintain a Debt Service Coverage Ratio shall expire. Compliance with the Debt Service Coverage Ratio will be tested annually commencing with the fiscal year ending June 30, 2023 and will be indicated by a certificate of an authorized officer of the Institution provided to the Trustee not later than the Reporting Date (as defined herein) pursuant to the Guaranty.

For purposes of the Guaranty, the “Debt Service Coverage Ratio” means the ratio of Operating Revenues Available for Debt Service equal to 1.0x Annual Debt Service.

“Annual Debt Service” means the actual sum of the principal and sinking fund installments of, and interest on, all outstanding Long-Term Indebtedness payable during a fiscal year, provided

that with respect to any Long-Term Indebtedness subject to an interest rate exchange agreement, the debt service shall include the net payments made to or received from the counterparty.

“Balloon Long-Term Indebtedness” means any Long-Term Indebtedness as to which twenty-five percent (25%) or more of principal payments is due in a single Fiscal Year of the Institution.

“Indebtedness” means, without duplication, (i) all indebtedness of the Institution for borrowed moneys, (ii) all indebtedness, no matter how created, secured by the Initial Project Facility or other property of the Institution, whether or not such indebtedness is assumed by the Institution, (iii) the liability of the Institution under any leases of real or personal property, excluding any operating leases of real or personal property, that are properly capitalized on the balance sheet of the Institution in accordance with generally accepted accounting principles and (iv) any guaranty by the Institution of any other Person for borrowed moneys or which has been incurred or assumed by such Person in connection with the acquisition of property or the leasing of real or personal property which is properly capitalized on the balance sheet of such Person in accordance with generally accepted accounting principles, excluding indebtedness that has been defeased.

“Long-Term Indebtedness” means Indebtedness having an original maturity of greater than one (1) year or Indebtedness on which the Institution has an option to extend the maturity thereof for a period of greater than one (1) year beyond the date of the original incurrence thereof.

“Maximum Annual Debt Service” means on any date, the greatest amount required in the then current or future fiscal year to pay the sum of the principal and sinking fund installments of and interest on outstanding Long-Term Indebtedness payable during such year assuming that any Long-Term Indebtedness that bears a variable rate of interest (a) if the Long-Term Indebtedness is tax-exempt, the interest rate borne by such Indebtedness shall be assumed to be the five year average of the SIFMA index (or a comparable index) as of the date one month before the issuance of such proposed Indebtedness, (b) if such Long-Term Indebtedness is not tax-exempt, the interest rate borne by such Long-Term Indebtedness shall be assumed to be the five year average of 30-day LIBOR (or a comparable index) as of the date one month before the issuance of such proposed Long-Term Indebtedness, and (c) if the variable rate Long-Term Indebtedness is subject to an interest rate exchange agreement, the interest rate borne by such Long-Term Indebtedness shall include the net payments made to or received from the counterparty; provided further, that with respect to any Balloon Long-Term Indebtedness, such Long-Term Indebtedness shall be assumed to be amortized to provide for level debt service for a period equal to the original term of such debt at the interest rate actually borne by such balloon Long-Term Indebtedness or at the average variable rate as described above.

“Operating Revenues” means total operating revenues without donor restrictions, including interest and dividends and funds made available for operations from endowment funds and from other donor restricted resources as displayed or included in the Institution’s audited financial statements produced in accordance with generally accepted accounting principles (GAAP) then applicable to the Institution, and excluding (i) any gains resulting from either the extinguishment of indebtedness, the sale, exchange or other disposition of capital assets not in the ordinary course of business, (ii) earnings resulting from any reappraisal, revaluation or write-up or write-down of



fixed or capital assets, and (iii) any realized gains or losses on the sale of investments or interest exchange agreements.

“Operating Revenues Available for Debt Service” means the increase or decrease in net assets from operations without donor restrictions, including Operating Revenues, minus total operating expenses, excluding (i) depreciation, (ii) amortization, (iii) interest expense on Long-Term Indebtedness as displayed or included in the Institution’s audited financial statements produced in accordance with generally accepted accounting principles then applicable to the Institution, (iv) any non-cash adjustment for changes in accounting estimates, change in generally accepted accounting principles, or other non-cash adjustments made in accordance with generally accepted accounting principles, (v) extraordinary items, and (vi) any unrealized gains/appreciation or losses/depreciation on the carrying value of investments or interest exchange agreements.

“Reporting Date” means the reporting date of compliance with the Debt Service Coverage Ratio, such date being no later than 120 days following the end of each fiscal year of the Institution, commencing with the fiscal year ending June 30, 2023.

The Institution’s historical Debt Service Coverage Ratio for the past five years is presented in the table below.

	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Total Operating Revenues	\$ 46,449,321	\$ 48,229,135	\$ 48,981,985	\$ 46,009,516	\$ 48,022,064
Operating Expenses Less Depreciation, Amortization and Accretion, and Interest	41,491,035	43,705,138	44,499,447	43,853,833	45,825,170
Operating Revenues Available For Debt Service	\$ 4,958,286	\$ 4,523,997	\$ 4,482,538	\$ 2,155,683	\$ 2,196,894
Annual Debt Service*	\$ 1,668,868	\$ 1,752,806	\$ 1,715,472	\$ 1,911,946	\$ 1,828,858
Debt Service Coverage Ratio	<b>2.97x</b>	<b>2.58x</b>	<b>2.61x</b>	<b>1.13x</b>	<b>1.20x</b>

\* Excludes payments on financing leases due to change in GAAP.

### **Additional Long-Term Indebtedness**

The Institution has covenanted in the Guaranty that it shall not incur additional Long-Term Indebtedness unless the Institution shall provide to the Trustee a certificate of an Authorized Representative of the Institution containing pro forma calculations demonstrating that (A) the Maximum Annual Debt Service on all outstanding and proposed Long-Term Indebtedness is less than ten percent (10%) of the Institution’s Operating Revenues as stated in the most recently available audited financial statements of the Institution and (B) the Institution maintains a Debt Service Coverage Ratio of 1.0x on a pro-forma basis, such that Operating Revenues Available for Debt Service based on the Institution’s most recently available audited financial statements are at least 1.0x Maximum Annual Debt Service, including proposed Long-Term Indebtedness. Upon the repayment, defeasance, and/or redemption of the Series 2014A Bonds and the Series 2014B Bonds, the Institution’s obligation to comply with the debt service coverage requirement of the Additional Indebtedness covenant shall expire.

## **THE ISSUER**

Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) (A) authorizes municipalities to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted.

As provided in the Enabling Act, the Issuer is authorized and empowered to issue, execute and deliver the Series 2022 Bonds; to lend the proceeds of the Series 2022 Bonds to the Institution pursuant to the Loan Agreement; to secure the Series 2022 Bonds by a pledge of the moneys payable by the Institution under the Loan Agreement; and to execute and deliver the Series 2022 Indenture and the Loan Agreement.

On September 22, 2022, the Issuer approved the scheduling of a public hearing relating to the issuance of the Series 2022 Bonds. On October 12, 2022, the Issuer held a public hearing, in compliance with the provisions of Section 147(f) of the Code, with respect to the issuance of the Series 2022 Bonds, following the timely publication of notice of the hearing. By a resolution duly adopted by the Issuer on October 20, 2022, the Issuer approved the execution, issuance and delivery of the Series 2022 Bonds and the execution and delivery of the Series 2022 Indenture and the Loan Agreement. The Series 2022 Bonds are limited obligations of the Issuer payable solely from the moneys and securities held by the Trustee under the Series 2022 Indenture and the security provided by the Loan Agreement, the Series 2022 Assignment and the Guaranty. Neither the Issuer nor its members or officers are personally liable with respect to the Series 2022 Bonds. Accordingly, no financial information with respect to the Issuer or its members or officers has been included in this Official Statement.

THE ENABLING ACT PROVIDES THAT THE SERIES 2022 BONDS OF THE ISSUER SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR THE CITY OF ALBANY, NEW YORK AND NEITHER THE STATE OF NEW YORK NOR THE CITY OF ALBANY, NEW YORK SHALL BE LIABLE THEREON.

## **THE SERIES 2022 BONDS**

### **Description of the Series 2022 Bonds**

The Series 2022 Bonds will be issued pursuant to the Series 2022 Indenture. The Series 2022 Bonds will be dated the date of delivery, and will bear interest from such date (payable

on June 1, 2023 and on each December 1 and June 1 thereafter until final maturity thereof) at the rates set forth on the inside cover page of this Official Statement.

The Series 2022 Bonds will be issued as fully registered bonds in denominations of \$5,000 or any integral multiple thereof. The Series 2022 Bonds will be registered in the name of Cede & Co., as nominee of DTC, pursuant to DTC's Book-Entry Only System. Purchases of beneficial interests in the Series 2022 Bonds will be made in book-entry form, without certificates. If at any time the Book-Entry Only System is discontinued for the Series 2022 Bonds, the Series 2022 Bonds will be exchangeable for other fully registered certificated Series 2022 Bonds in any authorized denominations, maturity and interest rate. See "Book-Entry Only System" herein. The Trustee may impose a charge sufficient to reimburse the Issuer or the Trustee for any tax, fee or other governmental charge required to be paid with respect to such exchange or any transfer of a Series 2022 Bond. The cost, if any, of preparing each new Series 2022 Bond issued upon such exchange or transfer, and any other expenses of the Issuer or the Trustee incurred in connection therewith, will be paid by the person requesting such exchange or transfer.

The principal of, and premium, if any, on the Series 2022 Bonds shall be payable in lawful money of the United States of America at the Office of the Trustee, or of its successor in trust. Interest on Series 2022 Bonds due on any Bond Payment Date shall be payable to the Person in whose name such Series 2022 Bond is registered at the close of business on a Special Record Date for the payment of such defaulted payments, which shall be fixed in the following manner. The Trustee shall determine the amount of defaulted payments to be paid on each Bond and establish the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and money in the aggregate amount of the proposed defaulted payments shall be segregated by the Trustee to be held in trust for the benefit of the Persons entitled to such defaulted payments as in this subsection provided and not to be deemed part of the Trust Revenues. Thereupon, the Trustee shall fix a Special Record Date for the payment of such defaulted payments, which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment. The Trustee shall promptly notify the Issuer and the Institution of such Special Record Date and shall cause notice of the proposed payment of such defaulted payments and the Special Record Date therefor to be mailed one-time, first-class postage prepaid, to each registered Owner of a Bond at his address as it appears in the bond register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such defaulted payments and the Special Record Date therefor having been mailed as aforesaid, such defaulted payments shall be paid to the Persons in whose names the Bonds are registered on such Special Record Date. As long as the Series 2022 Bonds are registered in the name of Cede & Co., as nominee of DTC, such payments will be made directly to DTC. See "Book-Entry Only System" herein.

Any Series 2022 Bond shall be transferable only on the registration books of the Issuer maintained by the Trustee, as Bond Registrar. Upon surrender of the Series 2022 Bond at the office of the Trustee, duly endorsed for transfer by the Owner or his duly authorized legal representative in the form imprinted on the Series 2022 Bond or in such other form as is satisfactory to the Trustee and in either case accompanied by a guaranty of signature to the Trustee, the Issuer will execute and the Trustee will authenticate and deliver in exchange for such Series 2022 Bond a new registered Series 2022 Bond or Bonds, registered in the name of the transferee or transferees thereof.

## Redemption Provisions

### *Extraordinary Redemption Without Premium*

The Series 2022 Bonds are subject to redemption prior to maturity by the Issuer at the request of the Institution (1) in whole, but not in part, without premium or penalty, in the event of (a) a taking in Condemnation of, or failure of title to, all or substantially all of the Initial Project Facility, or (b) damage to or destruction of part or all of the Initial Project Facility, or (c) a taking by Condemnation of part of the Initial Project Facility, or (d) a taking by Condemnation of part of the Initial Project Facility; or (2) as a whole, without premium, in the event that (a) the Loan Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as a result of any change in the United States Constitution or legislative or administrative action (whether state or federal), or by final decree or judgment of any court or administrative body, or (b) the Institution certifies that unreasonable burdens or excessive liabilities have been imposed on the Institution or its property, including, without limitation, taxes not being imposed on the date of the Loan Agreement, or (3) in part, without premium, (a) in the event that (i) excess moneys remain in the Insurance and Condemnation Fund following damage or condemnation of a portion of the Initial Project Facility and completion of the repair, rebuilding or restoration of the Initial Project Facility, and (ii) such excess moneys are not paid to the Institution, or in the event that excess proceeds of recoveries from contractors are applied to redeem Series 2022 Bonds, in each case to the extent of such excess. In any such event, the Series 2022 Bonds shall be redeemed at a Redemption Price equal to 100% of the aggregate principal amount of the Series 2022 Bonds to be redeemed plus interest accrued thereon to the Redemption Date, without premium.

The Trustee shall call the applicable Series 2022 Bonds for redemption pursuant to the paragraph above within sixty (60) days of the Trustee's receipt of notice from the Institution pursuant to the Loan Agreement directing such redemption.

### *Optional Redemption*

The Series 2022 Bonds maturing on or after December 1, 2033 are subject to redemption by the Issuer at the option of the Institution on or after December 1, 2032, in whole at any time or in part (in denominations of \$5,000 or any integral multiple thereof) on any Bond Payment Date, at the Redemption Price of 100%, plus accrued interest to the Redemption Date.

The Trustee shall call the Series 2022 Bonds for redemption pursuant to the Series 2022 Indenture upon receipt of notice from the Issuer, or the Institution on behalf of the Issuer, directing such redemption, which notice shall be sent to the Trustee at least thirty-five (35) days prior to the Redemption Date and shall specify (i) the principal amount of the Series 2022 Bonds to be called for redemption and (ii) the Redemption Price. The Issuer shall direct the Trustee to call the Series 2022 Bonds for optional redemption when and only when it shall have been notified by the Institution to do so, the Institution has itself notified the Trustee of a corresponding prepayment under the Loan Agreement and the amount of such prepayment shall have been delivered to the Trustee for deposit into the Bond Fund.

### *Mandatory Sinking Fund Redemption*

The Series 2022 Bonds are subject to scheduled mandatory sinking fund redemption, by lot in such manner as the Trustee shall deem fair and appropriate for random selection, prior to maturity, on December 1 of each year, by the application of Sinking Fund Payments at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof to be redeemed, plus accrued interest to the Redemption Date, without premium, in the principal amounts set forth opposite the respective dates set forth below:

<u>Series 2022A Bonds</u>		<u>Series 2022B Bonds</u>	
<u>Sinking Fund Payment Date (December 1)</u>	<u>Sinking Fund Payment</u>	<u>Sinking Fund Payment Date (December 1)</u>	<u>Sinking Fund Payment</u>
2035	\$1,265,000	2023	\$135,000
2036	1,660,000	2024	155,000
2037	1,745,000	2025	160,000
2038*	1,835,000	2026	175,000
		2027	180,000
		2028	195,000
		2029	\$210,000
		2030	220,000
		2031	245,000
		2032	255,000
		2033	280,000
		2034	290,000
		2035*	310,000

\* Stated Maturity

### *Notice of Redemption*

When the Series 2022 Bonds are to be redeemed pursuant to the Series 2022 Indenture, the Trustee shall give notice of the redemption of the Series 2022 Bonds in the name of the Issuer and at the expense of the Institution stating: (1) the Series 2022 Bonds to be redeemed (including the CUSIP number); (2) the Redemption Date; (3) except as provided otherwise in the Series 2022 Indenture, that the Series 2022 Bonds will be redeemed at the Office of the Trustee; (4) that on the Redemption Date there shall become due and payable upon each Series 2022 Bond to be redeemed the Redemption Price thereof and (5) that from and after the Redemption Date interest thereon shall cease to accrue.

The Trustee shall mail a copy of the notice required by the Series 2022 Indenture, postage prepaid, not less than thirty (30) days nor more than sixty (60) days prior to the Redemption Date, to each Holder at the address of such Holder appearing on the registration books of the Issuer. Such mailing shall not be a condition precedent to such redemption, and failure to so mail any such notice to any of such Holders shall not affect the validity of the proceedings for the redemption of the Series 2022 Bonds.

### *Payment of Redeemed Series 2022 Bonds*

After notice shall have been given in the manner provided in the Series 2022 Indenture, the Series 2022 Bonds or portions thereof called for redemption shall become due and payable on the Redemption Date so designated. Upon presentation and surrender of such Series 2022 Bonds at the Office of the Trustee, or as otherwise provided in the Series 2022 Indenture, such Series 2022 Bonds shall be paid at the Redemption Price, plus accrued interest to the Redemption Date.

If, on the Redemption Date, moneys for the redemption of the Series 2022 Bonds or portions thereof to be redeemed, together with interest thereon to the Redemption Date, shall be held by the Trustee in the Bond Fund so as to be available therefor on such date, the Series 2022 Bonds or portions thereof so called for redemption shall cease to bear interest, and such Series 2022 Bonds or portions thereof shall no longer be Outstanding under the Series 2022 Indenture or be secured by or be entitled to the benefits of the Series 2022 Indenture. In the event the Owner fails to present or surrender its Series 2022 Bonds on the Redemption Date, the Trustee shall deposit such moneys in a separate non-interest bearing account, in trust for the benefit of such Owner, and the funds held in such account shall not be invested by the Trustee. If such moneys shall not be available on the Redemption Date, such Series 2022 Bonds shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption and shall continue to be secured by and be entitled to the benefits of the Series 2022 Indenture; additionally, the Trustee shall within fifteen (15) days after the proposed Redemption Date notify all affected Holders that the redemption has been revoked.

#### *Partial Redemption of Series 2022 Bonds*

Upon surrender of the Series 2022 Bonds for redemption in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder thereof a new Series 2022 Bond or Series 2022 Bonds in an aggregate principal amount equal to the unredeemed portion of the Series 2022 Bonds surrendered.

#### *Selection of Series 2022 Bonds to be Called for Redemption*

In the event of any partial redemption, the particular Series 2022 Bonds or portions thereof to be redeemed shall be selected by the Trustee from maturities designated in writing by the Institution, and within each maturity by lot or by such other method as the Trustee shall deem fair and appropriate, provided that for so long as the Series 2022 Bonds shall be Book Entry Bonds, the particular Series 2022 Bonds or portions thereof to be redeemed within a maturity may be selected by lot by the Depository in such manner as the Depository may determine. If any maturity of the Series 2022 Bonds which is subject to sinking fund redemption is to be redeemed in part, the Trustee shall apply any partial redemption payments (other than a scheduled mandatory redemption) to the schedule of mandatory Sinking Fund Payments thereon as designated by the Institution. Further, the Trustee may provide for the selection for redemption of portions (equal to \$5,000 or any integral multiple of \$5,000 in excess thereof) of Series 2022 Bonds. In no event shall the principal amount of Series 2022 Bonds subject to any partial redemption be other than a whole multiple of \$5,000 thereof.

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

The information under this heading has been furnished by The Depository Trust Company (“DTC”), New York, New York. Neither the Issuer nor the Institution makes any representations as to the completeness or the accuracy of such information or as to the absence of material adverse changes in such information subsequent to the date thereof.

DTC will act as securities depository for the Series 2022 Bonds. The Series 2022 Bonds will be issued as fully-registered securities in the name of Cede & Co. (DTC’s partnership

nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for the Series 2022 Bonds in the aggregate principal amount of the Series 2022 Bonds and will be deposited with DTC.

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

Purchases of the Series 2022 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2022 Bonds on DTC's records. The ownership interest of each actual purchaser of each of the Series 2022 Bonds ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2022 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2022 Bonds, except in the event that use of the book-entry system for the Series 2022 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2022 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2022 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2022 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The

Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

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

Redemption notices shall be sent to DTC. If less than all of the Series 2022 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Series 2022 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2022 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal of, Sinking Fund Payments for, Redemption Price, if any, of and interest payments on the Series 2022 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with bonds held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Issuer, or Trustee, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2022 Bonds at any time by giving reasonable notice to the Issuer or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, Bond certificates are required to be printed and delivered.

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

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Issuer believes to be reliable, but neither the Issuer nor the Institution takes any responsibility for the accuracy thereof. So long as Cede & Co. is the registered owner of the Series 2022 Bonds as nominee of DTC, references herein to the holders or registered



owners of the Series 2022 Bonds shall mean Cede & Co. and shall not mean the Beneficial Owners of the Series 2022 Bonds.

THE ISSUER, THE INSTITUTION AND THE TRUSTEE WILL HAVE NO RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, TO INDIRECT PARTICIPANTS, OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (i) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT, OR ANY INDIRECT PARTICIPANT; (ii) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE SERIES 2022 BONDS UNDER THE INDENTURE; (iii) THE SELECTION BY DTC OR ANY DIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE SERIES 2022 BONDS; (iv) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR INTEREST DUE WITH RESPECT TO THE SERIES 2022 BONDS; (v) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF THE SERIES 2022 BONDS; OR (vi) ANY OTHER MATTER RELATING TO DTC OR THE OPERATION OF THE BOOK-ENTRY SYSTEM.

## **SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2022 BONDS**

### **Payment of the Series 2022 Bonds**

The Series 2022 Bonds will be special obligations of the Issuer. The principal, Sinking Fund Payments and Redemption Price of and interest on the Series 2022 Bonds are payable solely from the revenues received by the Issuer pursuant to the Loan Agreement and the Series 2022 Bonds and all funds and accounts (excluding the Rebate Fund) established by the Series 2022 Indenture. Pursuant to the Loan Agreement, the Institution is obligated to make installment payments sufficient to fund debt service payments on the Series 2022 Bonds. The aforementioned revenues consist of the payments required to be made by the Institution under the Loan Agreement with respect to the Series 2022 Bonds on account of the principal, Sinking Fund Payments and Redemption Price of and interest on such Series 2022 Bonds. The revenues have been assigned to the Trustee for the benefit of the holders of the Series 2022 Bonds.

The Institution's payment obligations under the Loan Agreement are general obligations of the Institution. The Loan Agreement obligates the Institution to make monthly payments in amounts sufficient to fund, among other things, the annual principal and Sinking Fund Payments of and the semi-annual interest on the Outstanding Series 2022 Bonds as they become due.

The Issuer has directed the Institution, and the Institution has agreed to make such payments directly to the Trustee. Any payments made on the Series 2022 Bonds shall also be made directly to the Trustee. The aggregate payments made by the Institution under the Loan Agreement shall equal the debt service on the Series 2022 Bonds, and all of such payments are to be applied by the Trustee to the payment of the principal, Sinking Fund Payments and Redemption Price of and interest on the Series 2022 Bonds.

## Security for the Series 2022 Bonds

### *General*

The Series 2022 Bonds will be secured by (1) all moneys and securities held from time to time by the Trustee for the Owners of such Series 2022 Bonds pursuant to the Series 2022 Indenture and all Bond proceeds prior to disbursement pursuant to the terms of the Series 2022 Indenture, but excepting monies held in the Rebate Fund, (2) the Loan Agreement, (3) the Series 2022 Assignment, (4) the Pledge and Security Agreement, and (5) the Guaranty.

### *The Pledge and Security Agreement*

Further, the payment obligations of the Institution under the Loan Agreement is secured by a pledge and security interest in the Pledged Revenues of the Institution pursuant to the Pledge and Security Agreement. The Pledged Revenues consist of, to the maximum extent permitted by law, all receipts, revenues, income and other money received by or on behalf of the Institution in connection with fees charged by the Institution and tuition collected by the Institution, excluding auxiliary services fees for student housing, dining and the bookstore. Pursuant to the Pledge and Security Agreement, the lien on the Pledged Revenues is on a parity basis with a pledge granted to certain bondholders as set forth in the Intercreditor Agreement.

### *The Intercreditor Agreement*

The Institution's outstanding indebtedness includes the Series 2014A Bonds and the Series 2014B Bonds. As stated above, the Series 2022 Bonds are secured in part by the pledge and assignment to the Trustee of a security interest in the Institution's Pledged Revenues. The Series 2014A Bonds and Series 2014B Bonds are also secured by liens on the Pledged Revenues which, pursuant to the Pledge and Security Agreement and the Intercreditor Agreement, are *pari passu* with the lien on Pledged Revenues securing the Series 2022 Bonds. Specifically, pursuant to the Intercreditor Agreement, Regions Bank, as trustee for holders of the Series 2014A Bonds (the "Series 2014A Trustee") and NBT Bank, National Association, as holder of the Series 2014B Bonds (the "Series 2014B Bondholder") have agreed that the Institution may issue, incur or assume long term indebtedness secured by a lien on the Pledged Revenues which shall automatically be *pari passu* with the lien on the Pledged Revenues granted to secure the Series 2014A Bonds and the Series 2014B Bonds. Pursuant to the Pledge and Security Agreement relating to the Series 2022 Bonds, the Institution and the Trustee agree that any claim held by the Trustee with respect to the Pledged Revenues shall be *pari passu* with the rights of the Series 2014A Trustee and the Series 2014B Bondholder (the Trustee, the Series 2014A Trustee and the Series 2014B Bondholder are collectively referred to as the "Creditors"), with the interests of each of the Creditors being co-equal and in proportion to the unpaid outstanding principal amount of the Series 2022 Bonds, the Series 2014A Bonds and the Series 2014B Bonds (net of any cash or investments held as security therefor), subject to the terms and conditions contained in the Intercreditor Agreement.

Pursuant to the Pledge and Security Agreement, the Institution may in the future issue, incur or assume Long-Term Indebtedness secured by a Lien on Pledged Revenues, which Lien will also be *pari passu* with the Lien on the Pledged Revenues granted by the Pledge and Security Agreement and subject to the Intercreditor Agreement.

### *Guaranty*

The (A) Institution's obligation (i) to make all Loan Payments under the Loan Agreement and (ii) to perform all obligations related thereto and (B) the Issuer's obligation to repay the Series 2022 Bonds is secured by the Guaranty.

### *Springing Mortgage*

The Series 2022 Bonds are not initially secured by a mortgage. If, however, subsequent to the issuance of the Initial Bonds, the Institution incurs any additional Indebtedness that is secured by a Future Obligation Mortgage, the Institution has covenanted in the Guaranty that, on the date the Institution enters into such Future Obligation Mortgage, it will execute and deliver to the Trustee, or execute and deliver to the Issuer for assignment to the Trustee a Series 2022 Bond Mortgage. Each Series 2022 Bond Mortgage shall grant a mortgage lien on and security interest in the same Property encumbered by the Future Obligation Mortgage, on a pari passu basis with the lien of the Future Obligation Mortgage, and shall have substantially the same terms and conditions as the Future Obligation Mortgage. The Institution and the Trustee shall enter into an intercreditor agreement with holders of any additional Indebtedness secured by a Future Obligation Mortgage to provide for a sharing of net proceeds from any recovery under the Future Obligation Mortgage and Series 2022 Bond Mortgage on an equal and ratable basis without regard to order of priority.

If at any time after the Institution executes and delivers a Series 2022 Bond Mortgage there shall no longer be outstanding any Indebtedness secured by a mortgage lien on the Property encumbered by that Series 2022 Bond Mortgage, then that Series 2022 Bond Mortgage shall be terminated and discharged of record and shall be of no further force or effect.

## **THE INSTITUTION**

The Institution is a New York not-for-profit education corporation, located in the City of Albany, New York. The Institution was founded in 1881 and is authorized by the Board of Regents of the State of New York to operate as a college and all its programs of study leading to degrees and credit-bearing certificates are approved according to standards of academic quality in the Regulations of the Commissioner of Education. Additionally, the Institution is accredited by the Middle States Commission on Higher Education; the Doctor of Pharmacy program is accredited by the Accreditation Council for Pharmacy Education; the Clinical Laboratory Sciences program is accredited by the National Accrediting Agency for Clinical Laboratory Sciences; the M.S. in Cytotechnology and the Molecular Cytology program is accredited by the Commission on Accreditation of Allied Health Education Programs; and the B.S. in Public Health is accredited by the Council on Education for Public Health. See "APPENDIX A - Albany College of Pharmacy and Health Sciences" for a more complete description of the Institution.

## **THE PLAN OF REFUNDING**

On the Closing Date, a portion of the proceeds of the Series 2022 Bonds will be disbursed to the Prior Trustees, to be disbursed by the Prior Trustees to reimburse amounts drawn on letters of credit securing the Prior Bonds to fund the redemption of the Prior Bonds, in full, on their

earliest possible optional redemption date following the date of the issuance of the Series 2022 Bonds, which is expected to be December 1, 2022.

### ESTIMATED SOURCES AND USES OF FUNDS

The following table sets forth the estimated sources and uses of funds (exclusive of accrued interest) related to the Series 2022 Bonds:

<b>Sources of Funds</b>	<b>Series 2022A</b>	<b>Series 2022B</b>	<b>Series 2022 Total</b>
Aggregate Principal Amount	\$6,505,000.00	\$2,810,000.00	\$9,315,000.00
(Original Issue Discount)	(76,303.65)	(117,036.50)	(193,340.15)
<b>Total Sources of Funds</b>	<b><u>\$6,428,696.35</u></b>	<b><u>\$2,692,963.50</u></b>	<b><u>\$9,121,659.85</u></b>
<b>Uses of Funds</b>			
Deposit to Refund Prior Bonds	\$6,292,887.59	\$2,442,427.48	\$8,735,315.07
Cost of Issuance <sup>(1)</sup>	135,808.76	250,536.02	386,344.78
<b>Total Uses of Funds</b>	<b><u>\$6,428,696.35</u></b>	<b><u>\$2,692,963.50</u></b>	<b><u>\$9,121,659.85</u></b>

(1) Includes, but is not limited to, costs of issuance for the Issuer, counsel fees, printing, Trustee fees, Underwriter's Discount, Financial Advisors and related expenses.

## ANNUAL DEBT SERVICE REQUIREMENTS

The following table sets forth, for each Institution fiscal year ending June 30, the estimated amounts required each year to be made available for the payment of debt service by the Institution with respect to the Series 2022 Bonds, and includes estimated debt service for the Series 2014A Bonds and Series 2014B Bonds:

Period Ending	Series 2022 Bonds			Series 2014A & Series 2014B Bonds	Combined Debt Service
	Principal*	Interest	Debt Service	Debt Service <sup>(1)</sup>	
6/30/2023	\$ -	\$ 267,069	\$ 267,069	\$ 1,601,854	\$ 1,868,923
6/30/2024	135,000	526,631	661,631	1,609,408	2,271,039
6/30/2025	155,000	516,844	671,844	1,601,615	2,273,459
6/30/2026	160,000	506,213	666,213	1,607,162	2,273,375
6/30/2027	175,000	494,906	669,906	1,600,813	2,270,719
6/30/2028	180,000	482,925	662,925	1,607,606	2,270,531
6/30/2029	195,000	470,269	665,269	1,606,257	2,271,526
6/30/2030	210,000	456,600	666,600	1,603,025	2,269,625
6/30/2031	220,000	442,088	662,088	1,611,353	2,273,441
6/30/2032	245,000	426,394	671,394	1,607,778	2,279,172
6/30/2033	255,000	409,519	664,519	1,601,390	2,265,909
6/30/2034	280,000	391,463	671,463	1,602,280	2,273,743
6/30/2035	290,000	372,225	662,225	1,611,092	2,273,317
6/30/2036	1,575,000	318,769	1,893,769	378,488	2,272,257
6/30/2037	1,660,000	231,525	1,891,525	379,656	2,271,181
6/30/2038	1,745,000	142,144	1,887,144	384,846	2,271,990
6/30/2039	1,835,000	48,169	1,883,169	385,802	2,268,971
TOTAL	<u>\$ 9,315,000</u>	<u>\$ 6,503,751</u>	<u>\$ 15,818,751</u>	<u>\$ 22,400,425</u>	<u>\$ 38,219,176</u>

<sup>(1)</sup> Assumes an all-in rate of 2.50% for fiscal years 2023-2039 for the Series 2014B Bonds.

## BONDHOLDER'S RISKS

In addition to matters discussed elsewhere herein, the following factors may have a material effect on the operations of the Institution to an extent that cannot be determined at this time. Prospective purchasers of the Series 2022 Bonds should give careful consideration to the matters referred to in the following summary. Such summary is not intended to be exhaustive, but rather to summarize certain matters which could affect payment of the Series 2022 Bonds, in addition to other risks described throughout this Official Statement.

### General

The Series 2022 Bonds are not a debt or liability of the State of New York or any political subdivision thereof (including the City of Albany, New York), but are special and limited obligations of the Issuer payable solely from the amounts payable by the Institution pursuant to the Loan Agreement and the funds and accounts held by the Trustee pursuant to the Series 2022 Indenture (except the Rebate Fund) and certain investment income thereon. The Issuer has no

taxing power. No representation or assurance can be made that such payments will be realized from the Institution in amounts sufficient to provide funds for payment of debt service on the Series 2022 Bonds when due and to make other payments necessary to meet the obligations of the Institution. Further, there is no assurance that the revenues of the Institution sufficiently to match increased costs that may be incurred.

The ability of the Institution to generate revenues sufficient to provide for the payment of debt service on the Series 2022 Bonds and the Institution's other obligations is subject to, among other things, the capabilities of the management of the Institution, operating costs, changes in the economic conditions in the Institution's service area, competition, government regulation and licensing requirements, and future economic and other conditions (including the impact of inflation or recession), which are unpredictable and may not be determinable at this time. The ability of the Institution to operate successfully over the life of the Series 2022 Bonds may be dependent upon its ability to finance, acquire and support additional capital replacements and improvements, which may be affected by legislation and regulations.

### **Risks of Early Payment**

The Series 2022 Bonds may be paid prior to maturity upon optional, mandatory or special redemption (as described under "THE SERIES 2022 BONDS" herein) and upon an acceleration following the occurrence of certain Events of Default under the Series 2022 Indenture and the Loan Agreement. If the Series 2022 Bonds become due upon an acceleration, interest on the Series 2022 Bonds will cease to accrue on the date of the accelerated payment and no premium would be payable.

### **Competition**

Competition from both public and private institutions of higher education located elsewhere in New York and the United States, and other factors outside the control of the Institution, may decrease enrollment at the Institution.

### **No Debt Service Reserve Fund**

The payment of principal of, redemption price of and interest on the Series 2022 Bonds will not be secured by a debt service reserve fund.

### **Parity Liens on Pledged Revenues**

Although the Series 2022 Bonds are secured by a lien on the Institution's Pledged Revenues, the Series 2014A Bonds and Series 2014B Bonds are also secured by a lien on the Pledged Revenues. See "SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2022 BONDS - Security for the Series 2022 Bonds-The Intercreditor Agreement" herein. Upon the occurrence of an event of default by the Institution under any of the Financing Documents, any claim held by each of the Creditors with respect to the Pledged Revenues and proceeds derived therefrom will be *pari passu* (i.e., equal and ratable in right without regard to order of priority); the interests of each of the Creditors being co-equal and in proportion to the then unpaid outstanding principal amount of the Series 2022 Bonds, Series 2014A Bonds and the Series 2014B Bonds (net of any cash or investments held as security therefor).

Also, pursuant to the Pledge and Security Agreement, the Institution may in the future issue, incur or assume Long-Term Indebtedness secured by a Lien on Pledged Revenues, which Lien will also be *pari passu* with the Lien on the Pledged Revenues granted by the Pledge and Security Agreement and subject to the Intercreditor Agreement.

### **Financial Assistance**

The amount of available financial assistance is a significant factor in the decision of many students to attend the Institution. Approximately 98% of the Institution's students receive need-based aid in the form of grants, loans or campus employment. In addition to scholarships provided by the Institution, students secure grant and loan support from a variety of other sources, including the State and the Federal governments. Any significant reduction in the level of financial assistance offered to prospective students could reduce the number of students enrolling at the Institution.

### **Changes in Law**

Changes in law may impose new or added financial or other burdens on the operations of the Institution. Developments may include: (i) legislative or regulatory requirements for maintaining status as an organization exempt from taxation as described in Section 501(c)(3) of the Code or (ii) challenges to State and local exemptions from real property tax and other taxes. It is not possible to predict the scope or effect of future legislative or regulatory actions with respect to taxation of not-for-profit corporations. There can be no assurance that future changes in the laws and regulations will not materially adversely affect the operations and financial condition of the Institution by requiring it to pay income or real property taxes (or other ad valorem taxes).

See also "TAX MATTERS" for a discussion of risks associated with changes to the Code or State tax law that might affect the Tax-Exempt Series 2022 Bonds.

### **Event of Taxability**

If the Institution does not comply with certain covenants set forth in the Loan Agreement or if certain representations or warranties made by the Institution in the Loan Agreement or in certain certificates of the Institution are false or misleading, the interest paid or payable on the Series 2022A Bonds may become subject to inclusion in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2022A Bonds, regardless of the date on which such noncompliance or misrepresentation is ascertained. In the event that the interest on the Series 2022A Bonds becomes subject to inclusion in gross income for federal income tax purposes, the Indenture does not provide for payment of any additional interest on the Series 2022A Bonds, the redemption of the Series 2022A Bonds or the acceleration of the payment of principal on the Series 2022A Bonds.

### **Maintenance of 501(c)(3) Status**

The federal tax-exempt status of the Series 2022A Bonds presently depends upon maintenance by the Institution of its status as an organization described in Section 501(c)(3) of the Code. The Institution qualifies as a tax-exempt organization described in Section 501(c)(3) of the

Code. To maintain such status, the Institution must conduct its operations in a manner consistent with representations previously made to the IRS and with current and future IRS regulations and rulings.

Compliance with current and future regulations and rulings of the IRS could adversely affect the ability of the Institution to charge and collect revenues, finance or refinance indebtedness on a tax-exempt basis or otherwise generate revenues necessary to provide for payment of the Series 2022 Bonds. Although the Institution has covenanted to maintain its status as a tax-exempt organization, loss of tax-exempt status would likely have a significant adverse effect on such organization and its operations and could result in the includability of interest on the Series 2022A Bonds in gross income for federal income tax purposes retroactive to their date of issue. See “TAX MATTERS” herein.

The tax-exempt status of nonprofit corporations, and the exclusion of income earned by them from taxation, has been the subject of review by various federal, state and local legislative, regulatory and judicial bodies. This review has included proposals to broaden and strengthen existing federal tax law with respect to unrelated business income of nonprofit corporations.

There can be, however, no assurance that future changes in the laws and regulations of the federal, state or local governments will not materially and adversely affect the operations and revenues of the Institution by requiring it to pay income, real estate or other taxes.

### **Tax Audits**

Taxing authorities have recently been conducting tax audits on non-profit organizations to confirm that such organizations are in compliance with applicable tax rules and in some instances have collected significant payments as part of the settlement process. The Institution is not currently under audit.

### **Secondary Market for the Series 2022 Bonds**

There can be no assurance that there will be a secondary market for purchase or sale of the Series 2022 Bonds. From time to time there may be no market for the Series 2022 Bonds depending upon prevailing market conditions, including the financial condition or market position of firms who may make the secondary market, the evaluation of the Institution’s capabilities and the financial condition and results of operations of the Institution.

### **Default by the Institution or the Issuer**

THE SERIES 2022 BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE BY THE ISSUER SOLELY FROM THE PAYMENTS TO BE MADE BY THE INSTITUTION UNDER THE LOAN AGREEMENT AND THE AMOUNTS ON DEPOSIT IN CERTAIN FUNDS AND ACCOUNTS ESTABLISHED THEREFOR UNDER THE SERIES 2022 INDENTURE.

No representations or assurances can be given that either the Institution (or a replacement operator of any of the Facilities) or the Issuer will not default in performing their respective obligations under the Series 2022 Indenture, the Loan Agreement. If an Event of Default occurs



under the Series 2022 Indenture, the Trustee may, and upon direction of the Holders of at least 51% of the Series 2022 Bonds Outstanding under the Series 2022 Indenture, shall accelerate the maturity of the Series 2022 Bonds and interest will cease to accrue on the date of acceleration, notwithstanding the fact that such Holders may not receive notice of such acceleration until after such date. In addition, no premium will be received upon an acceleration of the Series 2022 Bonds due to a default.

### **Enforceability of Remedies; Bankruptcy**

The Series 2022 Bonds are payable from the sources of payment and security described in “SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2022 BONDS” herein. Upon a default, the practical realization of value from the collateral described therein upon any default will depend upon the exercise of various remedies specified by the Series 2022 Indenture and the Loan Agreement. These and other remedies may, in many respects, require judicial actions which are often subject to discretion and delay.

Under existing law, the remedies specified by the Series 2022 Indenture, the Series 2022 Bonds and the Loan Agreement may not be readily available or may be limited. A court may decide not to order the specific performance of the covenants contained in those documents. The legal opinions to be delivered concurrently with the delivery of the Series 2022 Bonds will be qualified as to the enforceability of the various legal instruments due to limitations imposed by state and federal laws, rulings and decisions affecting remedies and by bankruptcy, reorganization or other laws affecting the enforcement of creditors’ rights generally.

The rights and remedies of the Bondholders are subject to various provisions of the United States Bankruptcy Code, New York Not-for-Profit Corporation Law, and other statutory and judicial insolvency laws. If the Institution were to seek relief under the foregoing laws (or if an insolvency proceeding or action is commenced against the Institution ) a plan of dissolution could be adopted that could include provisions modifying or altering the rights of creditors generally, or any class of them, secured or unsecured. In addition, a bankruptcy proceeding would create an automatic stay of the commencement or termination of any judicial or other proceeding against the Institution or its property. A similar stay is available in State-law insolvency proceedings.

### **Redemption or Acceleration of Series 2022 Bonds Without Premium**

As described in this Official Statement, there are certain instances where the Series 2022 Bonds may be redeemed or accelerated without payment of premium to the Holders. The instances described in this Official Statement include the occurrence of an Event of Default under the Series 2022 Indenture. (See the sections herein entitled “THE SERIES 2022 BONDS” and “APPENDIX D - Summary of Certain Provisions of the Series 2022 Indenture”).

## **TAX MATTERS**

All quotations from and summaries and explanations of provisions of laws appearing under this caption do not purport to be complete and reference is made to such laws for full and complete statements of their provisions.

## Opinion of Bond Counsel

Series 2022A Bonds: In the opinion of Hodgson Russ LLP, Albany, New York, Bond Counsel, under existing law and assuming compliance with certain covenants and the accuracy of certain representations, (1) interest on the Series 2022A Bonds is excludable from the gross income of the owners thereof for federal income tax purposes, and is not an “item of tax preference” for purposes of the individual and corporate alternative minimum taxes imposed by the Code, except that (a) the Institution or another Person, by failing to comply with certain requirements contained in the Code, may cause interest on the Series 2022A Bonds to become subject to federal income taxation and certain other taxes from the date of issuance thereof, and (b) interest on the Series 2022A Bonds may be included in the tax base for purposes of computing the branch profits tax imposed on foreign corporations doing business in the United States under Section 884 of the Code; (2) so long as interest on the Series 2022A Bonds is excluded from gross income for federal income tax purposes, interest on the Series 2022A Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York); and (3) for tax years beginning after December 31, 2022, interest on the Series 2022A Bonds will be included in the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code. Bond Counsel expresses no opinion as to any other tax consequences regarding the Series 2022A Bonds.

Series 2022B Bonds: In the opinion of Hodgson Russ LLP, Bond Counsel, interest on the Series 2022B Bonds is not excludable from gross income for federal income tax purposes and is not exempt under existing law from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York).

In rendering the foregoing opinions, Bond Counsel noted that exclusion of the interest on the Series 2022A Bonds from gross income for federal income tax purposes may be dependent, among other things, on compliance with the applicable requirements of Sections 145, 147, 148 and 149 of the Code and the regulations thereunder (collectively, the “Tax Requirements”). In the opinion of Bond Counsel, the Tax Regulatory Agreement and the other Financing Documents establish requirements and procedures, compliance with which will satisfy the Tax Requirements. Bond Counsel will not independently verify the accuracy of the certifications and representations of the Issuer and the Institution or the continuing compliance with the covenants by the Issuer and the Institution.

Bond Counsel does note that compliance with certain Tax Requirements necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 2022A Bonds may necessitate the taking of action, or refraining to take action, by persons not within the control of the Issuer or the Institution. The Issuer and the Institution have each covenanted to take the actions required of it for the interest on the Series 2022A Bonds to be and to remain excluded from gross income for federal income tax purposes, and not to take any actions that would adversely affect that exclusion. After the date of issuance of the Series 2022A Bonds, Bond Counsel will not undertake to determine (or to so inform any person) whether any actions taken or not taken, or any events occurring or not occurring, or any other matters coming to Bond Counsel’s attention, may adversely affect the exclusion from gross income for federal income tax purposes of the interest paid or payable on the Series 2022A Bonds or the market value of the Series 2022A Bonds.

The opinion of Bond Counsel is based on current legal authority and covers certain matters not directly addressed by such authority. It represents Bond Counsel's legal judgment as to exclusion of interest on the Series 2022A Bonds from gross income for federal income tax purposes, but is not a guaranty of that conclusion. The opinion is not binding upon the Internal Revenue Service ("IRS") or any court. Bond Counsel expresses no opinion about (1) the effect of future changes in the Code and the applicable regulations under the Code or (2) the interpretation and enforcement of the Code or such regulations by the IRS.

ALL PROSPECTIVE PURCHASERS OF THE SERIES 2022A BONDS AND/OR THE SERIES 2022B BONDS SHOULD CONSULT WITH THEIR TAX ADVISORS IN ORDER TO UNDERSTAND THE IMPLICATIONS OF THE CODE AS TO THE TAX CONSEQUENCES OF PURCHASING OR HOLDING THE SERIES 2022A BONDS AND/OR THE SERIES 2022B BONDS.

### **Tax Requirements**

The Tax Requirements referred to above, which must be complied with in order that interest on the Series 2022A Bonds remain excluded from gross income for federal income tax purposes, include, but are not limited to:

(1) The requirement that (a) all property financed or refinanced with proceeds of the Series 2022A Bonds be owned by a 501(c)(3) organization or by a state or local governmental unit, and (b) no more than five percent (5%) of the proceeds of the Series 2022A Bonds be used for any private business use, treating as private business use (i) use (directly or indirectly) in a trade or business carried on by any entity other than (A) a state or local governmental unit or (B) a Section 501(c)(3) organization in a trade or business related to such Section 501(c)(3) organization's exempt purposes and (ii) possession of certain interests in the property financed or refinanced with proceeds of the Series 2022A Bonds by any entity other than (A) a state or local governmental unit or (B) a Section 501(c)(3) organization. The Institution has indicated in the Tax Regulatory Agreement that (x) all property financed or refinanced with proceeds of the Series 2022A Bonds will be owned by a 501(c)(3) organization or by a state or local governmental unit, and (y) no more than five percent (5%) of the proceeds of the Series 2022A Bonds will be used for any private business use.

(2) The requirement that not more than two percent (2%) of the proceeds of the Series 2022A Bonds be utilized to finance the costs of the issuance of the Series 2022A Bonds. The Institution has indicated in the Tax Regulatory Agreement that not more than two percent (2%) of the proceeds of the Series 2022A Bonds will be utilized to finance the costs of issuance of the Series 2022A Bonds.

(3) The requirements contained in Section 148 of the Code relating to arbitrage bonds, including but not limited to the requirement that, unless the Institution satisfies one of the applicable exceptions provided by Section 148 of the Code, the excess of all amounts earned on the investment of the Gross Proceeds (as defined in the Tax Regulatory Agreement) of the Series 2022A Bonds over that which would have been earned on such

Gross Proceeds had such Gross Proceeds been invested at a Yield (as defined in the Tax Regulatory Agreement) equal to that on the Series 2022A Bonds, and any investment income earned on such excess, be rebated to the United States. The Institution has agreed in the Tax Regulatory Agreement and in the Loan Agreement to comply with the requirements of Section 148 of the Code.

(4) The requirement that the Initial Project Facility not be used for a purpose prohibited under Section 147(e) of the Code (relating to, among others, any airplane, skybox or other private luxury box, facility primarily used for gambling, or store, the principal business of which is the sale of alcoholic beverages for consumption off premises).

(5) The requirement contained in Section 149(b) of the Code that payment of principal or interest on the Series 2022A Bonds not be directly or indirectly guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof).

### **Certain Collateral Federal Tax Consequences**

You should also be advised that the Series 2022A Bonds are subject to, among others, the following provisions contained in the Code:

(1) interest on the Series 2022A Bonds may also be subject to a branch profits tax imposed upon certain foreign corporations doing business in the United States and to a federal tax imposed on excess net passive income of certain S corporations;

(2) interest paid by certain financial institutions on debt allocable to the cost of acquiring and carrying the Series 2022A Bonds is not deductible from federal income taxation; and

(3) a property and casualty insurance company's deduction for losses incurred is reduced by 15% on tax-exempt income received from the Series 2022A Bonds.

Prospective purchasers of the Series 2022A Bonds should also be aware that ownership of, accrual or receipt of interest on, or disposition of, the Series 2022A Bonds may have collateral federal income tax consequences for certain taxpayers, including financial institutions, property and casualty insurance companies, S Corporations, certain foreign corporations, individual recipients of Social Security or Railroad Retirement benefits, individuals otherwise eligible for the earned income tax credit, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. Prospective purchasers should consult their tax advisers as to any possible collateral consequences from their ownership of, or receipt of interest on, or disposition of, the Series 2022A Bonds. Bond Counsel expresses no opinion regarding any such collateral federal income tax consequences.

The applicability and extent of these and other tax consequences will depend upon the particular tax status or other tax items of the owner of the Series 2022A Bonds. Bond Counsel will express no opinion regarding these consequences.

## **Information Reporting and Backup Withholding**

Interest paid on the Series 2022A Bonds and the Series 2022B Bonds will be subject to information reporting to the IRS in a manner similar to interest paid on taxable obligations. Although such reporting requirement does not, in and of itself, affect the excludability of interest on the Series 2022A Bonds from gross income for federal income tax purposes, such reporting requirement causes the payment of interest on the Series 2022A Bonds and the Series 2022B Bonds to be subject to backup withholding if such interest is paid to beneficial owners who (a) are not “exempt recipients,” and (b) either fail to provide certain identifying information (such as the beneficial owner’s taxpayer identification number) in the required manner or have been identified by the IRS as having failed to report all interest and dividends required to be shown on their income tax returns. Generally, individuals are not exempt recipients, whereas corporations and certain other entities generally are exempt recipients. Amounts withheld under the backup withholding rules from a payment to a beneficial owner would be allowed as a refund or credit against such beneficial owner’s federal income tax liability provided the required information is furnished to the IRS.

## **Future Legislation or Other Post-Issuance Events**

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authority and represents Bond Counsel’s judgment as to the proper treatment of the Series 2022A Bonds for federal income tax purposes. It is not binding on the IRS or the courts. Current and future legislative proposals, if enacted into law, or administrative actions or court decisions, at either the federal or state level, may cause interest on the Series 2022A Bonds to be subject, directly or indirectly, to federal income taxation or to be subjected to State or local income taxation, or otherwise have an adverse impact on the potential benefits of the exclusion from gross income of the interest on the Series 2022A Bonds for federal or state income tax purposes.

Legislation affecting tax-exempt obligations is regularly considered by the United States Congress and may also be considered by the New York State Legislature. Court proceedings may also be filed, the outcome of which could modify the tax treatment of the Series 2022A Bonds. There can be no assurance that legislation enacted or proposed or actions by a court after the date of issuance of the Series 2022A Bonds will not have an adverse effect on the tax status of the interest paid or payable on the Series 2022A Bonds or the market value or marketability of the Series 2022A Bonds. These adverse effects could result, for example, from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), or repeal (or reduction in benefit) of the exclusion of the interest on the Series 2022A Bonds from gross income for federal or state income tax purposes for all or certain taxpayers. The introduction or enactment of any such legislative proposals, administrative actions or court decisions may also affect, perhaps significantly, the value or marketability of the Series 2022A Bonds.

No representation is made as to the likelihood of such proposals being enacted in their current or similar form, or if enacted, the effective date of any such legislation and no assurances can be given that such proposals or amendments will not materially and adversely affect the market value or the marketability of the Series 2022A Bonds or the tax consequences of ownership of the

Series 2022A Bonds. Similarly, it is not possible to predict whether any other legislative or administrative actions or court decisions having an adverse impact on the Federal or state income tax treatment of holders of the Series 2022A Bonds may occur.

Prospective purchasers of the Series 2022A Bonds should consult their own tax advisers regarding pending or proposed federal and state tax legislation and court proceedings, and prospective purchasers of the Series 2022A Bonds at other than their original issuance at the respective prices set indicated on the inside cover of this Official Statement should also consult their own tax advisers regarding other tax considerations, such as the consequences of market discount, as to which Bond Counsel expresses no opinion.

Bond Counsel's engagement with respect to the Series 2022A Bonds and the Series 2022B Bonds ends with the issuance of the Series 2022A Bonds and the Series 2022B Bonds. Bond Counsel has not undertaken to advise in the future whether any events occurring after the date of issuance of the Series 2022A Bonds may affect the tax status of interest paid or payable on the Series 2022A Bonds.

Unless separately engaged for such purpose, Bond Counsel is not obligated to defend the Issuer or the owners of the Series 2022A Bonds regarding the tax status of the interest thereon in the event of an audit examination by the IRS. If the IRS does audit the Series 2022A Bonds, under current IRS procedures, the IRS will treat the Issuer as the taxpayer and the beneficial owners of the Series 2022A Bonds will have only limited rights, if any, to obtain and participate in judicial review of such audit. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the Issuer legitimately disagrees may not be practicable. Any action by the IRS, including but not limited to the selection of the Series 2022A Bonds for audit, or the course or result of such audit, or an audit of other obligations presenting similar tax issues, may alter the market value for, or the marketability of, the Series 2022A Bonds, and may cause the Issuer, the Institution or the Bondholders to incur significant expense.

### **Discount Series 2022A Bonds**

The excess, if any, of the amount payable at maturity of any maturity of the Series 2022A Bonds purchased as part of the initial public offering over the issue price thereof constitutes original issue discount. The amount of original issue discount that has accrued and is properly allocable to an owner of any maturity of the Series 2022A Bonds with original issue discount (the "Discount Series 2022A Bonds") will be excluded from gross income for purposes of federal income taxation to the same extent as interest on such Series 2022A Bonds. In general, the issue price of a maturity of the Series 2022A Bonds is the first price at which a substantial amount of the Series 2022A Bonds of that maturity was sold to the public (excluding sales to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers) and the amount of original issue discount accrues in accordance with a constant yield method based on the compounding of interest. A purchaser's adjusted basis in a Discount Series 2022A Bond is increased by the amount of such accruing discount for purposes of determining taxable gain or loss on the sale or other disposition of such Discount Series 2022A Bond for purposes of federal income taxation. In addition, original issue discount that accrues in each year to an owner of a Discount Series 2022A Bond will be included in the calculation of the

distribution requirements of certain regulated investment companies and may result in some of the collateral federal income tax consequences discussed above. Consequently, owners of any Discount Series 2022A Bond should be aware that the accrual of original issue discount in each year may result in an alternative minimum tax liability, additional distribution requirements or other collateral federal income tax consequences although the owner of such Discount Series 2022A Bond has not received cash attributable to such original issue discount in such year.

The accrual of original issue discount and its effect on the redemption, sale or other disposition of a Discount Series 2022A Bond that is subject to redemption prior to maturity or that is not purchased in the initial offering at the first price at which a substantial amount of such substantially identical Series 2022A Bonds is sold to the public may be determined according to rules that differ from those described above.

Prospective purchasers of Discount Series 2022A Bonds should consult their own tax advisors with respect to the determination for purposes of federal income taxation of the amount of original issue discount or interest properly accruable with respect to such Discount Series 2022A Bonds and with respect to state and local tax consequences of owning and disposing of Discount Series 2022A Bonds.

### **Premium Series 2022A Bonds**

The excess, if any, of the tax adjusted basis of a maturity of any Series 2022A Bonds purchased as part of the initial public offering by a purchaser (other than a purchaser who holds such Series 2022A Bonds as inventory, stock in trade or for sale to customers in the ordinary course of business) over the amount payable at maturity is “bond premium.” Owners of a maturity of the Series 2022A Bonds with bond premium (a “Premium Series 2022A Bond”) will be subject to requirements under the Code relating to tax cost reduction associated with the amortization of bond premium and, under certain circumstances, the initial owner of a Premium Series 2022A Bond may realize taxable gain upon disposition of Premium Series 2022A Bonds even though sold or redeemed for an amount less than or equal to such owner’s original cost of acquiring such Premium Series 2022A Bonds. In general, bond premium is amortized over the term of a Premium Series 2022A Bond for Federal income tax purposes in accordance with constant yield principles based on the owner’s yield over the remaining term of such Premium Series 2022A Bond (or, in the case of a bond with bond premium callable prior to its stated maturity, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on such bond). The Owner of a Premium Series 2022A Bond is required to decrease such Owner’s adjusted basis in such Premium Series 2022A Bond by the amount of amortizable bond premium attributable to each taxable year such Premium Series 2022A Bond is held. The amortizable bond premium on such Premium Series 2022A Bond attributable to a taxable year is not deductible for federal income tax purposes; however, bond premium is treated as an offset to qualified stated interest received on such Premium Series 2022A Bond.

Prospective purchasers of any Premium Series 2022A Bond should consult their tax advisors with respect to the determination for purposes of federal income taxation of the treatment of bond premium upon the sale or other disposition of such Premium Series 2022A Bond and with respect to the state and local tax consequences of acquiring, owning and disposing of such Premium Series 2022A Bond.

## **New York State Taxes**

Series 2022A Bonds. In the opinion of Bond Counsel, so long as interest on the Series 2022A Bonds is excluded from gross income for federal income tax purposes, interest on the Series 2022A Bonds is exempt, under existing law, from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York).

Series 2022B Bonds. In the opinion of Bond Counsel, interest on the Series 2022B Bonds is not exempt under existing law from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York).

## **Tax Risks - Loss of Federal Tax Exemption**

As described above, interest on the Series 2022A Bonds may become subject to federal income taxation if certain events occur subsequent to the date of issuance of the Series 2022A Bonds that violate the requirements and limitations prescribed by the Code. Although the Institution has agreed not to violate the requirements and limitations of the Code, there can be no assurance that these events will not occur. If certain requirements are violated, the interest on the Series 2022A Bonds may be deemed to be taxable from the date of issuance. The Series 2022A Bonds are not subject to mandatory redemption or to mandatory acceleration in the event of such an occurrence. No premium or additional interest will be paid to the Bondholders or former Bondholders to compensate the Bondholders for any losses they may incur as a result of the interest on the Series 2022A Bonds becoming subject to federal income taxation.

## **Form of Opinion of Bond Counsel**

The form of the approving opinion of Bond Counsel with respect to the Series 2022 Bonds is attached hereto as Appendix G. See “FORM OF BOND COUNSEL OPINION” in APPENDIX G.

## **UNDERWRITING**

The Series 2022 Bonds are being purchased by KeyBanc Capital Markets Inc., the Underwriter, who has agreed to purchase the Series 2022 Bonds at an aggregate underwriting discount of \$50,000.00 from the public offering prices set forth on the cover page hereof. The Underwriter may offer and sell the Series 2022 Bonds to certain dealers (including dealers depositing Series 2022 Bonds into investment trusts) and others at prices lower than the public offering prices stated on the cover page hereof. The purchase of the Series 2022 Bonds by the Underwriter is subject to certain conditions and requires that the Underwriter will purchase all the Series 2022 Bonds, if any are purchased. The public offering prices set forth on the cover page hereof may be changed after the initial offering by the Underwriter.

## **RATINGS**

Standard & Poor’s Ratings Services, a division of McGraw-Hill Companies, Inc. (“S&P”) has assigned its municipal bond rating of “BBB+” (negative outlook) and Fitch Ratings, Inc.



(“Fitch”) has assigned its municipal bond rating of “A-” (stable outlook) to the Series 2022 Bonds. Such ratings reflects only the view of S&P and Fitch at the time the ratings are issued, and any explanation of the significance of such ratings may only be obtained from S&P or Fitch. There is no assurance that such credit ratings will remain in effect for any given period of time or that such ratings will not be lowered, suspended or withdrawn entirely by S&P or Fitch, if, in their judgment, circumstances so warrant. Any such lowering, suspension or withdrawal of the ratings may have an adverse effect on the market price or marketability of the Series 2022 Bonds.

### **CONTINUING DISCLOSURE OBLIGATIONS**

The Institution, in order to assist the Underwriter in complying with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Rule”), has undertaken in a Continuing Disclosure Undertaking, dated as of November 1, 2022 (the “Continuing Disclosure Undertaking”) by the Institution, for the benefit of the Bondholders, to provide to the Trustee certain annual information and notices required to be provided by Rule 15c2-12. (See “APPENDIX F - Form of Continuing Disclosure Undertaking”). The Continuing Disclosure Undertaking may be amended or modified without the consent of the Bondholders under certain circumstances set forth therein. Copies of the Continuing Disclosure Undertaking when executed by the parties thereto at or prior to the delivery of the Series 2022 Bonds will be on file at the principal corporate trust office of the Trustee. The Issuer has not committed to provide any continuing disclosure to the owners of the Series 2022 Bonds or to any other person. The Institution has covenanted for the benefit of the Bondholders to provide certain financial information and operating data relating to such Institution by not later than 120 days following the end of the Institution ‘s fiscal year beginning with the fiscal year ending June 30, 2023 (the “Annual Report”), and to provide notices of the occurrence of certain enumerated events, if deemed by such Institution to be material. The Annual Report will be filed on behalf of the Institution with the Municipal Securities Rulemaking Board through its EMMA System. In the event the obligations of the Institution are terminated with respect to the Series 2022 Bonds, the Institution will also be relieved of its obligation to provide information under the related Continuing Disclosure Undertaking.

The Institution previously entered into continuing disclosure undertakings in connection with municipal securities for which it is the obligated party. During the last five years, the Institution failed to timely file two rating upgrades with respect the Series 2014A Bonds. The Institution has made corrective filings with respect to each of these filing failures.

### **INDEPENDENT AUDITORS**

The financial statements of Albany College of Pharmacy and Health Sciences as of and for the Years Ended June 30, 2022 and June 30, 2021, included in APPENDIX B of this Official Statement, have been audited by UHY LLP, independent auditors, as set forth in their report thereon appearing in APPENDIX B of this Official Statement.

### **FINANCIAL ADVISORS**

Excelsior Capital Advisory Services LLC and PFM Financial Advisors LLC are serving as co-financial advisors to the Institution (the “Financial Advisors”) in connection with the issuance

of the Series 2022 Bonds. The Financial Advisors are not obligated to undertake an independent verification of, or to assume responsibility for the accuracy, completeness, or fairness of the information contained in the Official Statement and the Appendices hereto.

## **LITIGATION**

### **The Issuer**

There is no controversy or litigation of any nature now pending against the Issuer or to the knowledge of the members of the Issuer, threatened, seeking to restrain or enjoin the issuance, sale, execution or delivery of the Series 2022 Bonds or in any way contesting or affecting the validity of the Series 2022 Bonds or any proceedings of the Issuer taken with respect to the issuance or sale thereof, or the pledge or application of any moneys or security provided for the payment of the Series 2022 Bonds or the use of the proceeds of the Series 2022 Bonds.

### **The Institution**

There is no controversy or litigation of any nature now pending against the Institution or to the knowledge of the directors, officers or management of the Institution, threatened, seeking to restrain or enjoin the issuance, sale, execution or delivery of the Series 2022 Bonds or in any way contesting or affecting the validity of the Series 2022 Bonds or any proceedings of the Institution taken with respect to the issuance or sale thereof, or the pledge or application of any moneys or security provided for the payment of the Series 2022 Bonds or the use of the proceeds of the Series 2022 Bonds.

## **APPROVAL OF LEGAL PROCEEDINGS**

Legal matters incident to the authorization, issuance and sale of the Series 2022 Bonds are subject to the approving opinions of Hodgson Russ LLP, Albany, New York, Bond Counsel. Certain legal matters will be passed upon for the Issuer by Corporation Counsel of the City of Albany, counsel for the Issuer, and certain legal matters will be passed upon for the Institution by Bond, Schoeneck & King PLLC, Albany, New York, counsel to the Institution. Certain legal matters will be passed upon for the Underwriter by Orrick, Herrington & Sutcliffe LLP, New York, New York, counsel to the Underwriter.

## **OTHER MATTERS**

The foregoing summaries and explanations do not purport to be comprehensive and are expressly made subject to the exact provisions of documents referred to herein. So far as any statements are made in this Official Statement involving matters of opinion, whether or not expressly so stated, they are intended merely as such and not as representations of fact.

The agreements of the Issuer with the holders of the Series 2022 Bonds is fully set forth in the Series 2022 Indenture and this Official Statement is not to be construed as constituting an agreement with the purchasers of such Series 2022 Bonds.

The execution, delivery and distribution of this Official Statement has been duly authorized by the Issuer and the Institution.

DATE: November 1, 2022

**CITY OF ALBANY CAPITAL RESOURCE  
CORPORATION**

By: /s/ Elizabeth Staubach  
Chair

**ALBANY COLLEGE OF PHARMACY AND  
HEALTH SCIENCES**

By: /s/Michele D. Vien  
Authorized Officer

[THIS PAGE INTENTIONALLY LEFT BLANK]

## APPENDIX A

### Albany College of Pharmacy and Health Sciences

#### CERTAIN INFORMATION CONCERNING THE INSTITUTION

##### History of the Institution

Albany College of Pharmacy and Health Sciences (“ACPHS” or the “College”) was founded in 1881 and has graduated more than 16,414 students in the increasingly complex profession of pharmacy and related fields.

Up until the late 1990’s, ACPHS had just one building, the Francis J. O’Brien Building, and one program, Pharmacy. These factors severely limited opportunities for growth at the College, which at the time had an enrollment of just 600 students. In 1998, the College began an aggressive expansion of its academic programs, enrollment, and physical plant.

The College has since diversified its academic offerings around its core Doctor of Pharmacy (Pharm.D.) program. In addition to its Pharm.D. program, ACPHS now offers five (5) bachelor’s degree programs (Biomedical Technology; Clinical Laboratory Sciences; Microbiology; Pharmaceutical Sciences; and Public Health) and six (6) master’s degree programs (Biomufacturing and Bioprocessing; Biomedical Sciences; Clinical Laboratory Sciences; Cytotechnology and Molecular Cytology; Molecular Biosciences; and Pharmaceutical Sciences).

The addition of these programs has prompted many changes, including changing the name of the College, previously Albany College of Pharmacy, to Albany College of Pharmacy and Health Sciences in 2008 to better reflect the range of academic program offerings. The new programs, along with the associated faculty hires, have also led to a greater emphasis on research and scholarly activity.

Faculty at the College today are engaged in a wide range of federally and privately funded research projects, including: studying biodefense strategies to thwart potential anthrax attacks or deployment of the Francisella bacteria; exploring the impact of parental resources on children’s health; developing chemical compounds for limiting the harmful effects of the sun; and working on numerous projects related to the prevention, detection, and treatment of cancer.

In parallel with the addition of new academic programs and the increase in enrollment has been an expansion of the College’s physical plant. Since 2000, ACPHS has acquired three residence halls, the building and gymnasium formerly belonging to Christian Brothers Academy, and a building that now houses the College’s Department of Pharmaceutical Sciences and several research labs. During this time, the College has also constructed a new student center. Most recently, in June 2022, ACPHS acquired a 154,000 square foot state-of-the-art facility uniquely designed for life science research and located adjacent to the campus at 150 New Scotland Avenue, now known as the Life Sciences Innovation Building. The facility will be home to ACPHS’s Center for Biopharmaceutical Education and Training (“CBET”).

Additional enhancements to the physical campus include renovations to many of the College's research labs and practice labs, the dining hall, the library, and the construction of a new athletics field.

ACPHS further extended its reach in 2009 with the opening of a satellite campus in Colchester, Vermont, which subsequently closed in June 2022 due to inadequate enrollment. Since 2020, the College's Stack Family Center for Biopharmaceutical Education and Training has been operating in the Albany NanoTech Complex; it will move to the newly acquired life sciences research laboratory once renovations are complete.

Dr. Gregory Dewey, who became president of ACPHS on July 1, 2014, retired on June 30, 2022. He was succeeded by Dr. Toyin Tofade, who became the 10<sup>th</sup> president in the College's history on July 1, 2022. She joined the College after serving as Dean of Pharmacy at Howard University in Washington, D.C.

### Strategic Plan

The College adopted its current strategic plan (the "Strategic Plan") in 2018. The five-year plan is a dynamic and living document continuously evaluated and modified as goals are met and new challenges arise. Below are the Strategic Plan's four vision principles:

1. We will be a college offering pre-eminent degree programs in the health sciences while maintaining pharmacy at our core. These programs will feature the integration of the basic, clinical and population health sciences.
2. We will be a small, independent college with high academic standards foster an academic, physical, and social environment that is student centric.
3. We will expand our scholarship endeavors to create new knowledge and enrich the student experience.
4. We will educate students to be global citizens and prepare them for careers in the health professions and life sciences industries.

### Academic Programs

#### *Undergraduate*

- B.S. in Biomedical Technology
- B.S. in Clinical Laboratory Sciences
- B.S. in Microbiology
- B.S. in Pharmaceutical Sciences
- B.S. in Public Health

### *Graduate*

- M.S. in Biomanufacturing and Bioprocessing
- M.S. in Biomedical Sciences
- M.S. in Clinical Laboratory Sciences
- M.S. in Cytotechnology and Molecular Cytology
- M.S. in Molecular Biosciences
- M.S. in Pharmaceutical Sciences

### *Doctorate*

- Doctor of Pharmacy (Pharm.D.)

### Accreditation

The College holds an accreditation from the Middle States Commission on Higher Education (MSCHE), an institutional accrediting agency recognized by the US Secretary of Education and the Commission on Recognition of Postsecondary Accreditation.

MSCHE examines each institution holistically rather than specific programs. The College's accreditation was reaffirmed in 2021 with the next site visit scheduled for the 2028-2029 academic year. The curriculum of each undergraduate or graduate program is approved by the New York State Department of Education.

The following ACPHS programs are accredited separately with the length of each accreditation cycle determined by the respective accrediting body:

**Doctor of Pharmacy (Pharm.D.):** The ACPHS Doctor of Pharmacy program is accredited by the Accreditation Council for Pharmacy Education (ACPE). In 2011, ACPE approved a six-year extension of accreditation of the Pharmacy program until 2025.

**Clinical Laboratory Sciences:** The Clinical Laboratory Sciences program is accredited by the National Accrediting Agency for Clinical Laboratory Sciences and is accredited through 2029.

**Cytology and Molecular Cytology:** The M.S. in Cytotechnology and Molecular Cytology program is accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) upon the recommendation of the Cytotechnology Program Advisory Committee of the American Society of Cytopathology. The program is accredited through 2025.

**Public Health:** The B.S. in Public Health is accredited by the Council on Education for Public Health (CEPH) for a five-year term until 2026.

### Governance

A Board of Trustees of up to 25 members governs the College. There are currently five (5) vacancies on the Board of Trustees. Trustees serve three-year terms and are eligible to serve three consecutive terms. The officers and current members of the Board of Trustees are as follows:

## BOARD OF TRUSTEES

<b>Officers:</b>	<p><b>Chairperson:</b> Marion T. Morton '84, Boehringer Ingelheim Pharmaceuticals, Inc.,</p> <p><b>Vice Chairperson:</b> Matthew J. Bette, Bette &amp; Cring, LLC</p> <p><b>Treasurer:</b> William Shields '84, Retired President, Advanced Infusion Solutions</p> <p><b>Secretary:</b> Richard H. Daffner '63, Allegheny General Hospital</p>
<b>Term Trustees:</b>	<p>Helen A. Ashuntantang '06, BioMerieux Inc.</p> <p>Leigh Briscoe-Dwyer '87, American Society of Health System Pharmacists® (ASHP)</p> <p>Paul Derohannesian II, DerOhannesian and DerOhannesian Law</p> <p>Christopher DiLascia '83, Transition Patient Services</p> <p>Michael Duteau '92, Noble Health Services</p> <p>Edward Enos '84, United Health Group</p> <p>Donna French '88, AstraZeneca</p> <p>Hugh A. Johnson, Hugh Johnson Advisors, LLC</p> <p>Susan M. Learned '91 Learned Consulting Group</p> <p>Ruth Mahoney, NBT Bancorp Inc.</p> <p>James Notaro '84, Clinic Support Services</p> <p>Wallace Pickworth '69, Battelle</p> <p>Pamela Schweitzer, Retired PharmD</p> <p>Gregory Sciarra '93, Oak Street Health</p> <p>David Stack '76, Pacira Pharmaceuticals, Inc.</p> <p>Marc Watrous '91, Life Sciences Advisor</p> <p>Pamela Williamson, Williamson Biopharma Consulting</p>

### Administration

The President of the College is appointed by the Board of Trustees and, as chief executive officer, is principally responsible for the administration of the College. The President appoints all other principal administrators with approval by the Board of Trustees.

### Administrative Biographies

#### **Toyin Tofade, MS, PharmD, BCPS, CPCC, FFIP**

##### **President**

Toyin Tofade, MS, PharmD, BCPS, CPCC, FFIP, is the 10th president of Albany College of Pharmacy and Health Sciences. Dr. Tofade is the first Black woman to serve as president in the College's 141-year history. Prior to her appointment as president of Albany College of Pharmacy and Health Sciences, she served as the Dean and Professor at the Howard University College of Pharmacy in Washington, D.C. Prior to her tenure at Howard University, Dr. Tofade served in multiple roles at the University of Maryland School of Pharmacy (UMSOP) in Baltimore and the University of North Carolina (UNC). A leader in global professional pharmacy organizations, she was appointed in 2020 as president-elect of the International Pharmacy Federation (FIP) academic pharmacy section. She received a bachelor's in Pharmacy (B.Pharm.) from Obafemi Awolowo



University in Nigeria, as well as a M.S. in Pharmacy Practice and a Doctor of Pharmacy (Pharm.D.) degree from UNC at Chapel Hill. She completed a residency with emphasis on clinical pharmacokinetics from UNC Chapel Hill and an American Society of Health-System Pharmacy-accredited residency at UNC hospitals. Dr. Tofade is also a certified coactive coach, and has completed the Academic Leadership Academy from the Academic Leadership Institute at The Pennsylvania State University, the Management Development Program from the Harvard Graduate School of Education, and the Crises Leadership in Higher Education from the Harvard Kennedy School.

### **Anuja Ghorpade, PhD**

#### **Dean and Vice President of Academic Affairs**

Anuja Ghorpade, PhD, has more than 30 years of experience in the higher education industry (biochemistry, biotechnology, physics, molecular and cell biology, and neuroscience education). In addition, she has considerable leadership development and academic administration experience. She has served as Dean and Vice President of Academic Affairs at ACPHS since June 2019, wherein she was instrumental in the reorganization of the College from three schools back to one college. From 2019 to present, Dr. Ghorpade has served as the Chief Science Officer for Medical Innovation Collaboration of North Texas, an emerging non-profit advancing life science and biotechnology development in North Texas. From 2016-2019, she served as Vice President of Research and Innovation at the University of North Texas Health Sciences Center (UNTHSC). Prior to that, she served as Chair of the Department of Cell Biology and Anatomy at the Graduate School of Biomedical Sciences at UNTHSC. Dr. Ghorpade began her career as the Director of the Neural Cell Core Facility and the Science Director of the Rapid Autopsy Program at the University of Nebraska Medical Center. Dr. Ghorpade's achievements include over 85 peer reviewed articles published in scholarly journals, nine book chapters, countless presentations and more than \$13 million in funding. She received her Ph.D. in Life Sciences from the National Institute of Immunology in New Delhi, India; her Master of Science in Biotechnology from the Maharaja Sayajirav University of Baroda in Gujarat, India; and her Bachelor of Science in Microbiology, with minors in Physics and Chemistry from the University of Bombay in Mumbai, India.

### **Michele D. Vien**

#### **Vice President of Finance and IT, Chief Financial Officer**

Michele Vien was appointed Vice President of Finance and Chief Financial Officer in October 2010. Prior to that, she served as Comptroller from 2006-2010. Ms. Vien came to the College from a public accounting firm where she was a partner. She possesses 14 years of public accounting experience with both local and international firms. She is a member of several national and regional professional organizations related to higher education. In addition, Ms. Vien is a certified public accountant and a member of national and multiple state societies of public accounting. She has also served as treasurer on several not for profit boards of directors. She received her B.A. in Accounting and minor in Psychology from Washington and Jefferson College.

### **Tiffany Gutierrez**

#### **Vice President of Enrollment Management**

Tiffany Gutierrez was promoted to Vice President for Enrollment Management in 2007. Prior to that, she served as Director of Financial Aid from 1999-2007. Ms. Gutierrez came to the College from Siena College where she served as Assistant Director of Financial Aid from 1996-1999. She

holds more than 11 years of admissions, financial aid and enrollment marketing experience. A member of several national and statewide committees related to financial aid, admissions and enrollment management, she received her B.S. in Business Administration from University at Buffalo and her M.B.A. in Business Administration from University at Albany.

### **Diane O'Connor**

#### **Vice President, Communications and Marketing**

Diane O'Connor was appointed Vice President of Communications and Marketing in February 2022. Prior to joining ACPHS, O'Connor was employed by Skidmore College since 2016, most recently as Interim Vice President for Communications and Marketing. In addition to her leadership experience in higher education, she has over 25 years of management experience in the fields of public relations, communications, marketing, and journalism, and has developed successful communications and marketing campaigns for global brands spanning a number of industries. O'Connor holds a Bachelor of Arts degree from the State University of New York at Oneonta. She serves as a member and former board member of the Public Relations Society of America (PRSA), the American Marketing Association (AMA), and the Council for Advancement and Support of Education (CASE).

### **Vicki DiLorenzo**

#### **Vice President of Institutional Advancement**

Vicki DiLorenzo was appointed Vice President of Institutional Advancement in December 2005. Prior to that appointment, she held several administrative roles at the College including Director of Human Resources and Assistant Comptroller and has been with the College since 1998. Prior to joining ACPHS, Ms. DiLorenzo spent 15 years in the financial planning and investment industry as a financial planner. Ms. DiLorenzo completed both her B.S. and M.B.A. in Business Administration from Saint Rose College, and is currently a member of the Council for Advancement and Support of Education, Association of Fundraising Professionals – Hudson-Mohawk Chapter, Society for Human Resource Management and actively involved in the regional Chamber of Commerce.

### Employee Relations

In addition to its 81 full-time faculty members and 29 part-time faculty employees, the College has 62 administrative and 121 support staff employees. The College has no union representatives on campus.

During the close of the Vermont campus, faculty members were offered positions in Albany. In addition, ample notice of six months or more was given for staff positions in lieu of severance where services would be continued by Albany employees.

### Retirement Plan

Eligible employees of the College are participants in the College 403(b) plan, which is a defined contribution plan. The College's policy is to fund retirement costs as accrued. The contribution rate is based on a percentage of a participant's compensation. The maximum contribution of the College is 10% of a participant's compensation or as limited per IRS regulations. Total

contributions by the College amounted to \$1,652,376 and \$1,126,940 for the years ended June 30, 2022, and 2021, respectively.

### Admissions and Student Enrollment

Identified in the table below are the numbers of applications received for admissions to the College over the past five academic years and the upcoming fiscal year.

#### **Admissions Statistics First-Year Fall Applications and Enrollment**

<b>Academic Year</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
Applications	1,421	2,031	2,273	1,935	1,948	2,043
Acceptances	1,101	1,440	1,589	1,270	1,271	1,352
Ratio	77%	71%	70%	66%	65%	66%
Matriculated	196	199	192	119	122	119
Ratio	18%	14%	12%	9%	10%	9%

The first-year Fall 2022 class is composed of 119 students, of which 62 are in the Pharm.D. program, 28 are in B.S. Pharmaceutical Sciences and B.S. in Microbiology programs, 20 are in the B.S. in Public Health program, five (5) are in the B.S. in Biomedical Technology program, and four (4) are in the B.S. in Clinical Lab Sciences program.

ACPHS has continued to see a decline in demand for the Doctor of Pharmacy program at all entry levels, consistent with the decline in demand for it in the national market. The percentage of pharmacy enrollment for first-year students has steadily declined from 65% to 52% of the incoming class. Conversely, the percentage of bachelor's program enrollment has increased from 35% to 48% of the incoming first-year class. ACPHS is focusing on stabilizing new first-year pharmacy enrollment and continuing to grow new first-year bachelor's degree enrollment in order to diversify the enrollment portfolio. The College has made investments in predictive modeling for first-year admissions in an effort to increase yields in the applicant funnel. Predictive modeling has been implemented for financial aid packaging to best leverage financial aid resources and manage the College's discount rate.

Recruitment territories continue to be expanded by utilizing current staff and reclassifying Albany-based positions to regional positions that are located in New York City and Rhode Island to fortify these efforts in New York City, Long Island, New Jersey and New England. Recruitment staff members are traveling more widely, covering national college and science fairs to build pockets in Maryland, central Florida, Texas and southern California. ACPHS invested in building a new Communications and Marketing division to increase visibility, awareness and lead acquisition, particularly given the decline in prospect leads available from standardized testing companies such as ACT and SAT. ACPHS has invested in the use of tools such as ZeeMee and Campus ESP to communicate with prospective students and parents earlier in the search process.

## Enrollment

The following tables set forth student enrollment and full-time equivalent (FTE) enrollment in the fall of the most recent academic year along with five years of comparative data.

### **Total Enrollment**

<b>Academic Year</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
<b>Students</b>	1,379	1,333	1,247	1,115	1,072	933
<b>FTE</b>	1,367	1,320	1,229	1,115	1,063	918

### **Pharmacy Programs**

<b>Academic Year</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
<b>Students</b>	1,144	1,086	998	869	781	654
<b>FTE</b>	1,140	1,085	995	869	781	649

### **Other Programs**

<b>Academic Year</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
<b>Students</b>	235	247	249	246	291	279
<b>FTE</b>	227	235	234	246	282	269

### **Total Enrollment by Campus**

<b>Academic Year</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
<b><u>Albany</u></b>						
<b>Students</b>	1,229	1,203	1,126	1,027	1,016	924
<b>FTE</b>	1,219	1,190	1,108	1,027	1,007	909
<b><u>Vermont</u></b>						
<b>Students</b>	150	130	121	88	56	9
<b>FTE</b>	148	130	121	88	56	9

During year academic year 2020-2021, there were no part-time students enrolled at the College; therefore, the total headcount and FTE enrollments are the same. Academic year 2022-2023 will be the last year for all Vermont pharmacy programs due to the closing of the campus in 2023. The nine (9) remaining students are part of the Accelerated Pharm.D. program.

## Competitors

The following table compares the tuition and fees charged by the College for the 2022-2023 academic year relative to fees charged by other institutions with whom it competes for students.

<b>Institution</b>	<b>Estimated Tuition for 2022-2023 Academic Year</b>
<i>Albany College of Pharmacy and Health Sciences</i>	<b>\$37,950</b>
St. John's University	\$46,230
SUNY University at Albany	\$7,070 <sup>[1]</sup>
SUNY University at Binghamton	\$7,070 <sup>[1]</sup>
Rutgers, The State University of New Jersey: New Brunswick/Piscataway Campus	\$12,900 <sup>[2]</sup>
Massachusetts College of Pharmacy and Health Sciences	\$36,060
University of Rhode Island	\$13,250 <sup>[3]</sup>
Fairleigh Dickinson University	\$33,264
Long Island University, The Arnold and Marie Schwartz College of Pharmacy	\$38,684
Hofstra University	\$52,215
SUNY Buffalo	\$7,270 <sup>[4]</sup>

\*Source: Albany College of Pharmacy and Health Sciences.

<sup>[1]</sup> In-state tuition; out-of-state tuition is \$24,910.

<sup>[2]</sup> In-state tuition; out-of-state tuition is \$30,600.

<sup>[3]</sup> In-state tuition; out-of-state tuition is \$31,272.

<sup>[4]</sup> In-state tuition; out-of-state tuition is \$24,740.

### Student Quality and Profile

#### **Average SAT Scores (First-Year Freshman)**

<b>Academic Year</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
Verbal *	n/a	n/a	n/a	n/a	n/a	n/a
EBRW *	590	600	610	600	630	650
Math	610	630	640	620	650	680
Total	1,200	1,230	1,250	1,220	1,280	1,330

\* The College Board released a re-designed test in March of 2016. Most incoming students took the new SAT, in which Evidence-Based Reading and Writing (EBRW) replaced Critical Reading (CR). For the class starting in Fall 2021, the SAT/ACT was optional due to the impacts of COVID-19 on testing and access. About 30% of enrolling students submitted SAT or ACT.

#### **Average Class Rank (First-Year Freshman)**

<b>Academic</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23*</b>
Top 25%*	82.0%	68.0%	75.0%	75.0%	73.0%	74.0%

\*Not all high schools rank their students. Of the 116 new students, 70 schools reported rank for 2022, a similar percentage to last year.

Regarding the decrease in class rank for 2018-2019, there was a clustering of students between the top 30% and 25% (about 11% of the group). Further, fewer students had a reported class rank.

### **Geographic Profile of entering First-Year Students**

	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
New York	71%	71%	69%	63%	62%	67%
Out of State	23%	24%	26%	34%	30%	29%
Foreign	6%	5%	5%	3%	8%	4%

### **Student Retention\***

<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
94.4%	95.9%	95.7%	95.8%	97.3%

\*Percentage of all students in all classes completing the academic year.

### **Overview of Degrees Conferred by Program**

	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22*</b>
Pharmacy	225	218	210	189	200
Other	70	64	60	62	112

\*Increase in the total count of degrees other than Pharm.D. conferred during the reporting period is a result of the addition of two (2) M.S. programs, an increase in the number of degrees awarded to combined B.S./M.S. graduates, and growth in individual B.S. programs.

### Tuition and Fees

Full-time tuition for 2022-2023 is \$37,950 for B.S. students and students enrolled in the first two years of the Pharm.D. program. Additionally, 2022-2023 tuition for the Pharm.D. program for Vermont and Albany (years 3 through 6) is \$43,900. The Vermont Accelerated Pharm.D. structure will be phased out beginning Fall 2021 and conclude in 2023. Tuition is charged at a rate of \$51,870 for the 2022-2023 academic year. Tuition and fees for the the current year and last five years are listed below:

<b>Academic Year</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21*</b>	<b>2021-22</b>	<b>2022-23</b>
Tuition - B.S.	\$ 32,840	\$ 34,480	\$ 36,120	\$ 36,120	\$ 36,840	\$ 37,950
Tuition - Pharm D	\$ 38,060	\$ 39,920	\$ 41,780	\$ 41,780	\$ 42,620	\$ 43,900
Tuition - Accelerated	-	-	\$ 45,760	\$ 45,760	\$ 48,480	\$ 51,870
Fees **	\$ 781	\$ 625	\$ 625	\$ 625	\$ 275	\$ 625
Room & Board	\$ 10,800	\$ 10,920	\$ 11,046	\$ 11,046	\$ 11,400	\$ 11,710

\*Tuition frozen at 2020 rates.

\*\*No activity fee in 2022; reserves from previous years used to cover 2022 budget.

### Student Financial Aid

The College administers a student aid program through which approximately 98.0% of the student body receives financial aid in the form of grants, loans or campus employment. In fiscal year 2021-2022, the College provided \$14,221,790 in institutional grant aid to students. In addition, grants to students from the Federal Pell Grant Program and from the Federal Supplemental Educational Opportunity Grant (FSEOG) Program amounted to \$1,187,675. Students enrolled at Albany College of Pharmacy and Health Sciences received \$884,918 in grants from the New York State Tuition Assistance Program (TAP) and other state scholarships in fiscal year 2021-2022.

A summary of the funds provided for scholarships for the past five fiscal years is as follows:

<b>Financial Assistance</b> <b>Fiscal Years Ended June 30<sup>th</sup></b> <b>(\$000's)</b>					
	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Scholarships</b>					
College Funds	\$ 12,377	\$ 13,368	\$ 13,780	\$ 13,417	\$ 13,904
Federal Funds	1,324	1,340	1,279	1,183	1,188
State and Other Funds	1,142	1,020	1,014	835	885
<b>Total Scholarships</b>	<b>14,843</b>	<b>15,728</b>	<b>16,073</b>	<b>15,435</b>	<b>15,977</b>
<b>Loans</b>					
Stafford & Direct Loan	16,262	15,329	14,245	13,683	12,776
Perkins*	82	-	-	-	-
Health Professions	256	194	235	198	115
Parent and Other	14,486	14,270	13,889	10,868	10,174
<b>Total Loans</b>	<b>31,086</b>	<b>29,793</b>	<b>28,369</b>	<b>24,749</b>	<b>23,065</b>
<b>Student Employment</b>	<b>210</b>	<b>235</b>	<b>191</b>	<b>148</b>	<b>147</b>
<b>Total Assistance</b>	<b>\$ 46,139</b>	<b>\$ 45,756</b>	<b>\$ 44,633</b>	<b>\$ 40,332</b>	<b>\$ 39,189</b>

\*Due to the discontinuation of Perkins Federal loan program, no new funds were advanced beginning in 2018-2019.

In addition to grant aid, students financed their education costs with jobs and loans. Students borrowed \$23.1 million in student loans in 2021-2022, with \$12.8 million coming from the Federal Stafford loan.

Annual Financial Statement Information

The Financial Statement summaries below show the overall College-wide financial results for the fiscal years 2017-2018 through 2021-2022. The College's financial statements are prepared on the accrual basis of accounting.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



**Albany College of Pharmacy and Health Sciences**  
**STATEMENTS OF FINANCIAL POSITION**  
**Fiscal Years Ended June 30, 2018, 2019, 2020, 2021 and 2022**

	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
	<u><b>Actual</b></u>	<u><b>Actual</b></u>	<u><b>Actual</b></u>	<u><b>Actual</b></u>	<u><b>Actual</b></u>
<b>ASSETS:</b>					
Cash and Cash Equivalents	\$ 29,622,614	\$ 31,843,078	\$ 32,905,622	\$ 27,933,555	\$ 11,090,179
Student Loan Receivables	2,372,552	2,210,566	2,069,478	1,831,076	1,680,263
Other Receivables	3,273,129	3,440,888	4,075,131	6,588,912	7,047,267
Other Assets	1,504,865	1,870,956	2,064,428	2,211,124	2,147,686
Investments	57,621,328	61,618,125	64,010,223	82,870,857	70,447,626
Property, Plant & Equipment, net	40,989,637	37,596,236	34,047,156	33,205,298	43,625,190
Right of Use Operating Leased Assets	-	-	-	3,600,263	2,202,155
Right of Use Financing Leased Assets	-	-	-	1,148,285	5,189,019
<b>TOTAL ASSETS</b>	<b>\$ 135,384,125</b>	<b>\$ 138,579,849</b>	<b>\$ 139,172,038</b>	<b>\$ 159,389,370</b>	<b>\$ 143,429,385</b>
<b>LIABILITIES:</b>					
Accounts Payable and Accrued Liabilities	\$ 2,109,120	\$ 3,298,169	\$ 2,669,954	\$ 3,428,554	\$ 3,208,264
Deferred Revenues	7,020,220	6,799,216	6,369,760	6,864,848	5,862,166
Other Liabilities	3,452,818	3,456,263	3,594,150	2,660,299	2,025,975
Bonds and Other Obligations Payable	21,645,440	20,739,946	19,819,452	18,878,958	17,923,464
Operating Lease Liabilities, long-term	-	-	-	3,986,215	2,450,772
Financing Lease Liabilities, long-term	-	-	-	1,145,843	5,101,968
Federal Advances for Student Loans	2,403,398	2,439,576	2,154,144	1,961,658	1,722,117
<b>TOTAL LIABILITIES</b>	<b>\$ 36,630,996</b>	<b>\$ 36,733,170</b>	<b>\$ 34,607,460</b>	<b>\$ 38,926,375</b>	<b>\$ 38,294,726</b>
<b>NET ASSETS:</b>					
Without Donor Restrictions	\$ 83,849,708	\$ 85,464,667	\$ 86,744,471	\$ 97,350,234	\$ 85,658,174
With Donor Restrictions:					
Purpose Restricted	5,766,787	6,240,028	7,195,476	11,728,090	7,870,650
Perpetual in Nature	9,136,634	10,141,984	10,624,631	11,384,671	11,605,835
<b>TOTAL NET ASSETS</b>	<b>\$ 98,753,129</b>	<b>\$ 101,846,679</b>	<b>\$ 104,564,578</b>	<b>\$ 120,462,995</b>	<b>\$ 105,134,659</b>
<b>TOTAL LIABILITIES &amp; NET ASSETS</b>	<b>\$ 135,384,125</b>	<b>\$ 138,579,849</b>	<b>\$ 139,172,038</b>	<b>\$ 159,389,370</b>	<b>\$ 143,429,385</b>

**Albany College of Pharmacy and Health Sciences**  
**STATEMENTS OF ACTIVITIES WITHOUT DONOR RESTRICTIONS**  
**Fiscal Years Ended June 30, 2018, 2019, 2020, 2021 and 2022**

REVENUES, GAINS, AND SUPPORT:	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Educational and general					
Student tuition, net of institutional aid	\$ 35,977,740	\$ 35,642,285	\$ 34,415,170	\$ 30,603,771	\$ 28,761,213
Student fees	612,651	655,916	540,416	428,700	462,110
Government contracts, grants, and contributions	1,269,507	1,741,175	2,760,167	1,941,455	4,942,257
Other contracts, grants, and contributions	797,562	1,347,512	870,233	764,801	561,071
Recovery of indirect costs	569,914	758,443	819,000	685,073	469,654
Gifts and pledges	235,751	549,185	164,348	346,512	131,486
Contributions in-kind	-	-	-	-	741
Office of post-graduate education	80,400	93,465	35,595	94,426	51,885
Endowment income designated for current operations	-	-	-	1,020,000	1,500,000
Other sources	1,870,633	2,111,621	4,982,679	4,863,242	5,112,317
	41,414,158	42,899,602	44,587,608	40,747,980	41,992,734
Auxiliary services					
Student housing and meal plan	3,794,760	4,057,985	3,293,206	1,963,522	2,849,895
Bookstore	33,527	37,189	33,204	30,807	36,655
	3,828,287	4,095,174	3,326,410	1,994,329	2,886,550
Net assets released from restrictions	1,206,876	1,234,359	1,067,967	3,267,207	3,142,780
Total revenues, gains, and support	46,449,321	48,229,135	48,981,985	46,009,516	48,022,064
EXPENSES AND LOSSES					
Education and general	40,769,465	43,816,943	44,620,433	43,963,815	45,929,302
Depreciation	5,009,014	4,989,557	4,788,921	4,357,804	4,282,336
Interest	739,736	749,958	702,493	621,305	585,929
Total expenses and losses	46,518,215	49,556,458	50,111,847	48,942,924	50,797,567
Increase (decrease) in net assets from operations	(68,894)	(1,327,323)	(1,129,862)	(2,933,408)	(2,775,503)
Investment income (loss), net	3,964,966	2,944,381	2,673,822	13,364,920	(9,542,973)
Gain(loss) on sale of other assets	107,000	107,000	-	4,101	(32,541)
Postretirement health care plan adjustments other than net periodic benefit costs	17,762	(109,099)	(264,156)	170,150	658,957
Increase (decrease) in net assets	4,020,834	1,614,959	1,279,804	10,605,763	(11,692,060)
NET ASSETS, beginning of year	79,828,874	83,849,708	85,464,667	86,744,471	97,350,234
NET ASSETS, end of year	\$ 83,849,708	\$ 85,464,667	\$ 86,744,471	\$ 97,350,234	\$ 85,658,174

Note: Reclassifications of Contributions in-kind and Endowment income designated for current operations occurred in 2021.

## Management Discussion of Operating Results for Fiscal 2021-2022

- Total revenues without donor restrictions, excluding investment income, were \$48.0 million, an increase of \$2.0 million or 4.4% from 2020-2021. HEERF funding from CRSSA and ARPA, was recognized in the amount of \$1.3 million and \$2.4 million, respectively, for a total of \$3.7 million in Government contracts, grants, and contributions. This additional revenue was offset by a collective \$0.7 million reduction in other grant revenues as several contracts and grants closed out in the current year, thereby resulting in a net cumulative increase of \$3.0 million in Government contracts, grants, and contributions. Student housing and meal plans increased \$0.9 million as more students returned to living on campus after the COVID-19 pandemic. Endowment income designated for current operations increased by \$0.5 million to augment a portion of budgeted decreases in tuition revenue of \$1.8 million. Recovery of indirect costs were directly impacted by the closure of several grants, resulting in a \$0.2 million decrease. Unstable market conditions put investment income at a net loss of \$9.5 million compared to net investment income of \$13.4 million in the prior year.
- Total expenses were \$50.8 million, an increase of \$1.9 million or about 3.8%. The most notable increase was in student awards and prizes of \$1.7 million related to Higher Education Emergency Relief Fund (“HEERF”) disbursements to students from Coronavirus Aid Relief and Economic Security Act (“CARES”) and American Rescue Plan Act (“ARPA”). Additionally, \$0.4 million was incurred in the current year due to an investment in recruitment for the College’s new president and concentrated advertising efforts to enlist quality faculty and staff.
- The balance sheet reflects a decrease in total assets from \$159.4 million to \$143.4 million at June 30, 2021 to 2022, respectively. The majority of the decrease, as noted above, related to markets which produced unfavorable results, decreasing investments by \$12.4 million. Also, the College’s cash and cash equivalents decreased by \$16.8 million, largely due to the purchase of the Life Sciences Innovation Building in June 2022 (a \$9.6 million acquisition made with unrestricted assets), thereby resulting in an increase in fixed assets of \$10.4 million. The acquisition of the Life Sciences Innovation Building is expected to present a growth opportunity for the College and is aligned with the Strategic Plan, focusing on enhancing a student-centered academic environment. Total liabilities decreased to \$38.3 million from \$38.9 million at June 30, 2022 and 2021.
- The College ended the 2021-2022 fiscal year with an unrestricted loss of \$11.7 million, primarily attributable to over \$9.5 million loss in investment income.

The College continues to adapt to societal and economic impacts as the Fall of 2021 welcomed students in person with more relaxed social distancing guidelines due to enhanced campus safety policies and protocols. Increases in interest rates, uncertainty in energy and food supplies have contributed to less favorable market conditions, causing a growth in investments to reverse after surging in the prior year.

Financial prudence will continue to remain on the forefront as the College moves forward to support growth through its various initiatives while reviewing the current Strategic Plan.

### COVID-19 Pandemic

Global and domestic responses to the coronavirus disease (COVID-19) outbreak continue to rapidly evolve. The initial effect, which centered around global financial markets, has since affected travel, commerce and financial markets globally, and has affected economic growth worldwide and the higher education landscape in general.

The extent of COVID-19's effect on the College's operational and financial performance will depend on future developments, including the duration, spread and intensity of the pandemic, all of which are uncertain and difficult considering the rapidly evolving landscape. As a result, it is not currently possible to ascertain the overall long-term impact of COVID-19 on the College's finances. Given the dynamic nature of this outbreak, however, the extent to which the COVID-19 virus impacts the College's operating results will depend on future developments, which remain highly uncertain and cannot be predicted at this time.

Although the operations of the College were negatively impacted by the pandemic, the College's financial position remained strong for fiscal year 2019-2020. Like other institutions, pro-rated refunds of housing, meal plans, parking and student activity fees were provided to the College's students during Spring 2020. The net impact of refunds and other COVID-19 costs was approximately \$350,000 with the use of 50% of CARES funding to offset the financial burden brought on by the pandemic. The College also furloughed approximately 20 employees who were unable to carry out their job duties while the campuses were closed. In addition, to reduce the College's anticipated operating deficit for the 2020-2021 fiscal year, the College implemented a salary freeze and reduced the employer's contribution to its defined retirement plan from 11% to 6%. The College has been historically prudent in its management of cash and other liquid resources. These resources, coupled with its other cost-savings measures, have enabled the College to absorb any costs or losses in the 2020-2021 fiscal year. In addition, the College's President, Dean and Chief Financial Officer met weekly with a work group of the Board of Trustees to discuss and plan for the financial impact of the pandemic, the budget for the 2020-2021 fiscal year and re-opening for the Fall 2021 semester.

For fiscal year 2020-2021, the College ended the fiscal year with an overall financial statement surplus. Due to guidelines implemented by the Centers for Disease Control (CDC), significant costs were incurred to accommodate social distancing, quarantined housing, testing and cleaning. In addition, the demand for on-campus housing and meal plans were significantly lower due to many students taking advantage of remote learning. The net impact of direct costs of COVID-19 for fiscal year 2020-2021 was approximately \$834,000. The College also lost approximately \$1.9 million in revenue related to auxiliary services.

For fiscal year 2021-2022, the College recognized HEERF II funding of approximately \$828,000 to offset the financial burden of the lasting impacts of COVID-19. These resources, as well as the assistance provided by HEERF III of \$1.2 million enabled the College to absorb costs associated with providing a safe campus for in-person work and learning.

<b>Federal Program</b>	<b>Fiscal Year Ended June 30th:</b>			<b>Total</b>
	<b>2020</b>	<b>2021</b>	<b>2022</b>	
HEERF I (CARES)	\$470,610	\$ -	\$ -	\$ 470,610
HEERF II (CRSSA)	-	-	828,441	828,441
HEERF III (ARPA)	-	-	1,187,195	1,187,195
<b>Total</b>	<b>\$470,610</b>	<b>\$ -</b>	<b>\$2,015,636</b>	<b>\$2,486,246</b>

Note: Represents institutional portion only.

### Budgetary Procedures

The Board of Trustees of the College approves the annual operating budget for the College which includes any increases in tuition, fees, salaries and student financial aid. The budgeting process is set up such that the initial review and recommendation of the budget resides with the Finance and Capital Resource Committee. Throughout the year, the actual revenue and expenditures are reported to the Finance and Capital Resource Committee, and performance is measured by comparison to the approved budget. Department chairs and related personnel are also expected to review their respective budgets via the College's online management system for compliance and performance to the approved budget.

The College continues to strive to enhance and evaluate all of its degree programs. The Doctor of Pharmacy Program anchors the College's enrollment at 70% of total enrollment. All other programs of 30% of total enrollment align with the College's goal to diversify the enrollment population with a focus on the Graduate and Bachelor of Science programs. Additionally, the College hopes to achieve diversification by increasing national and international visibility. It anticipates doing so by expanding relationships with similar and neighboring affiliations in an effort to share resources and stabilize spending in the years ahead.

The College's approved operating budget for the period July 1, 2022 through June 30, 2023 is projected to utilize cash reserves to cover an anticipated budget shortfall, prior to the refinancing of the Prior Bonds and related conveyance of the Initial Project Facility to the College. The deficit was anticipated due to the expense of the closure of Vermont as well as the College's enrollment declines during the academic years affected by COVID-19. The College is currently evaluating open positions and other cost reductions for savings. ACPHS experienced an increase in the percentage of summer melt that included 25 international students with continued COVID-related delays for visa paperwork processing at embassies in students' home countries. In order to mitigate the losses, the College will offer a Spring 2023 start to increase new enrollment for a small portfolio of bachelor's and master's programs. In addition, financial aid expenses will be monitored closely for savings due to attrition. ACPHS will also continue offering opportunities for current undergraduate students to remain enrolled for an additional year to complete a master's degree program.

For the 2022-2023 academic year, undergraduate tuition increased 3% (\$36,840 during 2021-2022 to \$37,950 for 2022-2023) and 3% for professional tuition (\$42,620 during 2021-2022 to \$43,900 for 2022-2023).

The refinancing of the Prior Bonds with proceeds of the Series 2022 Bonds, and related conveyance of the Initial Project Facility to the College, is expected to produce positive impacts on the College's finances. The Initial Project Facility consists of two student housing facilities (totaling 301 beds), and related parking areas, presently owned by the Company (CHF-Holland Suites, L.L.C.) and CHF-II (CHF-Holland Suites II, L.L.C.). The Company and CHF-II constructed the Initial Project Facility on real property leased by the College to the Company and CHF-II. The Company and CHF-II financed the construction and equipping of the Initial Project Facility with proceeds of the Prior Bonds. The College presently operates the Initial Project Facility pursuant to management agreements with the Company and CHF II. Simultaneous with the redemption of the Prior Bonds with proceeds of the Series 2022 Bonds, the College's leases to the Company and CHF II will terminate and the Company and CHF II will convey their respective interests in the Initial Project Facility to the College. As a result of the redemption of the Prior Bonds and conveyance of the Initial Project Facility to the College, the College anticipates that its income statement will improve by over \$500,000 annually, cash flow is expected to increase by over \$1 million annually, and the balance sheet is expected to grow by approximately \$3 million in fiscal year 2022-2023 as reserves and operating funds relating to the Initial Project facility are released to the College.

The Vermont lease is scheduled to end on June 30, 2024, and while the College is continuing to explore an early lease termination and alternatives to sublease the space, the College is expected to realize a decrease in lease expenditures of \$1.6 million after the lease expires.

### Endowment

The Institution's endowment fund as of June 30, 2022, was approximately \$63.7 million. Of that amount, \$45.7 million was unrestricted and designated by the Board of Trustees as a quasi-endowment fund to be used to support student financial aid and debt service. The College's spending policy is to use 4% of the value of the endowment fund based on a five-year moving average. The spending policy as well as the investment policy are reviewed annually. In general, it is expected that the endowment fund will be invested as a balanced fund of approximately 65% equities and 35% fixed income securities. Variations from this general guideline are to be expected based on market conditions.

### Cash and Investments

The following table sets forth the College's investments, unrestricted cash and cash equivalents, deposits with bond trustees (based on market values), and balances by net asset class as of June 30<sup>th</sup> for each of the five fiscal years ended:

**Fiscal Years Ended June 30<sup>th</sup>**  
**(\$000's)**

	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Investments</b>					
Certificates of Deposit	\$ 486	\$ 510	\$ 541	\$ 580	\$ 529
Mutual and Index Funds	46,645	51,205	47,960	64,045	42,132
Government Obligations	1,510	2,369	4,859	4,372	13,977
Corporate Bonds	2,623	2,659	4,965	5,506	6,538
Equities	6,357	4,875	5,685	8,368	7,271
	<u>57,621</u>	<u>61,618</u>	<u>64,010</u>	<u>82,871</u>	<u>70,447</u>
 Unrestricted Cash and Cash Equivalents*	 28,565	 30,104	 32,102	 26,908	 10,510
Deposits with Bond Trustees	-	-	-	-	-
<b>Total Cash and Investments</b>	<u><u>\$ 86,186</u></u>	<u><u>\$ 91,722</u></u>	<u><u>\$ 96,112</u></u>	<u><u>\$ 109,779</u></u>	<u><u>\$ 80,957</u></u>

\*Balances vary from Statement of Financial Position due to exclusion of restricted cash.

As of August 31, 2022, investments, unrestricted cash and cash equivalents, and deposits with bond trustees were \$80.5 million.

Outstanding Indebtedness of the College: As of June 30, 2022 the College had \$17.1 million in outstanding bonded debt, consisting of the following issues all issued by the City of Albany Capital Resource Corporation:

<b>Description</b>	<b>Maturity Date</b>	<b>Par Amount Outstanding as of June 30, 2022</b>
Tax-exempt Revenue Refunding Bonds, Series 2014A	December 1, 2034	\$ 11,910,000
Tax-exempt Revenue Refunding Bonds, Series 2014B	July 1, 2038	\$ 5,160,000

The Series 2014B Bonds were purchased by NBT Bank, N.A. simultaneously with the delivery of the Series 2014A Bonds. The initial term for the Series 2014B Bonds is 10 years which expires September 1, 2024.

Both the Series 2014A Bonds and Series 2014B Bonds are secured by parity liens on the Pledged Revenues, and by separate mortgages for each series on certain real property owned by the College. The financial covenants are the same for the Series 2014A Bonds and Series 2014B Bonds, and consist of (1) a debt service coverage ratio of 1.0x, provided an event of default will occur only if the College fails to achieve the debt service coverage ratio for two consecutive years, and (2) an additional bonds test of (a) pro forma maximum annual debt service no greater than 10% of operating revenues without donor restrictions and (b) compliance with the 1.0x debt service coverage ratio including the additional indebtedness.

The College has no obligation to support debt service on the Prior Bonds, which will be redeemed with proceeds of the Series 2022 Bonds. The Company and CHF II are responsible for payment of debt service on the Prior Bonds.

Additionally, the College had financing lease liabilities of approximately \$5.1 million as of June 30, 2022. The largest of these financing leases is \$3.9 million and is associated with the acquisition of a state-of-the-art medical and life sciences facility located at 150 New Scotland Avenue, adjacent to the College's campus. The facility was purchased using institutional cash, but the grounds on which the facility stands are being leased by the College for \$150,000 annually, with an escalation of 5% every five years for 49 years. The College also maintained operating lease liabilities of \$2.5 million as of June 30, 2022.

### Line of Credit

The College has a \$5.0 million unsecured working capital line of credit that expires in March 2023. The line is payable on demand with interest due monthly on the outstanding balances at interest per the annum rate equal to 0.5% below the Wall Street Journal Prime Rate, 4.25% as of June 30, 2022.

### Fundraising Activities

The College closed the \$11.0 million Discovery for Life Campaign ("DFL") that was launched July 1, 2018, on December 31, 2021. A total of over \$14.4 million was raised in cash and pledges. An additional \$4.1 million was committed to the Francis J. O'Brien Legacy Society to create meaningful legacies at the College by including ACPHS in individual's wills and trusts (deferred gifts) for a total of \$18.5 million. Highlights of the DFL Campaign is as follows:

#### **Endowed Scholarships Goal was \$2 Million**

The College established 18 new scholarships and awards for a total of \$3.3 million.

#### **Students First Goal was \$4 Million**

"Student Centered" is one ACPHS's core values. A total of \$5.0 million was raised to provide travel and housing stipends for select rotations, summer internships and research experiences, a student professional development fund, residencies, and fellowships. Entrepreneurial projects that provide students with interprofessional experiences will be encouraged and supported. In addition, funds supported the Campus Master Plan to renovate the practice skills lab, a biology lab, and student activity space in the Gozzo Student Center.

#### **Bridges to Industry Goal \$5 Million**

A total of \$6.1 million was raised to support the College's Center for Biopharmaceutical Education and Training ("CBET") to help launch careers, strengthen the biopharma workforce, and enable companies to demonstrate proof-of-concept through contract research services. As the first training center of its kind in New York State and the only one in the nation to be founded at a pharmacy school, CBET is a key differentiator in biomanufacturing training.



The chart that follows shows a five-year history, as of June 30<sup>th</sup>, of gifts received for all purposes:

	2018	2019	2020	2021	2022
Without Donor Restrictions	\$235,751	\$549,185	\$164,348	\$346,512	\$132,227
With Donor Restrictions					
Purpose Restricted	461,790	899,007	1,038,460	3,400,863	1,268,718
Perpetual in Nature	597,527	1,005,351	482,647	760,040	221,163
<b>Total</b>	<b>\$1,295,068</b>	<b>\$2,453,543</b>	<b>\$1,685,455</b>	<b>\$4,507,415</b>	<b>\$1,622,108</b>

The chart below represents a five-year history as of June 30<sup>th</sup> of property, plant and equipment:

	2018	2019	2020	2021	2022
Land and improvements	\$11,916,959	\$12,379,274	\$12,663,025	\$12,666,876	\$14,397,154
Buildings and improvements	66,871,233	67,572,297	67,653,211	67,880,068	81,526,767
Laboratory equipment	9,756,443	9,931,070	10,083,542	10,776,980	10,786,260
Other equipment	4,112,912	4,112,912	4,144,272	4,281,966	4,342,068
Furniture and fixtures	4,377,024	4,433,684	4,461,661	4,461,661	4,756,269
Computer equipment	7,085,243	7,432,338	7,456,539	7,578,959	7,861,328
<b>Total</b>	<b>104,119,814</b>	<b>105,861,575</b>	<b>106,462,250</b>	<b>107,646,510</b>	<b>123,669,846</b>
Less accumulated depreciation	63,275,783	68,265,339	73,054,260	77,350,814	81,405,761
<b>Property, plant, and equipment, net</b>	<b>40,844,031</b>	<b>37,596,236</b>	<b>33,407,990</b>	<b>30,295,695</b>	<b>42,264,085</b>
Construction in progress	145,607	-	639,167	2,909,602	1,361,105
	<b>\$40,989,638</b>	<b>\$37,596,236</b>	<b>\$34,047,157</b>	<b>\$33,205,298</b>	<b>\$43,625,190</b>

### Campus Master Plan

In January 2019, the College contracted with JMZ Architects to conduct a study of the physical campus and usage of facilities. JMZ subsequently worked with a Steering Committee from within the College which was made up of students, faculty, staff and administration. JMZ worked with the Committee to develop master planning process. This process included:

- Identification of External Influences, Student Engagement, Analysis of Academic Plans and Space Needs Analysis
- Comprehensive Facilities Assessment
- Master Plan Design Concepts
- Implementation Plan
- Finalized Plan

JMZ's plan recommended several capital projects and deferred maintenance projects with an estimated total cost of \$47.5 million. In November 2019, the College contracted with EYP Architects to begin to prioritize and implement the plan proposed by JMZ. Some goals of the plan were to:

- Provide additional student recreational and collaboration space both indoors and outdoors
- Create a “center” to the campus
- Improve vehicular and pedestrian traffic routes.
- Upgrade teaching and research laboratories

To-date, the College has completed projects totaling over \$6.0 million, including the creation of the “Panther’s Den” (a student lounge in the student center), relocation of the Bookstore, renovation of the second floor of the Library, updates to the Campus Green (exterior beautification and traffic improvements) and renovation of three teaching laboratories. Prior to the 2023-2024 academic year, plans are in place to renovate the residence hall lounges in South Hall and Notre Dame Hall, renovate the gymnasium, and add air conditioning to Notre Dame Hall. This work is estimated at \$5.1 million. These projects were funded through a variety of sources including grants, fundraising and the College’s Plant Fund.

Over the course of the 2022-2023 academic year, the President’s Cabinet will review remaining projects, reprioritize them, and make recommendations to the Board of Trustees for future projects.

### Insurance

The College maintains a number of insurance coverages. The College currently carries Educator’s Legal Liability and Directors and Officers and Employment practices insurance with \$5.0 million per claim and aggregate with and added excess policy of \$5.0 million.

The College has a general liability policy providing coverage for \$1.0 million per occurrence and \$3.0 million in the aggregate. The College also has licensed professional liability coverage of \$1.0 million per claim and \$3.0 million in the aggregate, as well as \$1.0 million auto coverage. A \$25.0 million umbrella policy covers losses in excess of those amounts for each of the three aforementioned coverages.

In addition, the College carries property coverage at a replacement value of \$168.1 million with business interruption coverage providing protection for covered losses. The College carries workers' compensation insurance on all its employees and has a \$2.0 million cyber security policy.

### Cyber Security

ACPHS maintains a Written Information Security Program, coordinated by the Chief Information Officer. The College takes a layered approach to cybersecurity, utilizing state-of-the-art tools to monitor and protect its systems. In addition to the College’s monitoring, the College engages external consultants to perform a periodic review of its information security program.

The College uses an array of security technologies and applications which include Windows Defender, Meraki Intrusion and Prevention and Meraki AMP, along with Barracuda email protection. The College's network is segmented to provide layered protection, with appropriate VLAN ACLs to restrict traffic between WAN/LAN and LAN/LAN segments. Two-factor authentication for ACPHS faculty and staff and students has been implemented using Azure MFA. Data backup for critical systems is implemented using NetApp and Barracuda cloud

backups. These data backups are held in two (2) physically distinct locations, in addition to an Office 365 data backup stored in the cloud.

### Litigation

The College is not involved in any lawsuits in the ordinary course of business as of the June 30, 2022 financial statements.

[THIS PAGE INTENTIONALLY LEFT BLANK]

## APPENDIX B

Financial Statements of Albany College of Pharmacy and Health Sciences for the Years Ended  
June 30, 2022 and 2021

[THIS PAGE INTENTIONALLY LEFT BLANK]



Albany College of Pharmacy  
AND HEALTH SCIENCES

AUDITED FINANCIAL STATEMENTS

Years ended June 30, 2022 and 2021

# ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES

## TABLE OF CONTENTS

	<b>Page</b>
<b>Independent Auditor's Report</b>	1
<b>Financial Statements</b>	
Statements of Financial Position	3
Statements of Activities	4
Statements of Cash Flows	5
Notes to Financial Statements	6



## INDEPENDENT AUDITOR'S REPORT

To the Audit Committee  
Albany College of Pharmacy and Health Sciences

### Opinion

We have audited the accompanying financial statements of Albany College of Pharmacy and Health Sciences, which comprise the statement of financial position as of June 30, 2022, and the related statements of activities and cash flows for the year then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Albany College of Pharmacy and Health Sciences as of June 30, 2022, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

### *Basis for Opinion*

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Albany College of Pharmacy and Health Sciences and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### *Responsibilities of Management for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Albany College of Pharmacy and Health Sciences' ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

### *Auditor's Responsibilities for the Audit of the Financial Statements*

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.



In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Albany College of Pharmacy and Health Sciences' internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Albany College of Pharmacy and Health Sciences' ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

***Report on Summarized Comparative Information***

We have previously audited Albany College of Pharmacy and Health Sciences' 2021 financial statements, and we expressed an unmodified audit opinion on those audited financial statements in our report dated October 18, 2021. In our opinion, the summarized comparative information presented herein as of and for the year ended June 30, 2021, is consistent, in all material respects, with the audited financial statements from which it has been derived.

*UHY LLP*

Albany, New York  
October 4, 2022

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**STATEMENTS OF FINANCIAL POSITION**  
**WITH SUMMARIZED FINANCIAL INFORMATION AS OF JUNE 30, 2021**

		June 30,	
		2022	2021
Line	<b>ASSETS</b>		
	<b>CURRENT ASSETS</b>		
1	Cash	\$ 10,510,021	\$ 26,907,851
2	Investments, short-term	529,250	580,205
3	Accrued interest and dividends	189,345	101,339
4	Accounts receivable, students, net	1,935,694	1,516,281
5	Accounts receivable, government entities	354,678	652,977
6	Student loans receivable, net, current portion	261,600	435,600
7	Pledges receivable, net, current portion	918,793	751,203
8	Other receivables, net	1,597,063	1,121,466
9	Prepaid expenses and other current assets	653,114	774,311
10	Total current assets	16,949,558	32,841,233
11	<b>PROPERTY, PLANT, AND EQUIPMENT, net</b>	43,625,190	33,205,298
	<b>OTHER ASSETS</b>		
12	Restricted cash	580,158	1,025,704
13	Investments, long-term	69,918,376	82,290,652
14	Student loans receivable, net, noncurrent	1,418,663	1,395,476
15	Pledges receivable, net, noncurrent	2,241,039	2,546,985
16	Other assets	1,255,314	905,876
17	Right of Use Operating Leased Assets	2,202,155	3,600,263
18	Right of Use Financing Leased Assets	5,189,019	1,148,285
19	Deposits held in custody for others	49,913	429,598
20	Total other assets	82,854,637	93,342,839
21	Total assets	\$ 143,429,385	\$ 159,389,370
	<b>LIABILITIES AND NET ASSETS</b>		
	<b>CURRENT LIABILITIES</b>		
22	Bonds payable, net, current portion	\$ 965,494	\$ 955,494
23	Accounts payable and accrued liabilities	3,158,351	2,998,956
24	Operating Lease Liabilities, current	1,091,953	1,337,921
25	Financing Lease Liabilities, current	496,313	261,538
26	Deferred revenue and deposits, current portion	3,396,055	4,134,228
27	Total current liabilities	9,108,166	9,688,137
	<b>OTHER LIABILITIES</b>		
28	Advances from Federal government for student loans	1,722,117	1,961,658
29	Bonds payable, net, less current portion	16,957,970	17,923,464
30	Operating Lease Liabilities, long-term	1,358,819	2,648,294
31	Financing Lease Liabilities, long-term	4,605,655	884,305
32	Deferred revenue and deposits, less current portion	2,466,111	2,730,620
33	Postretirement health care benefits obligation	2,025,975	2,660,299
34	Deposits held in custody for others	49,913	429,598
35	Total other liabilities	29,186,560	29,238,238
36	Total liabilities	38,294,726	38,926,375
	<b>COMMITMENTS AND CONTINGENCIES</b>		
	<b>NET ASSETS</b>		
	Without Donor Restrictions		
37	Undesignated	28,580,447	26,967,636
38	Designated for endowment and student loans	48,990,639	57,924,000
39	Designated for plant capital and capital reserve	8,087,088	12,458,598
40		85,658,174	97,350,234
	With Donor Restrictions		
41	Time and purpose restricted	7,870,650	11,728,090
42	Perpetual in nature	11,605,835	11,384,671
43		19,476,485	23,112,761
44	Total net assets	105,134,659	120,462,995
45	Total liabilities and net assets	\$ 143,429,385	\$ 159,389,370

See accompanying notes to financial statements.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**STATEMENTS OF ACTIVITIES**  
**WITH SUMMARIZED FINANCIAL INFORMATION FOR THE YEAR ENDED JUNE 30, 2021**

		Year Ended June 30,			
		Without Donor Restrictions	With Donor Restrictions	2022 Totals	2021 Totals
Line	<b>REVENUES, GAINS, AND SUPPORT</b>				
	Educational and general				
	Student tuition, net (of institutional aid of \$14,221,790 and \$13,798,064, 46 respectively)	\$ 28,761,213	\$ -	\$ 28,761,213	\$ 30,603,771
47	Student fees	462,110	-	462,110	428,700
48	Government contracts, grants, and contributions	4,942,257	-	4,942,257	1,941,455
49	Other contracts, grants, and contributions	561,071	40,000	601,071	801,832
50	Recovery of indirect costs	469,654	-	469,654	685,073
51	Gifts and pledges - cash and other financial assets	131,486	1,340,817	1,472,303	4,270,354
52	Contributions in-kind	741	149,064	149,805	252,162
53	Interest and dividends	3,321	-	3,321	31,298
54	Office of post-graduate education	51,885	-	51,885	94,426
55	Endowment income designated for current operations	1,500,000	-	1,500,000	1,020,000
56	Other sources	5,108,996	-	5,108,996	4,831,943
57		<u>41,992,734</u>	<u>1,529,881</u>	<u>43,522,615</u>	<u>44,961,014</u>
	Auxiliary services				
58	Student housing	1,384,546	-	1,384,546	974,794
59	Student meal plan	1,465,349	-	1,465,349	988,728
60	Bookstore	36,655	-	36,655	30,807
61		<u>2,886,550</u>	<u>-</u>	<u>2,886,550</u>	<u>1,994,329</u>
62	Net assets released from restrictions	<u>3,142,780</u>	<u>(3,142,780)</u>	<u>-</u>	<u>-</u>
63	Total revenues, gains, and support	<u>48,022,064</u>	<u>(1,612,899)</u>	<u>46,409,165</u>	<u>46,955,343</u>
	<b>EXPENSES AND LOSSES</b>				
64	Administration and general	7,323,558	-	7,323,558	6,519,097
65	Fundraising	1,610,922	-	1,610,922	1,536,513
	Program				
66	Admissions and student services	6,863,012	-	6,863,012	7,184,203
67	Office of post-graduate education	271,200	-	271,200	296,324
68	Library and instruction	24,972,746	-	24,972,746	25,412,372
69	Research	3,971,442	-	3,971,442	4,281,114
70	Student aid	1,659,017	-	1,659,017	8,374
71	Auxiliary services	4,125,670	-	4,125,670	3,704,927
	Total program	<u>41,863,087</u>	<u>-</u>	<u>41,863,087</u>	<u>40,887,314</u>
72	Total expenses and losses	<u>50,797,567</u>	<u>-</u>	<u>50,797,567</u>	<u>48,942,924</u>
73	<b>(Decrease) increase in net assets from operations</b>	<u>(2,775,503)</u>	<u>(1,612,899)</u>	<u>(4,388,402)</u>	<u>(1,987,581)</u>
74	Investment (loss) income, net	(9,542,973)	(2,023,377)	(11,566,350)	17,711,747
75	(Loss) gain on sale of asset	(32,541)	-	(32,541)	4,101
76	Postretirement health care plan adjustments other than net periodic benefit costs	658,957	-	658,957	170,150
77	<b>(Decrease) increase in net assets</b>	<u>(11,692,060)</u>	<u>(3,636,276)</u>	<u>(15,328,336)</u>	<u>15,898,417</u>
78	<b>NET ASSETS, beginning of year</b>	<u>97,350,234</u>	<u>23,112,761</u>	<u>120,462,995</u>	<u>104,564,578</u>
79	<b>NET ASSETS, end of year</b>	<u>\$ 85,658,174</u>	<u>\$ 19,476,485</u>	<u>\$ 105,134,659</u>	<u>\$ 120,462,995</u>

See accompanying notes to financial statements.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**STATEMENTS OF CASH FLOWS**  
**WITH SUMMARIZED FINANCIAL INFORMATION FOR THE YEAR ENDED JUNE 30, 2021**

	Year Ended June 30,	
	2022	2021
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Change in net assets	\$ (15,328,336)	\$ 15,898,417
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Loss (gain) on sale of other assets	32,541	(4,101)
Depreciation	4,282,336	4,357,804
Amortization of premium and bond issuance costs	(55,494)	(55,494)
Amortization of intangible asset	35,850	35,850
Amortization right of use asset, financing leases	209,682	155,056
Amortization right of use asset, operating leases	1,398,108	1,051,605
Change in allowances and bad debts	70,626	164,538
Net losses (gains) on investments	11,616,715	(17,724,926)
Contribution of property, plant and equipment	(50,000)	(234,596)
Contributions restricted for long-term investment	(641,246)	(3,384,022)
Rental and cafeteria income	(272,495)	(171,302)
Net change in postretirement health care benefits obligation	(634,324)	(131,104)
Changes in operating assets and liabilities:		
Accrued interest and dividends	(88,006)	(6,643)
Accounts receivable, students	(533,918)	(313,935)
Accounts receivable, government entities	298,299	53,236
Other receivables	(475,597)	(86,938)
Prepaid expenses and other current assets	121,197	4,929
Other assets	(385,232)	(176,051)
Accounts payable and accrued liabilities	159,395	753,818
Operating lease liabilities	(1,535,443)	(1,274,745)
Deferred revenue and deposits	(730,187)	666,390
Net cash used in operating activities	(2,505,529)	(422,214)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Proceeds from the sales and maturities of investments	18,618,169	9,242,180
Proceeds from the sale of property, plant, and equipment	138,000	23,320
Purchases of investments	(17,811,653)	(10,377,888)
Purchase of property, plant, and equipment	(14,822,769)	(3,300,569)
Student loans issued	(115,000)	(197,500)
Repayments of student loans	262,534	436,037
Net cash used in investing activities	(13,730,719)	(4,174,420)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Collection of pledges receivable	826,760	1,053,205
Payments on financing leases	(294,291)	(351,153)
(Decrease) increase in deposits with bond trustees	(56)	1
Principal payments on bonds	(900,000)	(885,000)
Decrease in governmental advances and governmental share of interest	(239,541)	(192,486)
Net cash used in financing activities	(607,128)	(375,433)
<b>Net change in cash and restricted cash</b>	<b>(16,843,376)</b>	<b>(4,972,067)</b>
<b>CASH AND RESTRICTED CASH, beginning of year</b>	<b>27,933,555</b>	<b>32,905,622</b>
<b>CASH AND RESTRICTED CASH, end of year</b>	<b>\$ 11,090,179</b>	<b>\$ 27,933,555</b>
<b>RECONCILIATION OF CASH AND RESTRICTED CASH TO THE STATEMENTS OF FINANCIAL POSITION:</b>		
Cash, unrestricted	\$ 10,510,021	\$ 26,907,851
Restricted cash	580,158	1,025,704
	<b>\$ 11,090,179</b>	<b>\$ 27,933,555</b>
<b>SUPPLEMENTARY CASH FLOW INFORMATION</b>		
Cash paid during the year for interest	\$ 640,823	\$ 679,378
<b>NONCASH INVESTING ACTIVITY</b>		
Property, plant, and equipment contribution	\$ 50,000	\$ 234,596

See accompanying notes to financial statements.

# **ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**

## **NOTES TO FINANCIAL STATEMENTS**

### **June 30, 2022 and 2021**

#### **NOTE 1 — ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

##### **Organization**

Albany College of Pharmacy and Health Sciences (College) was organized in 1881 as the Department of Pharmacy of Union University. In the 1920s, the professional colleges of Union University, which includes Albany College of Pharmacy and Health Sciences, Albany Medical College, and Albany Law School, all constructed their original buildings on New Scotland Avenue in Albany, New York. Although each of the institutions comprising Union University is functionally autonomous, Union College and the professional schools of the university maintain a close but informal association for the benefit of undergraduate and graduate students currently enrolled in the diverse university programs.

The student population of the College represents various states and foreign countries with most of its students coming from upstate New York.

##### **Recently Adopted Accounting Standards**

In September 2020, the FASB issued Accounting Standards Update (ASU) 2020-07, *Not-for-Profit Entities (Topic 958): Presentation and Disclosures by Not-for-Profit Entities for Contributed Nonfinancial Assets*. The purpose of the ASU 2020-07 is to clarify the presentation and disclosure of contributed nonfinancial assets with an intention to provide the reader of the financial statements a clearer understanding of what type of nonfinancial assets were received and how they are used and recognized.

Accordingly, the College adopted the standard and presented in the Statement of Activities \$149,805 and \$252,162 of in-kind contributions for June 30, 2022, and 2021, respectively. More information on the adoption, including restrictions and valuations of the contributions, is included in Note 19.

##### **Basis of Accounting and Financial Statement Presentation**

The accompanying financial statements are prepared in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) for not-for-profit entities.

The College follows *Financial Statements of Not-for-Profit Organizations*, which establishes standards for external reporting by not-for-profit organizations and requires that resources be classified for accounting and reporting purposes into two net asset categories according to externally (donor) imposed restrictions, as either net assets without donor restrictions or net assets with donor restrictions.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 1 — ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**  
(Continued)

**Net Assets**

Net assets without donor restrictions are not subject to donor restrictions and include the following:

*Net assets without donor restrictions undesignated* include the revenues and expenses associated with the principal educational mission of the College. Also included are gifts and income earned on unexpended balances for capital projects which are currently under construction, future capital projects, and transfers from the operating budget to fund the debt service requirements for outstanding bonds. The College follows the policy of lifting the restrictions on contributions of cash or other assets received for the acquisition of long-lived assets when the asset is placed in service or is acquired. Assets are carried net of accumulated depreciation, computed on a straight-line basis over the estimated useful lives of the assets. Equipment is removed from the records at the time of disposal. The College follows the policy of recording contributions of long-lived assets at their estimated fair value at the date of receipt.

*Net assets without donor restrictions, designated for endowment and student loans* include revenues and expenses associated with sponsored research agreements. In addition, College contributions to federal student loan funds and internally designated endowment funds are also included.

*Net assets without donor restrictions, designated for plant capital* include amounts designated for future capital needs of the College.

Net assets with donor restrictions includes the following:

*Purpose restricted* gifts for which donor imposed restrictions will be met in future periods and trust activity and pledges receivable for which the ultimate purpose of the proceeds is not perpetual in nature.

*Perpetual in nature* gifts and pledges which require by donor restriction that the corpus be invested in perpetuity and only the income be made available for use in accordance with donor restrictions.

**Estimates**

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingencies at the date of the financial statements and the reported amounts of revenues and expenses during the reporting year. Actual results could differ from those estimates.

**Fair Value Measurement**

The College reports certain assets and liabilities at fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants on the measurement date.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 1 — ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**  
(Continued)

**Student Accounts and Loans Receivable, Net**

The College extends credit to students in the form of accounts receivable and loans for educational expenses. The default rate on federal student loans programs is less than 1%.

The College's student loan receivable consists of revolving loan funds for the Federal Perkins Loans and Health Professional Student Loans for which the College acts as an agent for the federal government in administering the loan programs to assist students in funding their education. It is not practical to determine the fair value of student loans receivable because they are federally sponsored student loans with U.S. Government mandated interest rates and repayment terms and are subject to significant restrictions as to their transfer and disposition.

The College provides an allowance for doubtful accounts, which is determined based on collection history and a review of the open accounts by management. Accounts receivable are written off when deemed uncollectible. Recoveries of accounts previously written off are recorded when received. Student accounts receivable are considered past due if any portion of the receivable balance is outstanding for more than 30 days. The allowance for doubtful accounts for student receivables and other receivables was \$225,000 at both June 30, 2022 and 2021.

**Pledges Receivable, Net**

The College records unconditional promises as revenues, gains, and support in the period received at fair value, using the present value of estimated future cash flows discounted at rates which are commensurate with the risks associated with these pledges.

Pledges are written off to the allowance for doubtful accounts when they are deemed uncollectible. The allowance for doubtful accounts was \$150,000 at both June 30, 2022 and 2021.

Pledges receivable due in more than one year are recorded at the present value of estimated future cash flows using a discount rate ranging from 0.29% to 6.44% as of June 30, 2022.

**Property, Plant, and Equipment, Net**

Property, plant, and equipment are reported at cost. Donations of property and equipment are recorded as support at their estimated fair values on the date of donation. Expenditures for acquisitions, renewals, and betterments are capitalized, whereas maintenance and repair costs are expensed as incurred. When property, plant, and equipment are retired or otherwise disposed of, the appropriate accounts are relieved of costs and accumulated depreciation, and any resultant gain or loss is credited or charged to change in net assets. Expenditures for new construction, major renewals and replacements, and equipment with costs over \$3,000 are capitalized.

The College reports gifts of property and equipment as unrestricted support unless explicit donor stipulations specify how the donated assets must be used. Gifts of long-lived assets with explicit restrictions that specify how the assets are to be used and gifts of cash or other assets that must be used to acquire long-lived assets are reported as restricted support. Absent explicit donor stipulations about how long-lived assets must be maintained, management reports expirations of donor restrictions when the donated or acquired long-lived assets are placed in service.

Depreciation is computed using the straight-line method based on the estimated useful lives (5-50 years) of the various assets.



**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 1 — ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**  
(Continued)

**Recognition of Donor Restrictions**

The College reports gifts of cash and other assets as restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated time restriction ends or purpose restriction is accomplished, with donor restricted net assets are reclassified to without donor restricted net assets and reported in the statement of activities as net assets released from restrictions. However, if a restriction is fulfilled in the same time period in which the contribution is received, the College reports the support as without donor restrictions.

**Cash and Cash Equivalents**

Cash and cash equivalents are recorded at cost, which approximates fair value, and consists of all cash accounts which are not subject to withdrawal restrictions or penalties, and all highly liquid investments with an original maturity of three months or less. Separate cash accounts are maintained if required.

**Restricted Cash**

Restricted cash consist of funds set aside for student loan programs and endowment funds with perpetual donor restrictions.

**Investments**

Investments are reported at fair value. The realized and unrealized gains (losses), interest, and dividends are reported as investment income on the statement of activities. Realized gains and losses are calculated using the specific identification method.

Investment securities are exposed to various risks, such as interest rate, market, and credit. Due to the level of risk associated with certain investment securities, it is at least reasonably possible that changes in the values of investment securities will occur in the near term, and that such change could materially affect the amounts reported in the statement of financial position.

**Bond Issuance Costs**

Bond issuance costs are carried at cost less accumulated amortization, are amortized to interest expense over the term of the bond using the straight-line method and are included in bonds payable, net, in the statement of financial position.

**Deferred Revenue and Advances**

Deferred revenue and advances include the following:

- Rental revenue which is recognized as revenue on a straight-line basis over thirty years.
- Tuition collected in advance of the school year, which is recognized as revenue during the school year to which the tuition relates.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 1 — ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**  
(Continued)

**Deferred Revenue and Advances (Continued)**

- Grants received prior to grant revenue being earned, which is recognized as revenue when grants are expended.
- Advances from the federal government for student loans represent loan funds provided to students by the federal government through the College. The College collects the loans on behalf of the federal government. The amount due from the student is reported in Student loans receivable on the College's statement of financial position.

**Advertising Expenses**

The College expenses advertising costs as they are incurred. Advertising expenses amounted to \$116,945 and \$136,308 for the years ended June 30, 2022 and 2021, respectively.

**Operating Revenue and Institutional Aid**

Under ASC 606, the College recognizes revenue from exchange transactions in a manner that depicts the transfer of goods or services using a five-step model. The College's academic year coincides with its fiscal year ending June 30. Therefore, the recognition of revenue derived from tuition, fees as well as room and board requires minimal judgment as billing and collection is completed contemporaneously with the fulfillment of services. Revenue is appropriately deferred when collected in advance of the performance of services. Other auxiliary revenue is recognized at the point of sale. As required, the College has presented tuition, net of institutional aid, in the accompanying Statements of Activities.

Other sources of revenue includes other pharmacy program income of \$3,981,931 and \$4,233,213 for the years ended June 30, 2022 and 2021, respectively.

**Right of Use Assets and Liabilities**

The College determines if an arrangement is a lease or contains a lease at inception of a contract and classifies leases as either operating or financing dependent upon the terms and conditions set forth in the contract. A contract is determined to be or contain a lease if the contract conveys the right to control the use of identified property, plant, or equipment (an identified asset) in exchange for consideration. The College determines these assets are leased because the College has the right to obtain substantially all the economic benefit from and the right to direct the use of the identified asset. Assets in which the supplier or lessor has the practical ability and right to substitute alternative assets for the identified asset and would benefit economically from the exercise of its right to substitute the asset are not considered to be or contain a lease because the College determines it does not have the right to control and direct the use of the identified asset. The College's lease agreements do not contain any material residual value guarantees or material restrictive covenants.

In evaluating its contracts, the College separately identifies lease and non-lease components, such as common area and other maintenance costs, for its office buildings, apartments and vehicles. The College elected the practical expedient to separate lease and non-lease components and classifies the contract as a lease if consideration in the contract allocated to the lease component is greater than the consideration allocated to the non-lease component.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 1 — ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**  
(Continued)

**Right of Use Assets and Liabilities** (Continued)

Leases result in the recognition of ROU assets and lease liabilities on the statements of financial position. ROU assets represent the right to use an underlying asset for the lease term, and lease liabilities represent the obligation to make lease payments arising from the lease, measured on a discounted basis. The College determines lease classification as operating or finance at the lease commencement date. ROU assets and lease liabilities for operating and finance leases are included in our statements of financial position and presented separately based on the classification of the underlying lease arrangement.

At lease inception, the lease liability is measured at the present value of the lease payments over the lease term. The ROU asset equals the lease liability adjusted for any initial direct costs, prepaid or deferred rent, and lease incentives. For the initial and subsequent measurement of all lease liabilities, the discount rate is based on the rate implied within the lease or is based on the College's incremental borrowing rate using a period comparable with the lease term.

The lease term may include options to extend or to terminate the lease that the College is reasonably certain to exercise. Operating lease expense is generally recognized on a straight-line basis over the lease term.

**Functional Expenses**

Functional expenses are presented by functional and natural classification, see analysis in Note 21. Expenses are allocated directly to programs, when appropriate. The costs of operation and maintenance of plant, depreciation, and interest expense have been allocated across functional expense categories to reflect the full cost of those activities. Costs are allocated using the following methods:

- Expenses covering services for multiple programs such as: Security, Utilities, and Other are allocated based on square footage.
- Depreciation expense for all fixed assets is based on the use of that space in which the asset is located. For buildings and equipment that are maintained in areas that have multiple functions, the allocation was based on square footage.
- Interest expense on capital debt, financing, and capital leases is allocated based on usage of debt-financed and leased space.
- Salaries are allocated based on percentage of effort, time tracked, or directly charged to a program, when appropriate. Fringes are allocated based on percentage on an average fringe benefit rate calculated annually, and adjusted accordingly, for full-time and part-time benefit eligible employees.

**Tax Status**

The College is a not-for-profit organization as described in Section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxes. The College has been classified as a publicly-supported organization that is not a private foundation under Section 509(a) of the Code.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 1 — ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**  
(Continued)

**Tax Status** (Continued)

The College files a Form 990 annually with the Internal Revenue Service. When annual returns are filed, some tax positions taken are highly certain to be sustained upon examination by the taxing authorities, while other tax positions are subject to uncertainty about the technical merits of the position or amount of the positions tax benefit that would ultimately be sustained. Management evaluated the College's tax positions, including interest and penalties attributable thereto, and concluded that there are no tax positions that required adjustment in its financial statements as of June 30, 2022 and 2021.

The College has no federal or state informational returns that are currently under examination by the Internal Revenue Service or state authorities.

**Subsequent Events**

The College has evaluated subsequent events for potential recognition or disclosure through October 4, 2022, the date the financial statements were available to be issued.

**Reclassifications**

Certain prior year balances have been reclassified to conform to current year presentation.

**Prior Year Summarized Information**

The financial statements include prior-year summarized comparative information in total but not by net asset class. Such information does not include sufficient detail to constitute a presentation in conformity with U.S. GAAP. Accordingly, such information should be read in conjunction with the College's previously issued financial statements for the year ended June 30, 2021, from which the summarized information was derived.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 2 — INVESTMENTS**

A summary of the College's investments in marketable securities is as follows:

	June 30,			
	2022		2021	
	Cost	Fair Value	Cost	Fair Value
Current				
Investments held for operating fund purposes				
Certificates of deposit	\$ 504,000	\$ 529,250	\$ 504,000	\$ 580,205
Long-term				
Endowment fund				
Mutual funds	3,774,133	5,147,022	4,770,315	7,079,679
Government obligations	3,181,466	3,094,627	2,046,210	2,101,236
Corporate bonds	2,516,909	2,382,358	2,456,624	2,511,873
Equities	3,000,754	7,271,046	3,000,754	8,368,317
Total	<u>12,473,262</u>	<u>17,895,053</u>	<u>12,273,903</u>	<u>20,061,105</u>
Funds designated for endowment				
Mutual and index funds	20,721,565	31,645,559	31,353,365	50,084,024
Government obligations	10,276,671	10,167,627	1,323,995	1,323,697
Corporate bonds	3,520,588	3,317,771	1,846,248	1,845,997
Total	<u>34,518,824</u>	<u>45,130,957</u>	<u>34,523,608</u>	<u>53,253,718</u>
Funds designated for capital reserve				
Mutual and index funds	5,263,882	5,339,426	5,313,603	6,880,818
Government obligations	760,497	714,932	947,618	946,628
Corporate bonds	927,688	838,008	1,148,837	1,148,383
Total	<u>6,952,067</u>	<u>6,892,366</u>	<u>7,410,058</u>	<u>8,975,829</u>
Total long-term investments	<u>53,944,153</u>	<u>69,918,376</u>	<u>54,207,569</u>	<u>82,290,652</u>
Total investments	<u>\$ 54,448,153</u>	<u>\$ 70,447,626</u>	<u>\$ 54,711,569</u>	<u>\$ 82,870,857</u>

Investment (loss) income, net is as follows:

	Year Ended June 30, 2022		
	Without Donor Restrictions	With Donor Restrictions	Total
Interest and dividends	\$ 1,535,907	\$ 273,640	\$ 1,809,547
Net gains on sale of securities	382,486	160,614	543,100
Net unrealized loss	(9,794,404)	(2,365,411)	(12,159,815)
Investment fees	(166,962)	(92,220)	(259,182)
Net investment loss	<u>\$ (8,042,973)</u>	<u>\$ (2,023,377)</u>	<u>\$ (10,066,350)</u>

	Year Ended June 30, 2021		
	Without Donor Restrictions	With Donor Restrictions	Total
Interest and dividends	\$ 972,894	\$ 262,582	\$ 1,235,476
Net gains on sale of securities	1,265,756	14,892	1,280,648
Net unrealized gain	12,295,903	4,148,375	16,444,278
Investment fees	(149,633)	(79,022)	(228,655)
Net investment income	<u>\$ 14,384,920</u>	<u>\$ 4,346,827</u>	<u>\$ 18,731,747</u>

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 3 — STUDENT LOANS RECEIVABLE, NET**

Government revolving loans are funded principally with federal advances to the College under the Perkins Loan Program (Perkins), Health Professional Student Loan Program (HPSL), and certain other programs. During the fiscal year 2018, the Perkins Loan Program ended and as a result the College made the first of its annual required repayments to the government. During fiscal years 2022 and 2021, the College made required repayments from the Perkins Revolving Loan fund of approximately \$253,000 and \$214,000, respectively, to the Department of Education, as required by law. Interest earned on the revolving and institutional loan programs is reinvested to support additional loans. The repayment and interest rate terms of the institutional loans vary considerably.

Student loans receivable, net, are summarized as follows:

	<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>
Student loans receivable	\$ 1,697,233	\$ 1,849,570
Less allowance for doubtful accounts	16,970	18,494
	<u>1,680,263</u>	<u>1,831,076</u>
Less current portion	261,600	435,600
Long-term portion	<u>\$ 1,418,663</u>	<u>\$ 1,395,476</u>

The aging of the student loan portfolio by classes of loans as of June 30, 2022, is presented as follows:

<b>Classes of Loans</b>	<b>Not in Repayment</b>	<b>Current</b>	<b>Less Than 240 Days Past Due</b>	<b>Greater Than 240 Days but Less Than Two Years Past Due</b>	<b>Greater Than Two Years but Less Than Five Years Past Due</b>	<b>Greater Than Five Years Past Due</b>	<b>Total</b>
Federal Perkins Loans	\$ 99,924	\$ 239,828	\$ 14,909	\$ 32,058	\$ 58,035	\$ 55,884	\$ 500,638
Health Professional Student Loans	603,386	373,615	58,427	65,780	45,000	50,387	1,196,595
	<u>\$ 703,310</u>	<u>\$ 613,443</u>	<u>\$ 73,336</u>	<u>\$ 97,838</u>	<u>\$ 103,035</u>	<u>\$ 106,271</u>	<u>\$ 1,697,233</u>
As a percentage of total loan portfolio	41.44%	36.14%	4.32%	5.76%	6.07%	6.26%	100.00%

Changes in allowance are as follows:

	<b>Year Ended June 30,</b>	
	<b>2022</b>	<b>2021</b>
Balance, beginning	\$ 18,494	\$ 20,902
Provision (recovery)	3,278	(125)
Loans charged off	(4,802)	(2,283)
	<u>\$ 16,970</u>	<u>\$ 18,494</u>

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 3 — STUDENT LOANS RECEIVABLE, NET** (Continued)

The allowance and recorded investment in student loans based on impairment method and credit quality indicator as of June 30, 2022 is presented as follows:

	<b>Perkins</b>	<b>HPSL</b>	<b>Total</b>
Allowance for loans collectively evaluated for impairment	\$ 5,005	\$ 11,965	\$ 16,970
Loans collectively evaluated for impairment	<u>\$ 500,638</u>	<u>\$ 1,196,595</u>	<u>\$ 1,697,233</u>
Allowance as a percentage of loans evaluated for impairment	1.00%	1.00%	1.00%
Investment by credit quality indicator			
Performing	\$ 354,661	\$ 1,035,428	\$ 1,390,089
Nonperforming	<u>145,977</u>	<u>161,167</u>	<u>307,144</u>
	<u>\$ 500,638</u>	<u>\$ 1,196,595</u>	<u>\$ 1,697,233</u>

**NOTE 4 — PLEDGES RECEIVABLE, NET**

Pledges receivable, net, are summarized as follows:

	<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>
Scholarships	\$ 283,243	\$ 332,314
Beyond Practice Ready	52,850	110,450
Bridges to Industry	2,583,439	2,769,727
Collaboratory	102,392	130,317
Pharmacy Practice Lab	90,000	120,000
Biology Lab	88,000	-
Research equipment	-	20,000
Capital campaign	121,545	52,045
Pharmacogenomics Certificate Program	-	21,450
Residency Programs	61,458	-
Other	<u>7,150</u>	<u>35,708</u>
Total	<u>\$ 3,390,077</u>	<u>\$ 3,592,011</u>

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 4 — PLEDGES RECEIVABLE, NET (Continued)**

	<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>
Receivable in less than one year	\$ 1,018,793	\$ 851,203
Receivable in one to five years	1,884,937	2,008,787
Receivable in more than five years	486,347	732,021
Total	3,390,077	3,592,011
Less discount to net present value	80,245	143,823
Less allowance for uncollectible pledges	150,000	150,000
Total pledges receivable, net	3,159,832	3,298,188
Less current portion	918,793	751,203
Long-term portion	<u>\$ 2,241,039</u>	<u>\$ 2,546,985</u>

A portion of the long-term pledge receivable balance can be relieved by gifts-in-kind.

As of June 30, 2022 and 2021, the College had also received notification of bequest intentions totaling approximately \$13,092,000 and \$13,785,000, respectively. If received, \$2,140,250 of the respective totals would be used for scholarships, \$2,020,000 would be used for research and the remainder would be unrestricted funds to be used at the College's discretion. These amounts are not included in pledges receivable due to the conditional nature of the gifts.

**NOTE 5 — DEPOSITS HELD IN CUSTODY FOR OTHERS**

A summary of deposits held in custody for others is as follows:

	<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>
Student activity	\$ 24,958	\$ 404,643
Athletics	24,955	24,955
Total	<u>\$ 49,913</u>	<u>\$ 429,598</u>

**NOTE 6 — PROPERTY, PLANT, AND EQUIPMENT, NET**

A summary of property, plant, and equipment, net, is as follows:

	<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>
Land and improvements	\$ 14,397,154	\$ 12,666,876
Buildings and improvements	81,526,767	67,880,068
Laboratory equipment	10,786,260	10,776,980
Other equipment	4,342,068	4,281,966
Furniture and fixtures	4,756,269	4,461,661
Computer equipment	7,861,328	7,578,959
Total	123,669,846	107,646,510
Less accumulated depreciation	81,405,761	77,350,814
	42,264,085	30,295,696
Construction in progress	1,361,105	2,909,602
Property, plant, and equipment, net	<u>\$ 43,625,190</u>	<u>\$ 33,205,298</u>



**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 6 — PROPERTY, PLANT, AND EQUIPMENT, NET (Continued)**

Depreciation expense for the years ended June 30, 2022 and 2021 was approximately \$4,282,000 and \$4,358,000, respectively.

**NOTE 7 — ENDOWMENT**

The College's endowment consists of various investments overseen by the Finance and Investment Committee of the Board of Trustees. Its endowment includes both donor-restricted endowment funds and funds designated by the Board of Trustees to function as endowments. Net assets associated with endowment funds, including funds designated by the Board of Trustees to function as endowments, are classified and reported based on the existence or absence of donor-imposed restrictions or Board designations.

**Relevant Law**

The Board of Trustees of the College has interpreted the New York State Not-For-Profit Corporation Law (NPCL) as requiring the preservation of the fair value of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. As a result of this interpretation, management classifies as permanently restricted net assets (a) the original value of gifts donated to the permanent endowment; (b) the original value of subsequent gifts to the permanent endowment, and (c) accumulations to the permanent endowment made in accordance with the direction of the applicable donor gift instrument at the time the accumulation is added to the fund. The remaining portion of the donor-restricted endowment fund that is not classified in permanently restricted net assets is classified as temporarily restricted net assets until those amounts are appropriated for expenditure by the College in a manner consistent with the standard procedures prescribed in NPCL Article 5-A. Management considers the following factors in making a determination to appropriate or accumulate donor-restricted endowment funds:

- a. The duration and preservation of the fund;
- b. The purposes of the College and the donor-restricted endowment fund;
- c. General economic conditions;
- d. The possible effect of inflation and deflation;
- e. The expected total return from income and the appreciation of investments;
- f. Other resources of the College;
- g. Where appropriate and circumstances would otherwise warrant, alternatives to expenditure of the endowment fund, giving due consideration to the effect that such alternatives may have on the organization, and
- h. The investment policies of the College.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 7 — ENDOWMENT** (Continued)

**Composition and Changes of Endowment**

Endowment net asset composition by type of fund as of June 30, 2022 is as follows:

	<b>Without Donor Restrictions</b>	<b>With Donor Restrictions</b>	<b>Total</b>
Donor-restricted endowment funds	\$ -	\$ 17,918,984	\$ 17,918,984
Board-designated endowment funds	45,739,311	-	45,739,311
	<u>\$ 45,739,311</u>	<u>\$ 17,918,984</u>	<u>\$ 63,658,295</u>

Changes in endowment net assets for the fiscal year ended June 30, 2022 were as follows:

	<b>Without Donor Restrictions</b>	<b>With Donor Restrictions</b>	<b>Total</b>
Endowment net assets, beginning of year	\$ 53,998,525	\$ 20,116,829	\$ 74,115,354
Investment return			
Investment income	1,126,611	273,642	1,400,253
Net gains, realized	360,521	160,614	521,135
Fees	(128,368)	(92,221)	(220,589)
Net losses, unrealized	(8,117,978)	(2,365,412)	(10,483,390)
Total	<u>(6,759,214)</u>	<u>(2,023,377)</u>	<u>(8,782,591)</u>
Contributions	-	221,164	221,164
Net assets released from restriction	-	(395,632)	(395,632)
Appropriation of endowment assets for expenditures	<u>(1,500,000)</u>	<u>-</u>	<u>(1,500,000)</u>
Endowment net assets, end of year	<u>\$ 45,739,311</u>	<u>\$ 17,918,984</u>	<u>\$ 63,658,295</u>

Endowment net asset composition by type of fund as of June 30, 2021 were as follows:

	<b>Without Donor Restrictions</b>	<b>With Donor Restrictions</b>	<b>Total</b>
Donor-restricted endowment funds	\$ -	\$ 20,116,829	\$ 20,116,829
Board-designated endowment funds	53,998,525	-	53,998,525
	<u>\$ 53,998,525</u>	<u>\$ 20,116,829</u>	<u>\$ 74,115,354</u>

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 7 — ENDOWMENT** (Continued)

**Composition and Changes of Endowment** (Continued)

Changes in endowment net assets for the fiscal year ended June 30, 2021 were as follows:

	<b>Without Donor Restrictions</b>	<b>With Donor Restrictions</b>	<b>Total</b>
Endowment net assets, beginning of year	<u>\$ 42,770,711</u>	<u>\$ 15,752,667</u>	<u>\$ 58,523,378</u>
Investment return			
Investment income	771,641	262,584	1,034,225
Net gains, realized	1,032,079	14,891	1,046,970
Fees	(114,612)	(79,022)	(193,634)
Net gains, unrealized	10,558,706	4,148,374	14,707,080
Total	<u>12,247,814</u>	<u>4,346,827</u>	<u>16,594,641</u>
Contributions	<u>-</u>	<u>760,040</u>	<u>760,040</u>
Net assets released from restriction	<u>-</u>	<u>(742,705)</u>	<u>(742,705)</u>
Appropriation of endowment assets for expenditures	<u>(1,020,000)</u>	<u>-</u>	<u>(1,020,000)</u>
Endowment net assets, end of year	<u><u>\$ 53,998,525</u></u>	<u><u>\$ 20,116,829</u></u>	<u><u>\$ 74,115,354</u></u>

**Return Objectives and Risk Parameters**

The College has adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of funding to programs supported by its endowment while seeking to maintain the purchasing power of the endowment assets. Endowment assets include those assets of donor-restricted funds that the College must hold in perpetuity as well as board-designated funds. Under this policy, as approved by the Board of Trustees, the endowment assets are invested in a manner that is intended to obtain a real rate of return on plan assets so that plan assets both grow in value at a rate that exceeds the rate of inflation over the long-term and that limits yearly volatility to acceptable levels as reviewed and determined by the Investment Committee.

**Strategies Employed for Achieving Objectives**

To satisfy its long-term rate-of-return objectives, the College relies on a total return strategy in which investment returns are achieved through both capital appreciation (realized and unrealized) and current yield (interest and dividends). The College targets a diversified asset allocation that places a greater emphasis on equity-based investments to achieve its long-term return objectives within prudent risk constraints.

**Spending Policy**

The College's policy for distributing endowment fund earnings is based on the need to support its various programs and maintenance of facilities. Whether any distributions are made from endowment funds is decided annually by the Board of Trustees in conjunction with the College's annual operating budget. Accordingly, over the long term, the College expects the current spending policy to allow its endowment to grow at a rate that exceeds the rate of inflation. This is consistent with the College's objective to maintain the purchasing power of the endowment assets held in perpetuity or for a specified term as well as to provide additional real growth through new gifts and investment return.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 7 — ENDOWMENT** (Continued)

**Spending Policy** (Continued)

The College has a spending policy of 4% per annum, based on a historical five-year moving average of the donor-restricted endowment fund market value on June 30. No distributions will be made which result in the market value of the donor restricted endowment falling below the original corpus. From time to time, the fair value of assets associated with individual donor restricted endowment funds may fall below the value of the original donor gift amounts. The amount below the original gift value or the amount required to be maintained by the donor or by law totaled \$7,071 (corpus of \$90,320) at June 30, 2022 (none at June 30, 2021) and was reported in net assets with donor restrictions. No distributions were made from these funds during the year ended June 30, 2022.

**NOTE 8 — LINE-OF-CREDIT**

During May 2022, the College renewed a \$5,000,000 unsecured working capital line-of-credit expiring March 2023; the previous line-of-credit expired during fall 2021. The line is payable on demand with interest due monthly on the outstanding balances at an interest rate equal to 0.5% below the Wall Street Journal Prime Rate, or 4.25% at June 30, 2022.

There was no outstanding balance on the line-of-credit at June 30, 2022.

**NOTE 9 — BONDS PAYABLE, NET**

Bonds payable are summarized as follows:

	<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>
Tax-exempt Revenue Refunding Bonds, Series 2014A	\$ 11,910,000	\$ 12,565,000
Tax-exempt Revenue Refunding Bonds, Series 2014B	5,160,000	5,405,000
Total bonds before unamortized premium and bond issuance costs	17,070,000	17,970,000
Unamortized premium, Series 2014A	1,101,754	1,190,220
Bond issuance costs, net	(248,290)	(281,262)
Bonds payable, net	17,923,464	18,878,958
Less current portion of bonds payable, net	965,494	955,494
Bonds payable, net, long-term portion	<u>\$ 16,957,970</u>	<u>\$ 17,923,464</u>

**Tax Exempt Revenue Refunding Bonds, Series 2014A** require principal payable annually each December 1 in various increments through December 1, 2034. Interest on the bonds will be payable on each June 1 and December 1 at rates from 2.000% to 5.000%. The bonds are secured by the following: (a) assignment to the Trustee of the Issuers rights under the Loan Agreement; (b) mortgage lien on and security interest in mortgaged property (Student Center and O'Brien Building); (c) pledged revenues as pursuant to the Intercreditor Agreement; (d) guaranty to the Trustee by the College; (e) monies deposited with and bond proceeds paid to the Trustee. The bonds are subject to optional redemption on December 1, 2024 at 100%. Under the Loan Agreement, the College must make payments of principal and interest to the Trustee. The bond includes an unamortized bond reoffering premium of \$1,101,754 and \$1,190,220 as of June 30, 2022 and 2021, respectively. The bond is presented net of unamortized bond issuance costs of \$213,476 and \$230,617 as of June 30, 2022 and 2021, respectively.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 9 — BONDS PAYABLE, NET** (Continued)

**Tax Exempt Revenue Refunding Bonds, Series 2014B** require principal and interest payable the first of each month at various increments through July 1, 2038. The Bank Purchase Agreement with NBT Bank N.A. expires during September 2024. Therefore, the College will be required to renew or replace the bank upon expiration. The variable interest rate (1.062% and 0.760% as of June 30, 2022 and 2021, respectively) is based on 70% of 100 basis points plus the 1 month LIBOR rate. The bonds are secured by the following: (a) assignment of all rights of the College in the Loan Agreement; (b) assignment of mortgage including first mortgage lien on and security interest in mortgaged property (Notre Dame dormitory); (c) pledged revenues as pursuant to the Intercreditor Agreement; (d) guaranty to NBT Bank, N.A. by the College. The bond is presented net of unamortized bond issuance costs of \$34,814 and \$50,645 as of June 30, 2022 and 2021, respectively.

Interest expense related to bonds payable was \$579,672 and \$602,422 for the years ended June 30, 2022 and 2021, respectively.

The bonds contain certain financial covenants. As of June 30, 2022 and 2021, the College has met these financial covenants.

Under the terms of the Bond Purchase Agreement, the College is required to maintain a depository relationship with NBT Bank, N.A. for the life of the loan, with a minimum balance of \$1,400,000.

A summary of the College's future maturities of bonds payable, is as follows:

	<b>Amount</b>	<b>Unamortized Premium and Bond Issuance Costs</b>	<b>Total</b>
For the year ending June 30,			
2023	\$ 910,000	\$ 55,494	\$ 965,494
2024	955,000	55,494	1,010,494
2025	990,000	68,173	1,058,173
2026	1,040,000	71,325	1,111,325
2027	1,080,000	71,325	1,151,325
Thereafter	12,095,000	531,653	12,626,653
	<u>\$ 17,070,000</u>	<u>\$ 853,464</u>	<u>\$ 17,923,464</u>

The estimated fair value of bonds payable is approximately \$17,200,000 and \$18,875,000 at June 30, 2022 and 2021, respectively. The estimated fair value of fixed rate bonds payable is based on quoted market prices for the same or similar issues. The carrying value of variable rate bonds payable approximates fair value because of the variable nature of the interest rates.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 10 — NET ASSETS WITH DONOR RESTRICTIONS, TIME AND PURPOSE RESTRICTIONS**

Net assets with donor restrictions, time and purpose restrictions are summarized as follows:

	<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>
Scholarships and prizes	\$ 4,680,823	\$ 6,556,663
Other programs	2,083,373	2,773,202
Professorship	600,000	-
Beyond Practice Ready	171,477	332,956
Fitness Court	130,200	-
Research	92,553	81,414
Discovery for life	68,900	436,591
Center for Biopharmaceutical		
Education and Training	31,771	1,497,598
Residency programs	11,553	49,666
	<u>\$ 7,870,650</u>	<u>\$ 11,728,090</u>

**NOTE 11 — NET ASSETS WITH DONOR RESTRICTIONS, PERPETUAL IN NATURE**

Net assets with donor restrictions, perpetual in nature are summarized as follows:

	<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>
Scholarships and prizes	\$ 8,580,557	\$ 8,359,393
Research	1,011,943	1,011,943
Chair	1,000,000	1,000,000
Summer enrichment program	921,568	921,568
Museum	53,522	53,522
O'Brien Loan Fund	38,245	38,245
	<u>\$ 11,605,835</u>	<u>\$ 11,384,671</u>

**NOTE 12 — RETIREMENT PLANS**

Eligible employees of the College are participants in the College 403(b) retirement savings plan, which is a defined contribution plan. The College's policy is to fund retirement costs as accrued. The contribution rate is based on a percentage of a participant's compensation. Total contributions by the College amounted to \$1,652,376 and \$1,126,940 for the years ended June 30, 2022 and 2021, respectively.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 13 — POSTRETIREMENT HEALTH CARE BENEFITS PLAN**

The College has a frozen defined benefit postretirement health care benefits plan (Plan) covering eligible employees. The Plan is unfunded; however, the College makes contributions to the Plan each year for medical premiums due under the Plan.

The College recognizes the unfunded status of the Plan as a liability in its statement of financial position. The College recognizes changes in the funded status or changes in unrestricted net assets in the year in which the changes occur. The College measures the funded status of the Plan as of the date of its year-end statement of financial position.

The benefit obligations related to the Plan are actuarially determined by Milliman Consultants and Actuaries (Milliman), the Plan's consulting actuary.

	<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>
The unfunded status of the Plan is as follows:		
Benefit obligation	\$ (2,025,975)	\$ (2,660,299)
Funded status	\$ (2,025,975)	\$ (2,660,299)
The cumulative amounts of adjustments to net assets that have not yet been recognized as components of net periodic benefit cost at June 30:		
Prior service credit	\$ 169,829	\$ 215,488
Net gain / (loss)	633,567	(71,049)
	<u>\$ 803,396</u>	<u>\$ 144,439</u>
	<b>Year Ended June 30,</b>	
	<b>2022</b>	<b>2021</b>
Employer contributions	\$ 45,916	\$ 43,379
Benefits paid	\$ 45,916	\$ 43,379
Amounts recognized in the statement of activities:		
Net (gain) / loss	\$ (704,616)	\$ (215,809)
Amortization of prior service credit	45,659	45,659
Total changes in net assets other than net periodic benefit cost	(658,957)	(170,150)
Net periodic benefit cost		
Service cost	53,922	65,009
Interest cost	62,286	63,075
Amortization of prior service (credit) / cost	(45,659)	(45,659)
Net periodic benefit cost	<u>70,549</u>	<u>82,425</u>
Total amount recognized in the statement of activities	<u>\$ (588,408)</u>	<u>\$ (87,725)</u>

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 13 — POSTRETIREMENT HEALTH CARE BENEFITS PLAN** (Continued)

The following are weighted-average assumptions used to determine benefit obligations:

	<b>June 30,</b>	
	<b>2022</b>	<b>2021</b>
Discount rate	<u>4.36%</u>	<u>2.55%</u>

The following benefit payments, which reflect future service as appropriate, are expected to be paid:

	<b>Amount</b>
For the year ending June 30,	
2023	\$ 87,549
2024	94,075
2025	103,297
2026	114,411
2027	119,391
Expected benefit payments 2028 through 2032	753,667

**NOTE 14 — RIGHT OF USE ASSETS AND LIABILITIES**

The College has entered into the following lease arrangements:

**Finance Leases**

These leases consist of various equipment leases and a land lease. Termination of the leases generally are prohibited unless there is a violation under the lease agreement.

**Operating Leases**

The College has various real estate leases for the use of facilities. The agreements require monthly payments ranging from \$500 to \$82,638 per month and expire at various times from August 2022 to June 2030. The facility leased by the College in Vermont contains scheduled rent escalation clauses in its future minimum lease payments as well as a rent holiday. This lease also requires the College to pay insurance, common area maintenance, and other costs, collectively referred to as operating costs. These costs are recognized as incurred and included in utilities expense. In addition, this facility, has a sublease agreement which expires June 2024. The lease requires the payment of base rent plus additional rent for insurance, common area maintenance, and other costs. The College also has a short term agreement with the landlord such that they are subleasing some of the leased space from the College.



**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 14 — RIGHT OF USE ASSETS AND LIABILITIES (Continued)**

**Other Lease Information**

The components of lease cost for the year ended June 30, are as follows:

	<b>2022</b>
Lease cost	
Financing lease cost	
Amortization of right-of-use asset	\$ 209,682
Interest on lease liabilities	6,256
Operating lease cost	1,398,108
Short term lease cost	-
Sublease income	(97,125)
	<u>                    </u>
Total lease cost	<u><u>\$ 1,516,921</u></u>

Other cash flow information related to leases for the year ended June 30, are as follows:

	<b>2022</b>
Cash paid for amounts included in the measurement of lease liabilities:	
Financing cash flows from finance leases	\$ 294,291
Interest paid for finance leases	\$ 6,256
Operating cash flows from operating leases	\$ 1,535,443

Weighted-average remaining lease term and discount rate for operating and finance leases as of June 30, are as follows:

	<b>2022</b>
<b>Weighted-average remaining lease term (in years)</b>	
Financing leases	34.12
Operating leases	6.63
<b>Weighted-average discount rate</b>	
Financing leases	2.55%
Operating leases	3.00%

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 14 — RIGHT OF USE ASSETS AND LIABILITIES (Continued)**

**Other Lease Information (Continued)**

Future minimum lease payments and reconciliation to the statement of financial position at June 30, 2022, are as follows:

<u>Year ending June 30,</u>	<u>Financing</u>	<u>Operating</u>
2023	\$ 503,731	\$ 1,127,787
2024	503,938	1,042,534
2025	489,861	133,419
2026	272,822	49,097
2027	167,801	30,559
Thereafter	8,390,180	67,631
Total minimum lease payments	10,328,333	2,451,027
Less: Amount representing interest	(5,226,365)	(255)
Present value of net minimum lease payments	<u>\$ 5,101,968</u>	<u>\$ 2,450,772</u>

**NOTE 15 — COMMITMENT AND CONTINGENCIES**

**Rental Income**

The College has a thirty-nine year lease agreement with CHF-Holland Suites, LLC to lease a portion of a College-owned facility to construct and furnish a 177-bed student housing facility and the rights to 177 parking spots. The entire lease of \$4.3 million was paid in advance.

The College has a forty-year lease agreement with CHF-Holland Suites II, LLC to lease an additional portion of a College-owned facility to construct and furnish a 122-bed student housing facility. The entire lease of \$1 million was paid in advance.

Both of the leases terminate when the thirty-year CHF bonds, issued for the purpose of constructing and furnishing the facilities, are paid in full. Therefore, the advance rent is being recognized as income using the straight-line method over the life of the bonds. Rental income under the leases was \$176,667 for both years ended June 30, 2022 and 2021.

Rental income to be recognized over each of the next five years is \$176,667.

**The Bookstore LLC**

The College contracted with independent corporations to manage the bookstore and the cafeteria during the years ended June 30, 2022 and 2021. During the years ended June 30, 2022 and 2021, the College reported the revenues and expenses of these operations in the statement of activities.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 15 — COMMITMENT AND CONTINGENCIES (Continued)**

**The Bookstore LLC (Continued)**

The College formed a Limited Liability Company, The Bookstore LLC (the LLC) with two other educational institutions to serve as a common bookstore for all three institutions. The College had a 50.8% and 47.8% membership interest in the LLC at June 30, 2022 and 2021, respectively. The location of the bookstore is in the College's student center.

The LLC entered into a lease with the College for the bookstore space in May 2006. The lease is through 2045. The rent is the sum of the bookstore's pro rata share of ground rent under the terms of the ground lease the College had with UHA. As an inducement to construct the bookstore space, Sage Colleges and Albany Law School entered into an agreement with the College, whereas each of the educational institutions paid the College a non-refundable payment of \$249,999, or a total of \$499,998.

**Federal Government Student Loan Program**

Funds provided under the federal government student loan program are loaned to qualified students and may be re-loaned after collection. If the College were to terminate the program, these funds would be returnable to the government.

**Food Service Contract**

The College has a contract with a food service company to provide food services. Under the terms of the contract, the food service provider funded \$1,339,077 of capital improvements to the College's dining service program. During 2021, the food service provider provided funding of \$83,844 for additional improvements. The College holds title to the improvements. During 2020, the contract was extended from May 2022 to May 2023. In the unlikely event that the food service contract is terminated prior to May 31, 2023, the College will be liable for liquidated damages to the food service provider, calculated based on the number of months remaining on the contract from the date of termination through May 2023. For years ended June 30, 2022 and 2021, the College reflected \$95,830 and \$78,480, as revenue on this agreement. The balance that has been deferred as of June 30, 2022 is \$87,840.

**Construction Contract**

During the year ended June 30, 2022, the College entered into 5 single construction contracts, totaling approximately \$7,503,000. During the year ended June 30, 2022, \$6,840,000 has been completed, and during the year ending June 30, 2023, \$663,000 will be completed.

**NOTE 16 — RISKS AND UNCERTAINTIES**

**Concentration of Credit Risk**

The College maintains cash balances in financial institutions located in the northeast. Accounts at those institutions are insured, up to certain limits, by the Federal Deposit Insurance Corporation (FDIC). At times, the College has bank deposits in excess of amounts insured by the FDIC. The College attempts to mitigate this risk by depositing its cash with high credit quality institutions.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 16 — RISKS AND UNCERTAINTIES (Continued)**

**Contract and Grant Administration**

Federally funded financial aid programs and research and development grants are subject to special audit. Such audits could result in claims against the resources of the College.

**COVID-19 Pandemic**

Global and domestic responses to the coronavirus disease (COVID-19) outbreak continue to rapidly evolve. The initial effect, which centered around global financial markets, has since affected travel, commerce and financial markets globally, and has affected economic growth worldwide and the higher education landscape in general.

The extent of COVID-19's effect on the College's operational and financial performance will depend on future developments, including the duration, spread and intensity of the pandemic, all of which are uncertain and difficult considering the rapidly evolving landscape. As a result, it is not currently possible to ascertain the overall long-term impact of COVID-19 on the College's finances. Given the dynamic nature of this outbreak, however, the extent to which the COVID-19 virus impacts the College's operating results will depend on future developments, which remain highly uncertain and cannot be predicted at this time.

**NOTE 17 — FAIR VALUE OF FINANCIAL INSTRUMENTS**

The College determines the fair value of financial instruments based on the fair value hierarchy which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The following three levels of inputs may be used to measure fair value:

- Level 1** Unadjusted quoted market prices in active markets for identical assets or liabilities.
- Level 2** Observable inputs other than quoted market prices and can include active markets and markets not considered to be active.
- Level 3** Unobservable inputs that are supported by little or no market activity.

Fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

Following is a description of valuation methodologies used for assets and liabilities measured at fair value at June 30, 2022 and 2021:

**Certificates of Deposit:** The fair value of fixed maturity certificates of deposit is estimated using the rates currently offered for deposits of similar remaining maturities.

**Corporate Bonds:** Valued at yields currently available on comparable securities of issuers with similar credit ratings. The bonds are valued under a discounted cash flows approach that maximizes observable inputs, such as current yields of similar instruments, but includes adjustments for certain risks that may not be observable, such as credit and liquidity risks.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 17 — FAIR VALUE OF FINANCIAL INSTRUMENTS** (Continued)

**Government Obligations:** Valued at yields currently available on comparable securities of issuers with similar credit ratings.

**U.S. Treasury Obligations and Equities:** Valued at the closing price reported in the active market in which the individual security is traded.

**Mutual Funds:** Valued at the daily closing price as reported by the fund. Mutual funds held by the College are open-ended mutual funds that are registered with the Securities and Exchange Commission. These funds are required to publish their daily net asset value ("NAV") and to transact at that price. The mutual funds held by the College are deemed to be actively traded.

The methods described above may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the College believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

A summary of assets and liabilities measured at fair value on a recurring basis are summarized below:

	June 30, 2022			
	Level 1	Level 2	Level 3	Total
Assets				
Certificates of deposit	\$ -	\$ 529,250	\$ -	\$ 529,250
Corporate bonds	2,410,469	4,127,668	-	6,538,137
Government obligations	9,486,062	4,491,124	-	13,977,186
Equities				
Large cap	6,139,893	-	-	6,139,893
Mid cap	877,851	-	-	877,851
International	253,302	-	-	253,302
Mutual funds				
Bond	1,265,720	-	-	1,265,720
Large cap	11,260,791	-	-	11,260,791
Mid cap	3,370,663	-	-	3,370,663
Small cap	23,725,565	-	-	23,725,565
International	2,509,268	-	-	2,509,268
Total Investments	61,299,584	9,148,042	-	70,447,626
Total Assets	\$ 61,299,584	\$ 9,148,042	\$ -	\$ 70,447,626

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 17 — FAIR VALUE OF FINANCIAL INSTRUMENTS (Continued)**

	June 30, 2021			
	Level 1	Level 2	Level 3	Total
<b>Assets</b>				
Certificates of deposit	\$ -	\$ 580,205	\$ -	\$ 580,205
Corporate bonds	1,148,383	4,357,870	-	5,506,253
Government obligations	946,628	3,424,933	-	4,371,561
<b>Equities</b>				
Large cap	7,138,574	-	-	7,138,574
Mid cap	988,193	-	-	988,193
International	241,550	-	-	241,550
<b>Mutual funds</b>				
Bond	12,816,607	-	-	12,816,607
Large cap	43,092,818	-	-	43,092,818
Mid cap	3,588,647	-	-	3,588,647
Small cap	1,392,828	-	-	1,392,828
International	3,153,621	-	-	3,153,621
<b>Total Investments</b>	<b>74,507,849</b>	<b>8,363,008</b>	<b>-</b>	<b>82,870,857</b>
<b>Total Assets</b>	<b>\$ 74,507,849</b>	<b>\$ 8,363,008</b>	<b>\$ -</b>	<b>\$ 82,870,857</b>

**NOTE 18 — LIQUIDITY AND AVAILABILITY OF FINANCIAL ASSETS**

The following reflects the College's financial assets available for general expenditures within one year as of June 30, 2022.

**Financial assets at year-end**

Cash	\$ 10,510,021
Accounts receivable, students, net	1,935,694
Investments	70,447,626
Other financial assets	8,744,953
<b>Total financial assets at year-end</b>	<b>\$ 91,638,294</b>

Less those unavailable for general expenditures within one year, due to:

Contractual or donor-imposed restrictions	
Donor restricted perpetual endowment	(11,567,592)
Donor time and purpose restricted endowment	(6,351,392)
Contributions restricted by donor with time or purpose restrictions	(1,279,350)
Other financial assets	(8,744,953)

**Financial assets available to meet cash needs for general expenditures within one year before board designations:**

**\$ 63,695,007**

Less Board designations:

Board designated endowment fund, primarily for long-term investing	(45,739,311)
Capital reserve	(8,087,088)

**Financial assets available to meet cash needs for general expenditures within one year**

**\$ 9,868,608**

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 18 — LIQUIDITY AND AVAILABILITY OF FINANCIAL ASSETS (Continued)**

The College is substantially supported by tuition and fees. The College is also supported by contributions on an unrestricted and restricted basis. Because a donor's restriction requires resources to be used in a particular manner or in a future period, the College must maintain sufficient resources to meet those responsibilities to its donors. Thus, financial resources may not be available for general expenditure within one year. The College invests cash in excess of annual requirements in short-term investments. Although the College does not intend to use funds outside of their designation, the board-designated funds of approximately \$53,826,000 could be made available if necessary.

**NOTE 19 — CONTRIBUTED NONFINANCIAL ASSETS**

The College received the following contributions of nonfinancial assets for the year ended June 30, 2022:

<b>Program Services</b>	<b>Donated Equipment/ Supplies</b>	<b>Donated Statue</b>	<b>Donated Rent</b>	<b>Donated Auction Items</b>	<b>Donated Program Speaker</b>	<b>Total</b>
Center for Biopharmaceutical Education and Training	\$ 95,365	\$ -	\$ -	\$ -	\$ -	\$ 95,365
Fitness/Athletics	50,000	-	-	-	-	50,000
Garden statue for medicinal garden	-	2,500	-	-	-	2,500
Pharmacogenomics Certificate Program	-	-	-	-	1,200	1,200
Auction items for Scholarship Golf Tournament	-	-	-	741	-	741
<b>Total</b>	<b>\$ 145,365</b>	<b>\$ 2,500</b>	<b>\$ -</b>	<b>\$ 741</b>	<b>\$ 1,200</b>	<b>\$ 149,806</b>

During the fiscal year 2022, the Organization received donated services for laboratory equipment and supplies, fitness equipment, landscape statue, speaker services for a certificate program and other auction items for a golf fundraising tournament.

The College received the following contributions of nonfinancial assets for the year ended June 30, 2021:

<b>Program Services</b>	<b>Donated Equipment/ Supplies</b>	<b>Donated Rent</b>	<b>Total</b>
Collaboratory	\$ -	\$ 121,662	\$ 121,662
Center for Biopharmaceutical Education and Training	130,500	-	130,500
<b>Total</b>	<b>\$ 130,500</b>	<b>\$ 121,662</b>	<b>\$ 252,162</b>

During the fiscal year 2021, the organization received laboratory equipment and contributions of the use of facilities for the Collaboratory program.

**NOTE 20 — RELATED PARTY TRANSACTIONS**

The College has not entered into any transactions with related parties, which materially affect the accompanying financial statements.

**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 21 — FUNCTIONAL EXPENSES**

Functional expenses for the year ended June 30, 2022 are as follows:

	Program								
	Administrative and General	Fundraising	Admissions and Student Services	Office of Post- Graduate Education	Library and Instruction	Research	Awards	Auxiliary Services	Total
Salaries	\$ 3,137,479	\$ 975,489	\$ 2,982,137	\$ 162,942	\$ 11,932,809	\$ 1,566,582	\$ -	\$ 302,081	\$ 21,059,519
Fringe benefits	911,916	287,467	780,717	48,017	3,307,296	447,861	-	11,808	5,795,082
Amortization	3,938	37	3,559	14	316,870	421	-	2,015	326,854
Bad debt	129,575	600	-	-	7,824	-	-	-	137,999
Bank fees	16,244	2,447	2,466	9	7,267	292	-	1,396	30,121
Books, audio video, material, and cataloging	-	-	-	-	515,628	-	-	-	515,628
Consultants	277,786	13,500	302,900	-	31,902	193,304	-	12	819,404
Cost of operations	-	-	-	-	2,656,701	-	-	1,418,754	4,075,455
Depreciation	234,502	25,205	475,067	9,166	1,983,624	495,206	-	1,059,566	4,282,336
Events	-	64,357	214,959	5,375	27,707	-	-	-	312,398
Honoraria	-	-	-	30,299	15,817	-	-	-	46,116
Insurance	266,681	-	-	-	43,298	33,884	-	134,242	478,105
Interest	20,811	5,017	64,918	1,825	219,682	11,403	-	262,273	585,929
Lease	-	-	-	-	962,843	287,478	-	-	1,250,321
Marketing and public relations	3,225	62,500	401,074	-	93,180	-	-	-	559,979
Membership dues	55,306	6,097	30,899	-	32,496	1,258	-	-	126,056
Non-capitalized equipment	69,967	89	10,570	32	238,671	6,765	-	4,809	330,903
Photocopy	75,467	-	-	-	-	-	-	-	75,467
Postage	81,932	2,866	-	-	-	-	-	-	84,798
Printing and publications	12,888	46,799	81,479	-	654	13,641	-	-	155,461
Professional development	-	2,363	9,087	-	32,812	3,134	-	-	47,396
Professional fees	254,732	-	784	-	21	-	-	-	255,537
Recruitment	379,454	-	232,405	-	3,073	-	-	-	614,932
Repairs and maintenance	333,938	-	141,065	-	188,780	203,586	-	358,913	1,226,282
Security contracts	47,012	3,857	366,881	1,403	342,365	47,057	-	209,269	1,017,844
Software licenses and maintenance	547,061	-	81,310	-	24,574	31,170	-	-	684,115
Student aid	-	-	-	-	-	-	1,658,760	-	1,658,760
Supplies	39,501	62,811	180,844	3,357	434,944	363,964	-	35,333	1,120,754
Taxes	18,182	-	-	-	168,315	167,887	-	18,182	372,566
Telephone, internet and cable	87,735	19	9,769	7	17,079	5,749	-	36,400	156,758
Travel	46,232	37,629	88,879	6	80,594	13,589	-	893	267,822
Utilities	40,845	2,189	208,207	796	586,155	38,136	-	269,724	1,146,052
Vouchers	-	-	-	-	127,962	-	-	-	127,962
Other	231,149	9,584	193,036	7,952	571,803	39,075	257	-	1,052,856
Total	\$ 7,323,558	\$ 1,610,922	\$ 6,863,012	\$ 271,200	\$ 24,972,746	\$ 3,971,442	\$ 1,659,017	\$ 4,125,670	\$ 50,797,567



**ALBANY COLLEGE OF PHARMACY AND HEALTH SCIENCES**  
**NOTES TO FINANCIAL STATEMENTS**  
**June 30, 2022 and 2021**

**NOTE 21 — FUNCTIONAL EXPENSES (Continued)**

Functional expenses for the year ended June 30, 2021 are as follows:

	Program								
	Administrative and General	Fundraising	Admissions and Student Services	Office of Post- Graduate Education	Library and Instruction	Research	Awards	Auxiliary Services	Total
Salaries	\$ 3,008,353	\$ 1,038,643	\$ 3,113,090	\$ 183,058	\$ 12,389,949	\$ 1,747,700	\$ -	\$ 270,692	\$ 21,751,485
Fringe benefits	715,220	265,107	745,818	47,029	2,986,710	426,163	-	68,103	5,254,150
Amortization	1,166	-	-	-	189,740	-	-	-	190,906
Bad debt	82,688	10,153	-	-	9,543	-	-	-	102,384
Bank fees	14,411	5,461	2,427	2,862	13,362	293	-	1,425	40,241
Books, audio video, material, and cataloging	-	-	-	-	570,309	-	-	-	570,309
Consultants	216,443	30,827	4,441	16	33,186	616,572	-	2,452	903,937
Cost of operations	-	-	-	-	3,024,870	-	-	1,006,478	4,031,348
Depreciation	246,656	24,885	463,753	9,049	2,179,509	344,358	-	1,089,594	4,357,804
Events	7,083	31,676	148,695	25,940	7,471	-	-	-	220,865
Honoraria	-	-	-	21,288	600	-	-	-	21,888
Insurance	239,174	-	-	-	38,375	27,102	-	107,374	412,025
Interest	23,703	5,362	59,629	1,950	233,311	12,187	-	285,164	621,306
Lease	-	-	-	-	980,081	287,172	-	-	1,267,253
Marketing and public relations	2,549	10,745	1,104,858	-	77,853	-	-	-	1,196,005
Membership dues	57,121	5,282	31,044	-	34,418	2,614	-	-	130,479
Non-capitalized equipment	63,391	12	4,538	4	129,055	28,153	-	7,156	232,309
Photocopy	83,204	-	-	-	-	-	-	-	83,204
Postage	46,589	4,469	-	-	1,441	-	-	-	52,499
Printing and publications	-	28,474	119,074	-	-	2,692	-	-	150,240
Professional development	195	1,796	2,681	-	10,532	1,271	-	-	16,475
Professional fees	205,361	-	-	-	2,383	-	-	-	207,744
Recruitment	27,686	-	225,118	-	194	-	-	-	252,998
Repairs and maintenance	380,919	-	118,282	-	187,941	193,399	-	371,078	1,251,619
Security contracts	50,039	3,855	359,694	1,402	362,605	47,013	-	214,671	1,039,279
Software licenses and maintenance	426,156	-	90,424	-	28,898	5,095	-	-	550,573
Student aid	-	-	-	-	-	-	7,923	-	7,923
Supplies	192,760	57,972	117,509	3,066	409,701	412,800	-	20,403	1,214,211
Taxes	17,745	-	-	4	164,416	18,252	-	17,745	218,162
Telephone, internet and cable	205,259	12	9,120	2	18,653	139	-	677	233,862
Travel	6,554	7,810	30,881	-	49,338	2,374	-	344	97,301
Utilities	38,209	1,798	167,722	654	556,280	37,223	-	241,571	1,043,457
Vouchers	-	-	-	-	149,119	-	-	-	149,119
Other	160,463	2,174	265,405	-	572,529	68,542	451	-	1,069,564
Total	\$ 6,519,097	\$ 1,536,513	\$ 7,184,203	\$ 296,324	\$ 25,412,372	\$ 4,281,114	\$ 8,374	\$ 3,704,927	\$ 48,942,924

[THIS PAGE INTENTIONALLY LEFT BLANK]

## APPENDIX C

### Definitions of Certain Terms

The following words and terms shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

“2007 Initial Project Facility” shall have the meaning assigned to such term in the fourth recital clause to the Indenture and the Loan Agreement.

“2008 Initial Project Facility” shall have the meaning assigned to such term in the fourth recital clause to the Indenture and the Loan Agreement.

“Accountant” means an independent certified public accountant or a firm of independent certified public accountants selected by the Institution.

“Additional Bonds” means any bonds issued by the Issuer pursuant to Section 214 of the Indenture.

“Additional Equipment” means, in connection with any Additional Project, any additional materials, machinery, equipment, fixtures or furnishings intended to be acquired with the proceeds of a related Series of Additional Bonds, or intended to be acquired with any payment which the Institution incurred in anticipation of the issuance of such Series of Additional Bonds and for which the Institution will be reimbursed from the proceeds of such Series of Additional Bonds, and such substitutions and replacements therefor and additions thereto as may be made from time to time pursuant to the Loan Agreement.

“Additional Project” means the purposes for which any Series of Additional Bonds may be issued.

“Annual Debt Service” means the actual sum of the principal and sinking fund installments of, and interest on, all outstanding Long-Term Indebtedness payable during a fiscal year, provided that with respect to any Long-Term Indebtedness subject to an interest rate exchange agreement, the debt service shall include the net payments made to or received from the counterparty.

“Applicable Laws” means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Issuer were the owner of the Project Facility and as if the Institution and not the Issuer were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“Arbitrage Certificate” means (A) with respect to the Series 2022A Bonds, the Initial Arbitrage Certificate and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt

Bonds, any similar document executed by the Issuer in connection with the issuance and sale of such Series of Additional Bonds.

“Authorized Denominations” means: (A) with respect to the Initial Bonds, \$5,000 and any integral multiple of \$5,000 in excess thereof, except that, if as a result of a redemption, partially redeemed Initial Bonds cannot be issued in such denominations, such partially redeemed Initial Bonds shall be reissued in such other denominations to the extent required to effect such redemption; and (B) with respect to any Series of Additional Bonds, the authorized denominations for such Series of Additional Bonds as set forth in the supplemental indenture relating thereto.

“Authorized Investments” means any of the following: (A) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America; (B) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (1) U.S. Export-Import Bank (“Eximbank”), (2) Farmers Home Administration (“FmHA”), (3) Federal Financing Bank, (4) Federal Housing Administration Debentures (“FHA”), (5) General Services Administration, (6) Government National Mortgage Association (“GNMA” or “Ginnie Mae”), (7) U.S. Maritime Administration, and (8) U.S. Department of Housing and Urban Development (“HUD”); (C) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself): (1) Federal Home Loan Bank System, (2) Federal Home Loan Mortgage Corporation (“FHLMC” or “Freddie Mac”), (3) Federal National Mortgage Association (“FNMA” or “Fannie Mae”), (4) Student Loan Marketing Association (“SLMA” or “Sallie Mae”), (5) Resolution Funding Corp. (“REFCORP”) obligations, and (6) Farm Credit System; (D) money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by Standard & Poor’s of “AAAm-G”, “AAA-m”; or “AA-m” and if rated by Moody’s rated “Aaa”, “Aa1” or “Aa2”; (E) certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral; (F) certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF; (G) investment agreements, including GIC’s, Forward Purchase Agreements and Put Agreements acceptable to the Trustee; (H) commercial paper rated, at the time of purchase, “Prime - 1” by Moody’s and “A-1” or better by Standard & Poor’s; (I) bonds or notes issued by any state or municipality which are rated by Moody’s and Standard & Poor’s in one of the two highest rating categories assigned by such agencies; (J) federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime - 1” or “A3” or better by Moody’s and “A-1” or “A” or better by Standard & Poor’s; and (K) repurchase agreements for 30 days or less must follow the following criteria. The criteria is described as follows: (1) Repos must be between the municipal entity and a dealer bank or securities firm (a) primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard & Poor’s Corporation and Moody’s Investor Services, or (b) banks rated “A” or above by Standard & Poor’s Corporation and Moody’s Investor Services; (2) the written repo contract must include the following: (a) securities which are acceptable for transfer are: (i) direct U.S. governments, or (ii) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC), (b) the term of the repo may be up to 30 days, (c) the collateral must be delivered to the municipal entity, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities), (d) valuation of collateral - the securities must be

valued weekly, marked-to-market at current market price plus accrued interest. The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%, and (3) legal opinion which must be delivered to the municipal entity: (a) repo meets guidelines under state law for legal investment of public funds.

“Authorized Representative” means the Person or Persons at the time designated to act on behalf of the Issuer or the Institution, as means the Person or Persons at the time designated to act on behalf of the Issuer or the Institution, as the case may be, by written certificate furnished to the Trustee containing the specimen signature of each such Person and signed on behalf of (A) the Issuer by its Chair or Vice-Chair, or such other person as may be authorized by resolution of the Issuer to act on behalf of the Issuer, (B) the Institution by its Chief Executive Officer or Chief Financial Officer, or such other person as may be authorized by the board of trustees of the Institution to act on behalf of the Institution and (C) the Trustee by any Vice President, Assistant Vice President or Trust Officer, or such other person as may be authorized by the board of directors of the Trustee to act on behalf of the Trustee.

“Bankruptcy Code” means the United States Bankruptcy Code, constituting Title 11 of the United States Code, as amended from time to time, and any successor statute.

“Beneficial Owner” means, with respect to a Bond, a Person owning a Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

“Beneficial Ownership Interest” means the beneficial right to receive payments and notices with respect to the Bonds which are held by the Depository under a Book Entry System.

“Bond” or “Bonds” means, collectively, (A) the Initial Bonds and (B) any Additional Bonds.

“Bond Counsel” means the law firm of Hodgson Russ LLP, Albany, New York or such other attorney or firm of attorneys located in the State whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and who are acceptable to the Issuer.

“Bond Fund” means the fund so designated established pursuant to Section 401(A)(3) of the Indenture.

“Bond Payment Date” means each Interest Payment Date and each date on which principal or interest or premium, if any, or a Sinking Fund Payment, shall be payable on the Bonds according to their terms and the terms of the Indenture, including without limitation scheduled mandatory Redemption Dates, unscheduled mandatory Redemption Dates, dates of acceleration of the Bonds pursuant to Section 602 of the Indenture, optional Redemption Dates and Stated Maturity, so long as any Bonds shall be Outstanding.

“Bond Proceeds” means (A) with respect to the Initial Bonds, the proceeds of the sale of the Initial Bonds, including any accrued interest, paid to the Trustee on behalf of the Issuer by the Underwriter as the purchase price of the Initial Bonds, and (B) with respect to any Series of Additional Bonds, the proceeds of the sale of such Series of Additional Bonds, including any accrued interest, paid to the Trustee on behalf of the Issuer by the purchasers of such Series of Additional Bonds as the purchase price of such Series of Additional Bonds.

“Bond Purchase Agreement” means (A) with respect to the Initial Bonds, the Initial Bond Purchase Contract, and (B) with respect to any Series of Additional Bonds, any similar document executed by the Issuer and/or the Institution in connection with the issuance and sale of such Series of Additional Bonds.

“Bond Register” means the register maintained by the Bond Registrar in which, subject to such reasonable regulations as the Issuer, the Trustee or the Bond Registrar may prescribe, shall provide for the registration of the Bonds and for the registration of transfers of the Bonds.

“Bond Registrar” means the Trustee, acting in its capacity as bond registrar under the Indenture, and its successors and assigns as bond registrar under the Indenture.

“Bond Resolution” means (A) with respect to the Initial Bonds, the Initial Bond Resolution and (B) with respect to any Series of Additional Bonds, any resolution adopted by the members of the board of directors of the Issuer authorizing the issuance of such Series of Additional Bonds.

“Bond Year” (A) with respect to the Initial Bonds, means each one (1) year period ending on the anniversary of the Closing Date relating to the Initial Bonds, or such other bond year as the Institution and the Issuer may select from time to time in a manner complying with the Code, and (B) with respect to any Series of Additional Bonds issued as Tax-Exempt Bonds, shall have the meaning set forth in the supplemental indenture related to such Series of Additional Bonds.

“Bondholder” or “Holder” or “Owner of the Bonds” means the registered owner of any Bond, as indicated on the bond register maintained by the Bond Registrar, except that wherever appropriate the term “Owners” shall mean the owners of the Bonds for federal income tax purposes.

“Book Entry Bonds” means Bonds held in Book Entry Form with respect to which the provisions of Section 213 of the Indenture shall apply.

“Book Entry Form” or “Book Entry System” means, with respect to the Bonds, a form or system, as applicable, under which (A) the Beneficial Ownership Interests may be transferred only through a book entry and (B) physical Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Bondholder, with the physical Bond certificates “immobilized” in the custody of the Depository or a custodian on behalf of the Depository. The Book Entry System which is maintained by and the responsibility of the Depository (and which is not maintained by or the responsibility of the Issuer or the Trustee) is the record that identifies, and records the transfer of the interests of, the Owners of book entry interests in the Bonds.

“Business Day” means any day of the year other than (A) a Saturday or Sunday, (B) a day on which the New York Stock Exchange is closed or (C) a day on which commercial banks in New York, New York, or the city or cities in which the Office of the Trustee is located, are authorized or required by law, regulation or executive order to close.

“Certificate of Authentication” means the certificate of authentication in substantially the form attached to the form of the Initial Bonds attached as Schedule I and Schedule II to the Indenture.

“Closing Date” means (A) with respect to the Initial Bonds, the date on which authenticated Initial Bonds are delivered to or upon the order of the Underwriter and payment is received therefor by the Trustee on behalf of the Issuer, and (B) with respect to any Series of Additional Bonds, the date on which such Additional Bonds of such Series are authenticated and delivered to the purchaser thereof and payment therefor is received by the Trustee on behalf of the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of said Code, and the applicable regulations (whether proposed, temporary or final) of the United States Treasury Department promulgated under said Code and the statutory predecessor of said Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“Completion Date” means (A) with respect to the Initial Project, the date of substantial completion of the Initial Project, as evidenced in the manner provided in Section 3.4 of the Loan Agreement and (B) with respect to any Additional Project, the date of substantial completion of the undertaking of such Additional Project, as evidenced in the manner provided in Section 3.4 of the Loan Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

“Continuing Disclosure Agreement” means (A) with respect to the Initial Bonds, the Initial Continuing Disclosure Undertaking and (B) with respect to any Series of Additional Bonds, any similar document executed by the Institution in connection with the issuance of such Series of Additional Bonds.

“Cost of the Project” means (A) with respect to the Initial Project, all those costs and items of expense relating thereto enumerated in Section 3.3(A) of the Loan Agreement incurred subsequent to the Inducement Date, including costs which the Institution incurred prior to the Inducement Date with respect to the Initial Project in anticipation of the issuance of the Initial Bonds and for which the Institution may be reimbursed from proceeds of the Initial Bonds pursuant to the provisions of the Initial Tax Regulatory Agreement, and (B) with respect to any Additional Project, all those costs and items of expense relating thereto enumerated in Section 3.3 of the Loan Agreement, including costs which the Institution incurred with respect to such Additional Project in anticipation of the issuance of the related Series of Additional Bonds and for which the Institution will be reimbursed from proceeds of the related Series of Additional Bonds pursuant to the provisions of the related Tax Documents.

“Debt Service Coverage Ratio” means the ratio of Operating Revenues Available for Debt Service equal to 1.0x Annual Debt Service.

“Debt Service Payment” means, with respect to any Bond Payment Date, (A) the interest payable on the Bonds on such Bond Payment Date, plus (B) the principal, if any, payable on the Bonds on such Bond Payment Date, plus (C) the premium, if any, payable on the Bonds on such Bond Payment Date, plus (D) the Sinking Fund Payments, if any, payable on the Bonds on such Bond Payment Date.

“Default Interest Rate” means the rate of interest equal to fifteen percent (15%) per annum, or the maximum permitted by law, whichever is less.

“Defaulted Payment” shall have the meaning ascribed to such term in Section 207(C) of the Indenture.

“Defeasance Obligations” means (A) cash, or (B) direct obligations of the United States of America or of any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States of America, including, but not limited to, United States Treasury obligations.

“Depository” means, initially, The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State, or its nominee, or any other securities

depository designated in any supplemental resolution of the Issuer to serve as securities depository for the Bonds that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a Book Entry System to record ownership of book entry interests in Bonds, and to effect transfers of book entry interests in Book Entry Bonds.

“Depository Letter” means (A) with respect to the Initial Bonds, the Initial Depository Letter, and (B) with respect to any Series of Additional Bonds issued as Book Entry Bonds, any letter of representations by and among the Issuer, the Trustee and the Depository relating to such Series of Additional Bonds, and any amendments or supplements thereto entered into with respect thereto.

“Direct Participant” means a Participant as defined in the Depository Letter.

“Enabling Act” means Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended.

“Equipment” means, collectively, the Initial Equipment and any Additional Equipment.

“Event of Default” means (A) with respect to the Indenture, any of those events defined as an Event of Default by the terms of Article VI of the Indenture, (B) with respect to the Loan Agreement, any of those events defined as an Event of Default by the terms of Article X of the Loan Agreement, and (C) with respect to any other Financing Document, any of those events defined as an Event of Default by the terms thereof.

“Event of Taxability” means, with respect to any Series of Tax-Exempt Bonds, (A) the enactment of a statute or promulgation of a regulation eliminating, in whole or in part, the applicable exemption, as such exists on the Closing Date, from gross income for federal income tax purposes for interest payable under such Series of Tax-Exempt Bonds, (B) a “final determination by decision or ruling by a duly constituted administrative authority” to the effect that such exemption for interest payable under such Series of Tax-Exempt Bonds is not available, is no longer available or is contrary to law, (C) the expiration of the right to further administrative review of any determination, decision or ruling to the effect that such exemption for interest payable under such Series of Tax-Exempt Bonds is not available, is no longer available or is contrary to law, or (D) receipt by the Trustee of a written opinion of Bond Counsel that there is no longer a basis for the Holders of such Series of Tax-Exempt Bonds (or any former Holder, other than a Holder who is or was a Substantial User of the Project Facility or a Related Person thereto) to claim that any interest paid and payable on such Series of Tax-Exempt Bonds is not excluded from gross income for federal income tax purposes. For the purposes of clause (B) above, a “final determination by decision or ruling by a duly constituted administrative authority” shall mean (1) the issuance of a ruling (including, but not limited to, a revenue ruling or a letter ruling) by the IRS or any successor thereto, or (2) the issuance of a preliminary notice of proposed deficiency (“30 Day Letter”), a statutory notice of deficiency (“90 Day Letter”), or other written order or directive of similar force and effect by the IRS, or any other United States Governmental Authority having jurisdiction therein. Notwithstanding the foregoing, nothing in this definition of “Event of Taxability” shall be construed (x) to mean or include consideration of the interest payable on a Series of the Tax-Exempt Bonds for purposes of calculating the interest expense which may be deducted by a bank or other Financial Institution, or (y) to mean that the Holder of such Series of the Tax-Exempt Bonds shall have any obligation to contest or appeal any assertion or decision that any interest payable under such Series of the Tax-Exempt Bonds is subject to taxation, or (z) to mean or include the imposition of an alternative minimum tax or preference tax or environmental tax or branch profits tax on any Holder of a Series of the Tax-Exempt Bonds, in the calculation of which is included the interest paid or payable under the Tax-Exempt Bonds.



“Extraordinary Services” and “Extraordinary Expenses” means all reasonable services rendered and all reasonable expenses incurred by the Trustee or any paying agent under the Indenture, other than Ordinary Services and Ordinary Expenses, including, but not limited to, reasonable attorney’s fees and any services rendered and any expenses incurred with respect to an Event of Default or with respect to the occurrence of an event which upon the giving of notice or the passage of time would ripen into an Event of Default under any of the Financing Documents.

“Final Maturity” means, with respect to any particular Bond, the final Stated Maturity of the principal due on such Bond, unless such Bond is called for redemption in whole prior to such date, in which case any such term shall mean the Redemption Date relating to such Bond.

“Financing Documents” means (A) with respect to the Initial Bonds, the Initial Financing Documents and (B) with respect to any Series of Additional Bonds, any similar documents executed by the Institution and/or the Issuer in connection with the issuance of such Series of Additional Bonds.

“Financing Statements” means any and all financing statements (including continuation statements) or other instruments filed or recorded from time to time to perfect the security interests created in the Financing Documents.

“Fitch” means Fitch Ratings, Inc., its successors and assigns, and, if Fitch shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of the Institution.

“Fund” means any Fund designated and created pursuant to Section 401 of the Indenture.

“Government Obligations” means (A) cash, (B) direct obligations of the United States of America, (C) obligations unconditionally guaranteed by the United States of America and (D) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (B) or (C).

“Governmental Authority” means the United States of America, the State, any political subdivision thereof, any other state and any agency, department, commission, board, bureau or instrumentality of any of them.

“Gross Bond Proceeds” means, with respect to a Series of Bonds, “gross proceeds” as defined in Section 148(f)(6)(B) of the Code, presently including, without limitation, the original proceeds of such Series of Bonds, investment proceeds, amounts held in a sinking fund, amounts invested in a reasonably required reserve or replacement fund, certain investment-type property pledged as security for such Series of Bonds by the Institution or by the Issuer, amounts received with respect to the Loan Agreement relating to such Series of Bonds, any amounts used to pay Debt Service Payments on such Series of Bonds, and any amounts received as a result of investing any of the foregoing.

“Gross Proceeds” means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance claim or Condemnation award.

“Holder” or “holder”, when used with respect to a Bond, means Bondholder.

“Immediate Notice” means notice transmitted through a time-sharing terminal, if operative as between any two parties, or if not operative, same-day notice by telephone, telecopy or telex, followed by prompt written confirmation sent by overnight delivery.

“Indebtedness” means, under the Indenture, (A) the payment of the Debt Service Payments on the Bonds according to their tenor and effect, (B) all other payments due from the Institution or the Issuer to the Trustee pursuant to any Financing Document, (C) the performance and observance by the Issuer and the Institution of all of the covenants, agreements, representations and warranties made for the benefit of the Trustee pursuant to any Financing Document, (D) the monetary obligations of the Institution to the Issuer and its members, directors, officers, agents, servants and employees under the Loan Agreement and the other Financing Documents, and (E) all interest, penalties and late charges accruing on any of the foregoing.

“Indenture” means the trust indenture dated as of November 1, 2022 by and between the Issuer and the Trustee, as said trust indenture may be amended or supplemented from time to time.

“Independent Counsel” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full-time employee of the Institution, the Issuer or the Trustee.

“Indirect Participant” means a Person utilizing the Book Entry System of the Depository by, directly or indirectly, clearing through or maintaining a custodial relationship with a Direct Participant.

“Initial Arbitrage Certificate” means the certificate dated the Closing Date for the Series 2022A Bonds executed by the Issuer and relating to certain requirements set forth in Section 148 of the Code applicable to the Series 2022A Bonds and the Initial Project.

“Initial Bond Purchase Contract” means the bond purchase contract, dated November 1, 2022, by and among the Underwriter, the Issuer and the Institution relating to the purchase of the Initial Bonds by the Underwriter, as said bond purchase contract may be amended or supplemented from time to time.

“Initial Bond Resolution” means the resolution of the members of the board of directors of the Issuer duly adopted on October 20, 2022 authorizing the Issuer to undertake the Initial Project, to issue and sell the Initial Bonds and to execute and deliver the Initial Financing Documents to which the Issuer is a party.

“Initial Bonds” means, collectively, the Series 2022A Bonds and the Series 2022B Bonds.

“Initial Continuing Disclosure Undertaking” means the continuing disclosure undertaking, dated as of November 1, 2022, by the Institution relating to the Initial Bonds, as said continuing disclosure undertaking may be amended or supplemented from time to time.

“Initial Depository Letter” means any letter of representations by and among the Issuer and the Depository relating to the Initial Bonds, and any amendments or supplements thereto entered into with respect thereto.

“Initial Equipment” means all materials, machinery, equipment, fixtures or furnishings acquired with the proceeds of the Prior Bonds being refunded with the proceeds of the Initial Bonds, or acquired with any payment which the Institution incurred in anticipation of the issuance of the Prior Bonds and for which the Institution was reimbursed from the proceeds of the Prior Bonds, and such substitutions and replacements therefor and additions thereto as may be made from time to time pursuant to the Loan

Agreement, including, without limitation, all of the Property described in Exhibit B attached to the Loan Agreement.

“Initial Facility” means all buildings (or portions thereof), improvements, structures and other related facilities, and improvements thereto, (A) located on the Initial Land, (B) refinanced with the proceeds of the sale of the Initial Bonds or any payment made by the Institution pursuant to Section 3.5 of the Loan Agreement, and (C) not constituting a part of the Initial Equipment, all as they may exist from time to time.

“Initial Financing Documents” means the Initial Bonds, the Indenture, the Loan Agreement, the Pledge and Assignment, the Guaranty, the Pledge and Security Agreement, the 2014 Intercreditor Agreement, the Initial Tax Documents, the Initial Underwriter Documents and any other document now or hereafter executed by the Issuer or the Institution in favor of the Holders of the Initial Bonds or the Trustee which affects the rights of the Holders of the Initial Bonds or the Trustee in or to the Initial Project Facility, in whole or in part, or which secures or guarantees any sum due under the Initial Bonds or any other Initial Financing Document, each as amended from time to time, and all documents related thereto and executed in connection therewith.

“Initial Land” means the real estate described on Exhibit A attached to the Loan Agreement, which is the site of the Initial Project.

“Initial Official Statement” means the official statement delivered in connection with the sale of the Initial Bonds by the Underwriter.

“Initial Preliminary Official Statement” means the preliminary official statement delivered in connection with the sale of the Initial Bonds by the Underwriter.

“Initial Project” shall have the meaning assigned to such term in the fourth recital clause to the Indenture and the Loan Agreement.

“Initial Project Facility means, collectively, the 2007 Initial Project Facility and the 2008 Initial Project Facility.

“Initial Tax Documents” means, collectively, the Initial Arbitrage Certificate and the Initial Tax Regulatory Agreement.

“Initial Tax Regulatory Agreement” means the tax regulatory agreement dated the Closing Date for the Series 2022A Bonds executed by the Institution in favor of the Issuer and the Trustee regarding, among other things, the restrictions prescribed by the Code in order for interest on the Series 2022A Bonds to be and remain excludable from the gross income of the Holders thereof for federal income tax purposes.

“Initial Underwriter Documents” means the Initial Bond Purchase Contract, the Initial Continuing Disclosure Undertaking, the Initial Preliminary Official Statement, the Initial Official Statement and any other document now or hereafter executed by the Issuer or the Institution in connection with the sale of the Initial Bonds by the Underwriter.

“Institution” means Albany College of Pharmacy and Health Sciences, a not-for-profit corporation organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted by Section 8.4 of the Loan Agreement.

“Insurance and Condemnation Fund” means the fund so designated established pursuant to Section 401(A)(3) of the Indenture.

“Interest Payment Date” means (A) with respect to the Initial Bonds, June 1 and December 1 of each year, commencing June 1, 2023, and (B) with respect to any Additional Bonds, the Stated Maturity of each installment of interest on such Additional Bonds, as set forth in the supplemental Indenture authorizing the issuance of such Series of Additional Bonds. In any case, the final Interest Payment Date of any Series of the Bonds shall be the Maturity Date relating thereto.

“Issuer” means (A) the City of Albany Capital Resource Corporation and its successors and assigns, and (B) any public instrumentality or political subdivision resulting from or surviving any consolidation or merger to which City of Albany Capital Resource Corporation or its successors or assigns may be a party.

“Lien” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, security agreement, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes hereof, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Loan” means the loan by the Issuer of the proceeds received from the sale of the Initial Bonds to the Institution pursuant to the provisions of the Loan Agreement.

“Loan Agreement” means the loan agreement dated as of November 1, 2022 by and between the Issuer and the Institution, as said loan agreement may be amended or supplemented from time to time.

“Loan Payments” means the amounts required to be paid by the Institution pursuant to the provisions of Section 5.1 of the Loan Agreement.

“Long-Term Indebtedness” means Indebtedness having an original maturity of greater than one (1) year or Indebtedness on which the Institution has an option to extend the maturity thereof for a period of greater than one (1) year beyond the date of the original incurrence thereof.

“Maturity Date” means, with respect to any Bond, the final Stated Maturity of the principal of such Bond.

“Maximum Annual Debt Service” means, (1) with respect to the Bonds, on any date, when used with respect to any Series of the Bonds, the greatest amount required in the then current or any future Bond Year to pay the sum of: (A) interest on such Series of the Bonds payable in such Bond Year, excluding accrued interest received upon the issuance of such Series of the Bonds and capitalized interest financed by the issuance of such Series of the Bonds, and (B) the principal and the Sinking Fund Payments due on such Series of the Bonds in such Bond Year; and, (2) with respect to the Guaranty, means on any date, the greatest amount required in the then current or future fiscal year to pay the sum of the principal and sinking fund installments of and interest on outstanding Long-Term Indebtedness payable during such year assuming that any Long-Term Indebtedness that bears a variable rate of interest (A) if the Long-Term Indebtedness is tax-exempt, the interest rate borne by such Indebtedness shall be

assumed to be the five year average of the SIFMA index (or a comparable index) as of the date one month before the issuance of such proposed Indebtedness, (B) if such Long-Term Indebtedness is not tax-exempt, the interest rate borne by such Long-Term Indebtedness shall be assumed to be the five year average of 30-day LIBOR (or a comparable index) as of the date one month before the issuance of such proposed Long-Term Indebtedness, and (C) if the variable rate Long-Term Indebtedness is subject to an interest rate exchange agreement, the interest rate borne by such Long-Term Indebtedness shall include the net payments made to or received from the counterparty; provided further, that with respect to any Balloon Long-Term Indebtedness, such Long-Term Indebtedness shall be assumed to be amortized to provide for level debt service for a period equal to the original term of such debt at the interest rate actually borne by such balloon Long-Term Indebtedness or at the average variable rate as described above.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of the Institution.

“Net Proceeds” means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such Gross Proceeds.

“Nonexempt Person” or “Nonexempt Entity” means any Person other than (A) a state or local governmental entity or (B) a Person described in Section 501(c)(3) of the Code which has been recognized in writing by the Internal Revenue Service as being exempt from taxation under Sections 501(a) and Section 501(c)(3) of the Code.

“Office of the Trustee” means the corporate trust office of the Trustee specified in Section 1103 of the Indenture, or such other address as the Trustee shall designate pursuant to Section 1103 of the Indenture.

“Official Statement” means (A) with respect to the Initial Bonds, the Initial Official Statement, and (B) with respect to any Series of Additional Bonds, any similar document approved by the Issuer and the Institution in connection with the sale by the Underwriter of the related Series of Additional Bonds.

“Operating Revenues” means total operating revenues without donor restrictions, including interest and dividends and funds made available for operations from endowment funds and from other donor restricted resources as displayed or included in the Institution’s audited financial statements produced in accordance with generally accepted accounting principles (GAAP) then applicable to the Institution, and excluding (i) any gains resulting from either the extinguishment of indebtedness, the sale, exchange or other disposition of capital assets not in the ordinary course of business, (ii) earnings resulting from any reappraisal, revaluation or write-up or write-down of fixed or capital assets, and (iii) any realized gains or losses on the sale of investments or interest exchange agreements.

“Operating Revenues Available for Debt Service” means the increase or decrease in net assets from operations without donor restrictions, including Operating Revenues, minus total operating expenses, excluding (i) depreciation, (ii) amortization, (iii) interest expense on Long-Term Indebtedness as displayed or included in the Institution’s audited financial statements produced in accordance with generally accepted accounting principles then applicable to the Institution, (iv) any non-cash adjustment for changes in accounting estimates, change in generally accepted accounting principles, or other non-cash adjustments made in accordance with generally accepted accounting principles, (v) extraordinary

items, and (vi) any unrealized gains/appreciation or losses/depreciation on the carrying value of investments or interest exchange agreements.

“Optional Redemption Premium” means the premium payable upon an optional redemption of the Bonds, as determined pursuant to Section 301(B) of the Indenture.

“Ordinary Services” and “Ordinary Expenses” means those reasonable services normally rendered with those reasonable expenses, including reasonable attorneys’ fees, normally incurred by a trustee or a paying agent, as the case may be, under instruments similar to the Indenture.

“Outstanding” means, when used with reference to the Bonds as of any date, all Bonds which have been duly authenticated and delivered by the Trustee under the Indenture, except:

(A) Bonds theretofore cancelled or deemed cancelled by the Trustee or theretofore delivered to the Trustee for cancellation;

(B) Bonds for the payment or redemption of which moneys or Defeasance Obligations shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or Redemption Date of any such Bonds) in accordance with the Indenture (whether upon or prior to the maturity or Redemption Date of any such Bonds); provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form and substance to the Trustee shall have been filed with the Trustee; and

(C) Bonds in lieu of or in substitution for which other Bonds have been authenticated and delivered under the Indenture.

In determining whether the Owners of a requisite aggregate principal amount of Bonds Outstanding have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions hereof, Bonds which are held by or on behalf of the Institution (unless all of the outstanding Bonds are then owned by the Institution) shall be disregarded for the purpose of any such determination. If the Indenture shall be discharged pursuant to Article X of the Indenture, no Bonds shall be deemed to be Outstanding within the meaning of this definition.

“Owner” or “owner”, when used with respect to a Bond, means the Registered Owner of such Bond, except that wherever appropriate the term “Owner” shall mean the owner of such Bond for federal income tax purposes.

“Participant” shall have the meaning assigned to such term in Section 213(B) of the Indenture.

“Paying Agent” means the Trustee, acting as such, and any additional paying agent for the Bonds appointed pursuant to Article VII of the Indenture, their respective successors and any other corporation that may at any time be substituted in their respective places pursuant to the Indenture.

“Permitted Encumbrances” means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens, (C) Liens for taxes, assessments and utility charges (1) to the extent permitted by Section 6.2(B) of the Loan Agreement, or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Financing Document, (E) any Lien on the Project

Facility in favor of the Trustee, (F) any lease of the Project Facility permitted by the tax Documents, and (G) any Lien on the Project Facility approved or granted by the Institution.

“Person” means an individual, partnership, corporation, limited liability company, trust, unincorporated organization or Governmental Authority.

“Pledge and Assignment” means the pledge and assignment dated as of November 1, 2022 from the Issuer to the Trustee, and acknowledged by the Institution, pursuant to which the Issuer has assigned to the Trustee its rights under the Loan Agreement (except the Unassigned Rights), as said pledge and assignment may be amended or supplemented from time to time.

“Pledge and Security Agreement” means the pledge and security agreement dated as of November 1, 2022 from the Issuer to the Trustee, pursuant to which the Institution has granted to the Trustee a security interest in the Pledged Revenues (as defined therein), as said pledge and security agreement may be amended or supplemented from time to time.

“Predecessor Bonds” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by such particular Bond; and, for purposes of this definition, any Bond authenticated and delivered under Section 205 of the Indenture in lieu of a lost, destroyed or stolen Bond shall be deemed to evidence the same debt as the lost, destroyed or stolen Bond.

“Preliminary Official Statement” means (A) with respect to the Initial Bonds, the Initial Preliminary Official Statement, and (B) with respect to any Series of Additional Bonds, any similar document approved by the Issuer and the Institution for use in connection with the issuance of the related Series of Additional Bonds.

“Principal Payment Date” means (A) with respect to the Initial Bonds, each Interest Payment Date on which a Sinking Fund Payment is due on the Bonds, and the Maturity Date of each of the Initial Bonds, and (B) with respect to any Additional Bonds, the Stated Maturity of each installment of principal due on such Additional Bonds.

“Prior Bond Fund” means the “Bond Fund”, as defined in the Prior Indenture.

“Prior Bonds” means, collectively, (A) Civic Facility Revenue Bonds (CHF-Holland Suites, L.L.C. Project – Letter of Credit Secured), Series 2007A in the original aggregate principal amount of \$12,780,000 and (B) Tax-Exempt Civic Facility Revenue Bonds (CHF-Holland Suites II, L.L.C. Project – Letter of Credit Secured), Series 2008A in the original aggregate principal amount of \$6,495,000, issued by the City of Albany Industrial Development Agency.

“Prior Indenture” means, collectively, the trust indentures dated as of May 1, 2007 and January 1, 2008, as amended, by and between the Prior Issuer and the Prior Trustee.

“Prior Insurance and Condemnation Fund” means the “Insurance and Condemnation Fund”, as defined in the Prior Indenture.

“Prior Issuer” shall have the meaning assigned to such term in the fourth recital clause to the Indenture and the Loan Agreement.

“Prior Project Fund” means the “Project Fund”, as defined in the Prior Indenture.

“Prior Reserve Funds” means, collectively, funds on deposit in the Prior Bond Fund, the Prior Insurance and Condemnation Fund and the Prior Project Fund.

“Prior Trustee” means Regions Bank, a banking corporation organized and existing under the laws of the State of New York, acting as trustee under trust indentures dated as of May 1, 2007 and January 1, 2008, as amended, by and between the Prior Issuer and the Prior Trustee.

“Project” means (A) with respect to the Initial Bonds, the Initial Project, and (B) with respect to any Series of Additional Bonds, the Additional Project with respect to which such Series of Additional Bonds were issued.

“Project Costs” means Costs of the Project.

“Project Facility” means, collectively, the Initial Project Facility and all Additional Project Facilities.

“Project Fund” means the fund so designated established pursuant to Section 401(A)(1) of the Indenture.

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

“Rating Agency” means Moody’s, if the Bonds are rated by Moody’s at the time, Standard & Poor’s, if the Bonds are rated by Standard & Poor’s at the time and Fitch, if the Bonds are rated by Fitch at the time, and their successors and assigns.

“Rebate Amount” shall have the meaning assigned to such term in the Tax Documents.

“Rebate Fund means the fund so designated established pursuant to Section 401(A)(4) of the Indenture.

“Rebate Fund Earnings Account” means the special account so designated within the Rebate Fund established pursuant to Section 401(A)(4)(b) of the Indenture.

“Rebate Fund Principal Account” means the account so designated within the Rebate Fund established pursuant to Section 401(A)(4)(a) of the Indenture.

“Record Date” means either a Regular Record Date or a Special Record Date.

“Redemption Date” means, when used with respect to a Bond, the date upon which a Bond is scheduled to be redeemed pursuant to the Indenture.

“Redemption Price” means, when used with respect to a Bond, the principal amount thereof plus the applicable premium, if any, payable upon the prior redemption thereof pursuant to the provisions of the Indenture and such Bond.

“Regular Record Date” means, with respect to the interest and any Sinking Fund Payment or principal payment due on the Bonds on or prior to maturity payable on any Bond on any Interest Payment Date, the fifteenth (15th) day (whether or not a Business Day) of the calendar month preceding the calendar month in which such Interest Payment Date occurs.



“Reporting Date” means the reporting date of compliance with the Debt Service Coverage Ratio, such date being no later than 120 days following the end of each fiscal year of the Institution, commencing with the fiscal year ending June 30, 2023.

“Request for Disbursement” means a request from the Institution, as agent of the Issuer, signed by an Authorized Representative of the Institution, stating the amount of the disbursement sought and containing the statements, representations and other items required by Article IV of the Indenture and by Section 3.3 of the Loan Agreement, which Request for Disbursement shall be in substantially the form of Exhibit A and Exhibit B attached to the Indenture.

“Requirement” or “Local Requirement” means any law, ordinance, order, rule or regulation of a Governmental Authority.

“Securities Laws” means the Securities Act of 1933, as amended, and all other securities laws of the United States of America or the State to the extent that such laws may now or hereafter be applicable to or affect the issuance, sale and delivery of the Bonds and any transfer or resale thereof.

“SEQRA” means Article 8 of the Environmental Conservation Law of the State and the statewide and local regulations thereunder.

“Series” or “Series of Bonds” means all of the Bonds of a single series authenticated and delivered pursuant to the Indenture.

“Series 2007 Project” shall have the meaning assigned to such term in the fourth recital clause to the Indenture and the Loan Agreement.

“Series 2008 Project” shall have the meaning assigned to such term in the fourth recital clause to the Indenture and the Loan Agreement.

“Series 2022A Bonds” means the Issuer’s Tax-Exempt Revenue Bonds (Albany College of Pharmacy Health and Sciences Refunding Project), Series 2022A in the aggregate principal amount of \$6,505,000 issued pursuant to the Initial Bond Resolution, the Certificate of Determination and Article II of the Indenture and sold to the Underwriter pursuant to the provisions of the Initial Bond Purchase Contract, in substantially the form attached to the Indenture as Schedule I thereto, and any Series 2022A Bonds issued in exchange or substitution therefor.

“Series 2022B Bonds” means the Issuer’s Taxable Revenue Bonds (Albany College of Pharmacy Health and Sciences Refunding Project), Series 2022B in the aggregate principal amount of \$2,810,000 issued pursuant to the Initial Bond Resolution, the Certificate of Determination and Article II of the Indenture and sold to the Underwriter pursuant to the provisions of the Initial Bond Purchase Contract, in substantially the form attached to the Indenture as Schedule II thereto, and any Series 2022B Bonds issued in exchange or substitution therefor.

“Series 2022A Project Account” means the account so designated within the Project Fund established pursuant to Section 401(A)(1)(a) of the Indenture.

“Series 2022B Project Account” means the account so designated within the Project Fund established pursuant to Section 401(A)(1)(b) of the Indenture.

“Sinking Fund Payments” means (A) with respect to the Initial Bonds, the sinking fund redemption payments due on the Initial Bonds pursuant to Section 301(C) of the Indenture and (B) with

respect to any Additional Bonds, the sinking fund redemption payments (if any) required pursuant to the supplemental Indenture authorizing issuance of such Additional Bonds.

“Special Record Date” means a date for the payment of any Defaulted Payment on the Bonds fixed by the Trustee pursuant to Section 207(C) of the Indenture.

“Standard & Poor’s” means Standard & Poor’s Ratings Services, a division of the McGraw-Hill Companies, Inc., and its successors and assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of the Institution.

“State” means the State of New York.

“Stated Maturity” means, when used with respect to any Bond or any installment of interest thereon, the date specified in such Bond as the fixed date on which the principal of such Bond or such installment of interest on such Bond is due and payable.

“Substantial User” means any Person constituting a “substantial user” within the meaning ascribed to such term in Section 147(a) of the Code.

“Supplemental Indenture” means any indenture supplemental to or amendatory of the Indenture executed by the Issuer in accordance with Article VIII of the Indenture.

“Tax Documents” means, collectively, (A) with respect to the Series 2022A Bonds, the Initial Tax Documents and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt Bonds, any similar documents executed by the Issuer and/or the Institution in connection with the issuance of such Series of Additional Bonds.

“Tax-Exempt Bond” means any Bond issued as an obligation of the Issuer, the interest on which is intended to be excluded from the gross income of the Holder thereof for federal income tax purposes pursuant to Section 103 and Section 145 of the Code, including but not limited to the Series 2022A Bonds.

“Tax Regulatory Agreement” means (A) with respect to the Series 2022A Bonds, the Initial Tax Regulatory Agreement and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt Bonds, any similar document executed by the Institution in connection with the issuance and sale of such Series of Additional Bonds.

“Term Bonds” means Bonds having a single stated maturity for which Sinking Fund Installments are specified in Section 301(C) of the Indenture (or, if such Bonds are Additional Bonds, in the supplemental indenture authorizing the issuance of such Bonds).

“Termination of Loan Agreement” means a termination of Loan Agreement by and between the Institution, as borrower, and the Issuer, as lender, intended to evidence the termination of the Loan Agreement, substantially in the form attached as Exhibit C to the Loan Agreement.

“Trust Estate” means all Property which may from time to time be subject to a Lien in favor of the Trustee created by the Indenture or any other Financing Document.

“Trust Revenues” means (A) all payments of loan payments made or to be made by or on behalf of the Institution under the Loan Agreement (except payments made with respect to the Unassigned Rights), (B) all other amounts pledged to the Trustee by the Issuer or the Institution to secure the Bonds or performance of their respective obligations under the Loan Agreement and the Indenture, (C) the Net Proceeds (except proceeds with respect to the Unassigned Rights) of insurance settlements and Condemnation awards with respect to the Project Facility, (D) moneys and investments held from time to time in each fund and account established under the Indenture and all investment income thereon, except (1) moneys and investments held in the Rebate Fund, (2) moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, (3) unclaimed funds held under Section 408 of the Indenture, and (4) as specifically otherwise provided, and (E) all other moneys received or held by the Trustee for the benefit of the Bondholders pursuant to the Indenture. Notwithstanding anything to the contrary, amounts held in the Rebate Fund shall not be considered Trust Revenues and shall not be subject to the Lien of the Indenture, and amounts held therein shall not secure any amount payable on the Bonds.

“Trustee” means Manufacturers and Traders Trust Company, a banking corporation organized and existing under the laws of the State of New York, or any successor trustee or co-trustee acting as trustee under the Indenture.

“Unassigned Rights” means (A) the rights of the Issuer granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 3.7, 4.4, 5.1(B)(2), 5.1(C), 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.11, 8.14, 8.16, 8.17, 8.18, 9.1, 9.2, 11.1, 11.4, 11.8 and 11.10 of the Loan Agreement, (B) the moneys due and to become due to the Issuer for its own account or the members, directors, officers, agents (other than the Institution), servants and employees of the Issuer for their own account pursuant to Sections 2.2, 5.1(B)(2), 5.1(C), 6.4(B), 8.2, 10.2 and 10.4 of the Loan Agreement, and (C) the right to enforce the foregoing pursuant to Article X of the Loan Agreement. Notwithstanding the preceding sentence, to the extent the obligations of the Institution under the Sections of the Loan Agreement listed in (A), (B) and (C) above do not relate to the payment of moneys to the Issuer for its own account or to the members, officers, directors, agents (other than the Institution), servants and employees of the Issuer for their own account, such obligations, upon assignment of the Loan Agreement by the Issuer to the Trustee pursuant to the Pledge and Assignment, shall be deemed to and shall constitute obligations of the Institution to the Issuer and the Trustee, jointly and severally, and either the Issuer or the Trustee may commence an action to enforce the Institution’s obligations under the Loan Agreement.

“Underwriter” means (A) with respect to the Initial Bonds, KeyBanc Capital Markets Inc., as underwriter and original purchaser of the Initial Bonds on the Closing Date relating thereto, and (B) with respect to any Series of Additional Bonds, the original purchaser of such Series of Additional Bonds on the Closing Date relating thereto.

“Underwriter Documents” means, collectively, (A) with respect to the Initial Bonds, the Initial Underwriter Documents and (B) with respect to any Additional Bonds, any similar documents executed by the Issuer and/or the Institution in connection with the issuance of such Additional Bonds.

“Yield”, when used with respect to the Initial Bonds, shall have the meaning assigned to such term in the Initial Tax Regulatory Agreement.

[THIS PAGE INTENTIONALLY LEFT BLANK]

## APPENDIX D

### Summary of Certain Provisions of The Indenture

The following summarizes certain provisions of the Indenture to which reference is made for the detailed provisions thereof. Certain provisions of the Indenture are also described in the Official Statement under the captions “INTRODUCTION”, “SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2022 BONDS” and “THE SERIES 2022 BONDS”.

The Bonds will be issued under and secured by the Indenture. Reference is made to the Indenture for complete details of the terms thereof. The following is a brief summary of certain provisions of the Indenture and should not be considered a full statement thereof.

#### Restriction on Issuance of Bonds (Section 201)

Except for substitute Bonds and Additional Bonds issued pursuant to the Indenture, the total aggregate principal amount of Bonds that may be issued under the Indenture is expressly limited to \$12,000,000.

#### Limited Obligations (Section 202)

The Bonds, together with the premium, if any, and interest thereon, will be limited obligations of the Issuer payable, with respect to the Issuer, solely from the Trust Revenues, which Trust Revenues are pledged and assigned to the Trustee for the equal and ratable payment of all sums due under the Bonds, and will be used for no other purpose than to pay the principal of, premium, if any, on and interest on the Bonds, except as may be otherwise expressly provided in the Indenture.

THE BONDS ARE NOT AND SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR OF THE CITY OF ALBANY, NEW YORK AND NEITHER THE STATE OF NEW YORK NOR THE CITY OF ALBANY, NEW YORK SHALL BE LIABLE THEREON. THE BONDS DO NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE STATE OF NEW YORK OR OF THE CITY OF ALBANY, NEW YORK.

No recourse shall be had for the payment of the principal of, or the premium, if any, or interest on, any Bond or for any claim based thereon or on the Indenture against any past, present or future member, director, officer, agent (other than the Institution), servant or employee as such, of the Issuer or of any predecessor or successor corporation, either directly or through the Issuer or otherwise, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise.

#### Delivery of Initial Bonds (Section 210)

Upon the execution and delivery of the Indenture, the Issuer will execute and deliver the Initial Bonds (including a reasonable number of additional Initial Bonds to be retained by the Trustee for authentication and delivery upon transfer or exchange of any Initial Bond) to the Trustee, and the Trustee will authenticate and deliver the Initial Bonds to the purchasers thereof against payment of the purchase

price therefor, plus accrued interest to the day preceding the date of delivery, upon receipt by the Trustee of the following:

- (1) a certified copy of the Initial Bond Resolution;
- (2) executed counterparts of the Indenture, the Loan Agreement and the other Initial Financing Documents;
- (3) a request and authorization to the Trustee on behalf of the Issuer signed by an Authorized Representative of the Issuer to deliver the Initial Bonds to or upon the order of the Underwriter upon payment to the Trustee for the account of the Issuer of the purchase price therefor specified in such request and authorization;
- (4) signed copies of the opinions of counsel to the Issuer, the Institution and the Trustee, and of Bond Counsel, as required by the Initial Bond Purchase Agreement;
- (5) the certificates and policies, if available, of the insurance required by the Loan Agreement;
- (6) evidence that a completed Internal Revenue Service Form 8038 with respect to the Initial Bonds has been signed by the Issuer; and
- (7) such other documents as the Trustee or Bond Counsel may reasonably require.

#### Additional Bonds (Section 214)

So long as the Loan Agreement is in full force and effect and no Event of Default exists thereunder or under the Indenture (and no event exists which, upon notice or lapse of time or both, would become an Event of Default thereunder or under the Indenture), the Issuer may, upon a request from the Institution complying with the provisions of the Indenture, issue one or more Series of Additional Bonds to provide funds to pay any one or more of the following: (1) costs of completion of the Project Facility in excess of the amount in the Project Fund; (2) costs of any Additional Project; (3) costs of refunding or advance refunding any or all of the Bonds previously issued; (4) costs of making any modifications, additions or improvements to the Project Facility that the Institution may deem necessary or desirable; (5) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Project Facility in the event of damage, destruction or taking by eminent domain; and/or (6) costs of the issuance and sale of the Additional Bonds, capitalized interest, funding debt service reserves, and other costs reasonably related to any of the foregoing. Additional Bonds may mature at different times, bear interest at different rates and otherwise vary from the Initial Bonds authorized under the Indenture, all as may be provided in the supplemental Indenture authorizing the issuance of such Additional Bonds.

Prior to the execution of a supplemental Indenture authorizing the issuance of Additional Bonds, the Issuer must deliver certain documents set forth in the Indenture to the Trustee, including:

- (1) an amendment to the Loan Agreement which shall provide, among other things, that the basic Loan Payments payable under the Loan Agreement shall be increased and computed so as to at least equal to the sum of the total Debt Service Payments due on the Initial Bonds and all Additional Bonds and all other costs in connection with the Project, the Project Facility and all Additional Projects covered thereby;

(2) evidence that the Financing Documents, as amended or supplemented in connection with the issuance of the Additional Bonds, provide that (a) the Bonds referred to therein shall mean and include the Additional Bonds being issued as well as the Initial Bonds originally issued under the Indenture and any Additional Bonds theretofore issued, and (b) the Project Facility referred to in the Financing Documents includes any Additional Facilities being financed;

(3) a copy of the resolution of the board of trustees of the Institution, duly certified by the secretary or assistant secretary of the Institution, which approves the issuance of the Additional Bonds and authorizes the execution and delivery by the Institution of the amendments to the Financing Documents described in paragraphs (1) and (2) above;

(4) a written opinion of counsel to the Institution which shall state that (i) the amendments and supplements to the Financing Documents described in paragraphs (1) and (2) above have been duly authorized, executed and delivered by the Institution, (ii) the Financing Documents, as amended and supplemented to the Closing Date for such Additional Bonds, constitute legal, valid and binding obligations of the Institution enforceable against the Institution in accordance with their respective terms, subject to the standard exceptions with respect to bankruptcy laws, equitable remedies and specific performance, and (iii) all conditions precedent provided for in the Indenture to the issuance, execution and delivery of the Additional Bonds have been complied with;

(5) a copy of the resolution of the members of the board of directors of the Issuer, duly certified by the secretary or assistant secretary of the Issuer, authorizing the issuance of the Additional Bonds and the execution and delivery by the Issuer of the amendments to the Financing Documents described in paragraph (1) and paragraph (2) above to be executed by the Issuer in connection therewith;

(6) an opinion of counsel to the Issuer stating that the amendments and supplements to the Financing Documents described above have been duly authorized and lawfully executed and delivered on behalf of the Issuer; and that such amendments and supplements to the Financing Documents are in full force and effect and are valid and binding upon the Issuer, subject to the standard exceptions with respect to bankruptcy laws, equitable remedies and specific performance;

(7) an opinion of Bond Counsel stating that, in the opinion of such Bond Counsel, the Issuer is duly authorized and entitled to issue such Additional Bonds and that, upon the execution, authentication and delivery thereof, such Additional Bonds will be duly and validly issued and will constitute valid and binding special obligations of the Issuer, enforceable in accordance with their terms, subject to the standard exceptions with respect to bankruptcy laws, equitable remedies and specific performance; that the issuance of the Additional Bonds will not, in and of itself, adversely affect the validity of the Initial Bonds originally issued under the Indenture or any Additional Bonds theretofore issued or the exclusion of the interest payable on the Initial Bonds and any Additional Bonds theretofore issued as Tax-Exempt Bonds from the gross income of the Holders thereof for federal income tax purposes; and that all conditions precedent provided for in the Indenture to the issuance, execution and delivery of the Additional Bonds have been complied with;

(8) written evidence from each Rating Agency, if any, by which the Bonds are then rated, to the effect that the issuance of such Additional Bonds will not, by itself, result in a

reduction or withdrawal of the rating(s) on the Outstanding Bonds applicable immediately prior to the issuance of the Additional Bonds;

(9) a written order to the Trustee executed by an Authorized Representative of the Issuer requesting that the Trustee authenticate and deliver the Additional Bonds to the purchasers therein identified;

(10) evidence of satisfaction by the Institution of the provisions of Schedule C to the Guaranty relating to the incurrence of Additional Indebtedness (as applicable); and

(11) such other documents as the Trustee may reasonably request.

Each Series of Additional Bonds shall be equally and ratably secured under the Indenture with the Initial Bonds issued on the Closing Date and with all other series of Additional Bonds, if any, previously issued under the Indenture, without preference, priority or distinction of any Bond over any other Bond.

The consent of the Holders of the Bonds shall not be required prior to the issuance of Additional Bonds, or to the execution and delivery of any amendments to the Financing Documents required in connection therewith. The Institution shall provide to the Trustee the following: (1) a notice of the proposed issuance of such series of Additional Bonds; and (2) a proposed form of notice to be sent to the Holders of the Bonds and each Rating Agency, if any, by which the Bonds are then rated of the proposed issuance of the Additional Bonds (a "Notice to Holders"), detailing, at least, the aggregate principal amount of such Additional Bonds, and summarizing the nature of the amendments to the Financing Documents proposed to be executed in connection therewith. Within five Business Days of receipt of the foregoing, the Trustee shall mail the Notice to Holders to the Holders of the Bonds and each Rating Agency, if any, by which the Bonds are then rated of the proposed issuance of the Additional Bonds.

#### Establishment of Funds (Section 401)

The Indenture creates four trust funds (and various accounts therein) to be held by the Trustee: (1) the Project Fund and, within the Project Fund, the following special accounts: (a) the Series 2022A Project Account; (b) the Series 2022B Project Account; and (c) an additional, separate account for each Series of Additional Bonds, each such additional account to be known as the "Series \_\_\_\_ Project Account", with the blank to be filled in with the same Series designation as borne by the related Series of Additional Bonds; (2) the Bond Fund; (3) the Insurance and Condemnation Fund; and (4) the Rebate Fund, and, within the Rebate Fund, the following special accounts: (a) the Rebate Fund Principal Account and (b) the Rebate Fund Earnings Account.

All moneys required to be deposited with or paid to the Trustee under any provision of the Indenture (1) shall be held by the Trustee in trust, and (2) (except for moneys held by the Trustee (a) for the redemption of Bonds, notice of redemption of which has been duly given, (b) as unclaimed monies under Section 408 of the Indenture or (c) in the Rebate Fund) shall, while held by the Trustee, constitute part of the Trust Revenues and be subject to the Lien of the Indenture. Moneys which have been deposited with, paid to or received by the Trustee for the redemption of a portion of the Bonds or for the payment of Bonds or interest thereon due and payable otherwise than upon acceleration by declaration, shall be held in trust for and be subject to a Lien in favor of only the Holders of such Bonds so redeemed or so due and payable.

Moneys held in the Rebate Fund shall not be subject to a security interest, pledge, assignment, Lien or charge in favor of the Trustee or any other Person.



### Application of Proceeds of Initial Bonds (Section 402)

The Issuer shall deposit with the Trustee all of the proceeds from the sale of the Initial Bonds, including accrued interest payable on the Initial Bonds. The Trustee shall deposit the proceeds from the sale of the Initial Bonds as follows:

(1) the Trustee shall deposit the portion of the proceeds of the sale of (a) the Series 2022A Bonds representing accrued interest on the Series 2022A Bonds, if any, into the Series 2022A Bond Account of the Bond Fund, and (a) the Series 2022B Bonds representing accrued interest on the Series 2022B Bonds, if any, into the Series 2022B Bond Account of the Bond Fund; and

(2) the Trustee shall deposit the remainder of the proceeds of the sale of (a) the Series 2022A Bonds into the Series 2022A Project Account of the Bond Fund, and (a) the Series 2022B Bonds into the Series 2022B Project Account of the Project Fund.

The proceeds of any Additional Bonds shall be deposited as provided in the supplement to the Indenture authorizing the issuance of such Additional Bonds.

### Transfers of Trust Revenues to Funds (Section 403)

Commencing on the first date on which Loan Payments are received from the Institution pursuant to Section 5.1(A) of the Loan Agreement, and thereafter, the Trustee shall deposit such payments, upon the receipt thereof, into the Bond Fund, as provided in Section 405(A) of the Indenture. The Net Proceeds of any insurance settlement or Condemnation award received by the Trustee shall, upon receipt thereof, be deposited into the Insurance and Condemnation Fund.

### The Project Fund (Section 404)

In addition to moneys deposited in the Project Fund from the proceeds of the sale of the Bonds, there shall be deposited into the Project Fund all other moneys received by the Trustee under or pursuant to the Indenture or the other Financing Documents which, by the terms thereof, are to be deposited in the Project Fund. Moneys on deposit in the Series 2022A Project Account and the Series 2022B Project Account of the Project Fund with respect to the Initial Bonds shall be disbursed and be applied by the Trustee to pay the Costs of the Project relating to the Initial Project pursuant to the provisions of the Loan Agreement, the Indenture and the Initial Tax Regulatory Agreement. Moneys on deposit in the Project Fund with respect to the Additional Bonds shall be disbursed in accordance with the provisions of the supplemental Indenture authorizing issuance of such Additional Bonds.

Moneys on deposit in the Project Fund may be invested in Authorized Investments in accordance with the provisions of the Indenture. All interest and other income accrued and earned on amounts held in the Project Fund shall be deposited by the Trustee into the appropriate account of the Project Fund related to such monies and may be used to pay the Costs of the Project related to such account.

Except for any amount retained for the payment of incurred and unpaid items of the Cost of the Project, after the Completion Date related to a particular Project, all moneys in the related account in the Project Fund (in excess of any amount required to be transferred to the Rebate Fund pursuant to the Indenture and the Tax Documents) shall be transferred from the Project Fund to the Bond Fund or an escrow fund to be created by the Trustee at the written direction of the Institution, to be applied to the defeasance of a portion of the Bonds then Outstanding pursuant to the provisions of the Tax Documents.

In the event that the unpaid principal amount of the Bonds shall be accelerated upon the occurrence of an Event of Default, the balance in the Project Fund (in excess of any amount required to be transferred to the Rebate Fund pursuant to the Indenture and the Tax Documents) shall be transferred from the Project Fund to the Bond Fund as soon as possible and shall be used to pay the principal of, premium, if any, on and interest on the Bonds.

The Trustee shall maintain adequate records pertaining to the Project Fund and all disbursements therefrom and shall, upon request of the Issuer or the Institution and within sixty (60) days after the Completion Date file an accounting thereof with the Issuer and the Institution.

#### The Bond Fund (Section 405)

In addition to the moneys deposited into the Bond Fund (1) from the proceeds of the Bonds pursuant to Section 402 of the Indenture and (2) pursuant to Sections 403, 404 and 409 of the Indenture, there shall be deposited into the Bond Fund(a) all Loan Payments received from the Institution under Section 5.1(A) of the Loan Agreement (except payments made with respect to the Unassigned Rights, which shall be paid to the Issuer), (b) any amount in the Insurance and Condemnation Fund directed to be paid into the Bond Fund under Section 406 of the Indenture, (c) any amounts received from the Institution pursuant to Section 3.6 of the Loan Agreement, (d) all prepayments by the Institution in accordance with Section 5.3 of the Loan Agreement in connection with which notice has been given to the Trustee pursuant to Section 302 of the Indenture, and (e) all other moneys received by the Trustee under and pursuant to the Indenture or the other Financing Documents which by the terms thereof are to be deposited into the Bond Fund, or are accompanied by directions from the Institution or the Issuer that such moneys are to be paid into the Bond Fund.

Moneys on deposit in the Bond Fund may be invested in Authorized Investments in accordance with the provisions of the Indenture. All interest and other income accrued and earned on moneys on deposit in the Bond Fund shall be retained in the Bond Fund.

#### The Insurance and Condemnation Fund (Section 406)

The Net Proceeds resulting from any insurance settlement or Condemnation award received by the Trustee in connection with damage to or destruction of or the taking of part or all of the Project Facility, together with any other amounts so required to be deposited therein under the Loan Agreement, shall be deposited into the Insurance and Condemnation Fund.

If, pursuant to the Loan Agreement, following damage to or Condemnation of all or a portion of the Project Facility, (1) the Institution exercises its option not to repair, rebuild or restore the Project Facility and to provide for the defeasance and/or redemption of the Bonds, or (2) if a taking in Condemnation as described in Section 7.2(C) of the Loan Agreement occurs, the Trustee shall, after any transfer to the Rebate Fund required by the Tax Documents and the Indenture is made, transfer all moneys held in the Insurance and Condemnation Fund to an escrow fund to be created by the Trustee at the written direction of the Institution, to be applied to the defeasance and/or redemption of the Bonds then Outstanding pursuant to the provisions of the Tax Documents, except as provided in Section 410 of the Indenture.

If, following damage to or Condemnation of all or a portion of the Project Facility, the Institution elects to repair, rebuild or restore the Project Facility, and provided no Event of Default under the Indenture or under any other Financing Document has occurred and is continuing, moneys held in the Insurance and Condemnation Fund and attributable to the damage to or the destruction of or the taking of the Project Facility shall, after any transfer to the Rebate Fund required by the Indenture and the Tax

Documents is made, be applied to pay the costs of such repairs, rebuilding or restoration in accordance with the Indenture.

If the cost of the repairs, rebuilding or restoration of the Project Facility effected by the Institution shall be less than the amount in the Insurance and Condemnation Fund, then on the completion of such repairs, rebuilding or restoration, the Trustee shall transfer such difference to the Bond Fund and use such amounts so transferred to provide for the defeasance and/or redemption of the Bonds in accordance with the Tax Documents; provided that such amounts may be transferred to the Institution for its purposes if (1) the Institution so requests and (2) the Institution furnishes to the Trustee an opinion of Bond Counsel to the effect that payment of such moneys to the Institution will not, in and of itself, adversely affect the exclusion of the interest paid or payable on the Tax-Exempt Bonds from gross income for federal income tax purposes.

#### The Rebate Fund (Section 407)

The Trustee shall make information regarding the Bonds and investments under the Indenture available to the Institution. If a deposit to the Rebate Fund is required as a result of the computations made or caused to be made by the Institution, the Trustee shall upon receipt of written direction from the Institution accept such payment for the benefit of the Institution. If amounts in excess of that required to be rebated to the United States of America accumulate in the Rebate Fund, the Trustee shall upon written direction from the Authorized Representative of the Institution transfer such amount to the Institution. Records of the determinations required by Section 407 of the Indenture and the instructions must be retained by the Trustee until six years after the Tax-Exempt Bonds are no longer outstanding. Any provision of the Indenture to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien under the Indenture designated by the Institution, or, in the event the amounts held in such fund or funds are less than the Rebate Amount, the amount to be deposited shall be withdrawn from the fund or funds established hereunder designated by the Institution or from other moneys made available by the Institution.

The Trustee, upon the receipt of a certification of the Rebate Amount from an Authorized Representative of the Institution, shall deposit in the Rebate Fund Principal Account, within thirty (30) days after the end of each Bond Year commencing with the first Bond Year, an amount such that the amount held in the Rebate Fund Principal Account after such deposit is equal to the Rebate Amount calculated as of the last day of the prior Bond Year and so certified to the Trustee. If there has been delivered to the Trustee a certification of the Rebate Amount in conjunction with the completion or restoration of the Project Facility pursuant to the Loan Agreement or the Indenture at any time during a Bond Year, the Trustee will deposit in the Rebate Fund Principal Account upon receipt of such certification an amount such that the amount held in the Rebate Fund Principal Account after such deposit is equal to the Rebate Amount calculated on the Completion Date or at the time of restoration of the Project Facility, as the case may be. The amount to be deposited in the Rebate Fund shall be withdrawn from the fund or funds established under the Indenture designated by the Institution or from other moneys made available by the Institution.

In the event that on the first day of any Bond Year, after the calculation of the Rebate Amount, the amount on deposit in the Rebate Fund Principal Account with respect to a Series of Tax-Exempt Bonds exceeds the Rebate Amount with respect to such Series of Tax-Exempt Bonds, the Trustee, upon the receipt of written instructions from an Authorized Representative of the Issuer or the Institution, shall withdraw such excess amount and (1) prior to the Completion Date, shall transfer such excess to the Project Fund to be applied to the payment of Costs of the Project related to such Series of Tax-Exempt Bonds or (2) after the Completion Date, shall transfer such excess to the Bond Fund to be applied to the

payment of the principal and interest and Sinking Fund Payments coming due on such Series of Tax-Exempt Bonds on the next following Bond Payment Date.

The Trustee, upon the receipt of written instructions satisfactory to the Trustee from an Authorized Representative of the Institution, shall pay to the United States, from amounts on deposit in the Rebate Fund or from other moneys supplied by the Institution, (1) not later less frequently than once every five (5) years after the date of original issuance of a Series of Tax-Exempt Bonds (or such other date as the Institution may choose, provided the Institution and the Trustee receive an opinion of Bond Counsel that such change will not cause interest on such Series of Tax-Exempt Bonds to be included in gross income for federal income tax purposes) and every five years thereafter until final retirement of such Series of Tax-Exempt Bonds, an amount such that, together with prior amounts paid to the United States, the total amount paid to the United States is equal to ninety percent (90%) of the Rebate Amount with respect to such Series of Tax-Exempt Bonds as of the date of such payment plus all amounts then held in the Rebate Fund Earnings Account with respect to such Series of Tax-Exempt Bonds, and (2) not later than thirty (30) days after the date on which all Bonds of any particular Series of Tax-Exempt Bonds have been paid in full, one hundred percent (100%) of the Rebate Amount with respect to such Series of Tax-Exempt Bonds as of the date of such payment plus all amounts relating thereto then held in the Rebate Fund Earnings Account with respect to such Series of Tax-Exempt Bonds.

The foregoing described provisions of the Indenture may be amended, without notice to or consent of the Bondholders, at the request of the Issuer or the Institution, to comply with the applicable regulations of the Treasury Department, upon the delivery by the Issuer or the Institution to the Trustee of an opinion of Bond Counsel that such amendment will not, in and of itself, adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds which exists on the Closing Date.

#### Non-Presentation of Bonds (Section 408)

Subject to the provisions of the Indenture, in the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, or in the event any interest payment on a Bond shall be unclaimed, if moneys sufficient to pay such Bond or interest shall have been deposited with the Trustee for the benefit of the Holder thereof, such Bond shall be deemed cancelled, redeemed or retired on such date even if not presented on such date or such interest shall be deemed paid, as the case may be, and all liability of the Issuer to the Holder thereof for the payment of such Bond or interest shall forthwith cease, terminate and be completely discharged; and thereupon it shall be the duty of the Trustee to hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond or interest thereon who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under the Indenture or with respect to such Bond or interest.

Subject to any law to the contrary, if any Bond shall not be presented for payment or any interest payment shall not be claimed prior to the earlier of (1) two years following the date when such Bond or interest becomes due, either at maturity or at the date fixed for redemption or otherwise, or (2) the Business Day prior to the date on which such moneys would escheat to the State, the Trustee shall, upon written request of the Institution, return to the Institution all funds held by the Trustee for the payment of such Bond or interest. Thereafter, (a) the Owner of such Bond shall be entitled to look only to the Institution for payment of such Bond or interest, and then only to the extent of the amount so repaid to the Institution, who shall not be liable for any interest thereon and shall not be regarded as a trustee of such money, (b) all liability of the Trustee with respect to such moneys shall terminate, and (c) such Bond shall, subject to the defense of any applicable statute of limitations, thereafter be an unsecured obligation of the Institution.

### Final Disposition of Moneys (Section 410)

In the event there are no Bonds Outstanding, and subject to any applicable law to the contrary, after payment of all fees, charges and expenses, including, but not limited to reasonable attorney's fees, of the Issuer and the Trustee and all other amounts required to be paid under the Indenture and under the other Financing Documents and after payment of any amounts required to be rebated to the United States under the Indenture and under the Tax Documents or any provision of the Code, all amounts remaining in any fund established under the Indenture shall be transferred to the Institution (except amounts held with respect to the Unassigned Rights, which amounts shall be paid to the Issuer, and except for moneys held for the payment or redemption of Bonds which have matured or been defeased or notice of the redemption of which has been duly given and any other monies held under Section 408, which shall be held for the benefit of the Owners of such Bonds).

### No Modification of Security; Limitation on Liens (Section 508)

The Issuer covenants that it will not without the written consent of the Trustee, alter, modify or cancel, or agree to alter, modify or cancel, the Loan Agreement or any other Financing Document to which the Issuer is a party, or which has been assigned to the Issuer, and which relates to or affects the security for the Bonds, except as contemplated by the Indenture or pursuant to the terms of such document. The Issuer further covenants that, except for the Financing Documents and other Permitted Encumbrances, the Issuer will not incur, or suffer to be incurred, any mortgage, Lien, charge or encumbrance on or pledge of any of the Trust Estate prior to or on a parity with the Lien of the Indenture.

### Covenant Against Arbitrage Bonds (Section 513)

Notwithstanding any other provision the Indenture, so long as any Tax-Exempt Bonds shall be Outstanding, the Issuer shall not use or direct or permit the use of the proceeds of the Tax-Exempt Bonds or any other moneys in its control (including, without limitation, the proceeds of any insurance settlement or Condemnation award with respect to the Project Facility) in such manner as would cause any of the Tax-Exempt Bonds to be an "arbitrage bond" within the meaning of such quoted term in Section 148 of the Code. Notwithstanding the foregoing, there shall be no such obligation upon the Issuer with respect to the use or investment of its administrative fee, provided, however, that if the Institution is required to rebate any amount with respect to such administrative fee, the Issuer shall provide, upon the reasonable request of the Institution, such information concerning the investment of such administrative fee as shall be requested by the Institution and as shall be reasonably available to the Issuer. The Issuer shall not be responsible for the calculation or payment of any rebate amount required by Section 148 of the Code. The Trustee shall not be responsible for the calculation, or the payment from its own funds, of any amount required to be rebated to the United States under Section 148 of the Code. The Trustee shall, however, make such transfers to the Rebate Fund and pay such amounts from the funds and accounts created under the Indenture and from the Institution's funds to the United States as the Institution, in accordance with the Indenture and the Tax Documents, shall direct.

### Events of Default and Remedies on Default (Section 601)

The Indenture provides that each of the following events will constitute an Event of Default under the Indenture:

- (1) failure by the Issuer to make due and punctual payment of the interest or premium or Sinking Fund Payments on any Bond, or failure by the Issuer to make due and

punctual payment of the principal of any Bond, whether at the Stated Maturity thereof, or upon proceedings for the redemption thereof, or upon the maturity thereof by declaration;

(2) subject to any right to waive the same as set forth in the Financing Documents, receipt by the Trustee of notice, or actual notice on the part of the Trustee, of the occurrence of an Event of Default under any of the other Financing Documents; or

(3) subject to the provisions of the Indenture, default in the performance or observance of any other covenant, agreement or condition on the part of the Issuer in the Indenture or in any Bond to be performed or observed and the continuance thereof for a period of thirty (30) days after written notice thereof is given to the Issuer and the Institution by the Trustee or by the Holders of at least fifty-one percent (51%) in aggregate principal amount of the Bonds then Outstanding.

#### Acceleration (Section 602)

Upon (A) the occurrence of an Event of Default under item (1) of the first paragraph under the caption “Events of Default and Remedies on Default” herein, the Trustee shall, and (B) the occurrence and continuance of an Event of Default under items (2) or (3) of the first paragraph under the caption “Events of Default and Remedies on Default” herein and so long as such Event of Default is continuing, the Trustee may, and upon the written request of the Holders of not less than fifty-one percent (51%) in aggregate principal amount of Bonds then Outstanding, the Trustee shall, by notice in writing delivered to the Institution, with a copy of such notice being sent to the Issuer, declare the entire principal amount of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Upon any such declaration, the Trustee shall immediately declare an amount equal to all amounts then due and payable on the Bonds to be immediately due and payable under the Loan Agreement.

#### Enforcement Of Remedies (Section 603)

Upon the occurrence and during the continuance of any Event of Default, the Trustee shall exercise such of the rights and powers vested in the Trustee by the Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his own affairs. In considering what actions are or are not prudent in the circumstances, the Trustee shall consider whether or not to take such action as may be permitted to be taken by the Trustee under any of the Financing Documents.

Upon the occurrence and during the continuance of any Event of Default, the Trustee may proceed forthwith to protect and enforce its rights under the Enabling Act, the Loan Agreement and the other Financing Documents by such suits, actions or proceedings as the Trustee, being advised by Independent Counsel, shall deem expedient.

Upon the occurrence and during the continuance of any Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce payment of and receive any amounts due or becoming due from the Issuer or the Institution under any of the provisions of the Indenture, the Loan Agreement and the other Financing Documents, without prejudice to any other right or remedy of the Trustee or the Bondholders. The Trustee may sue for, enforce payment of and receive any amounts due or becoming due from the Institution for principal, premium, interest or otherwise under any of the provisions of the Indenture or the other Financing Documents, without prejudice to any other right or remedy of the Trustee.

Regardless of the happening of an Event of Default, the Trustee may, and upon (1) the written request of the Holders of not less than fifty one percent (51%) in aggregate principal amount of Bonds then Outstanding and (2) upon receipt by the Trustee of such security or indemnity as the Trustee may require to hold the Trustee harmless from such action, the Trustee shall, institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under the Indenture and the other Financing Documents by any acts which may be unlawful or in violation of the Indenture or of any other Financing Document or of any resolution authorizing the Bonds, or to preserve or protect the interest of the Trustee and/or the Bondholders.

#### Rights of Bondholders to Direct Proceedings (Section 607)

The Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right at any time, by an instrument in writing executed and delivered to the Trustee and upon offering the Trustee the security and indemnity provided for in the Indenture, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture, the Loan Agreement or the other Financing Documents, or for the appointment of a receiver or any other proceedings under the Indenture, provided that such direction, in the opinion of Independent Counsel, is in accordance with the provisions of law and is not unduly prejudicial to the interests of the Bondholders not joining such direction.

#### Application of Moneys (Section 609)

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances (including reasonable attorneys' fees) incurred or made by the Trustee, be deposited into the Bond Fund; and all moneys in the Bond Fund shall be applied, together with the other moneys held by the Trustee under the Indenture (other than amounts on deposit in the Rebate Fund and unclaimed funds held pursuant to Section 408 of the Indenture), as follows:

- (1) Unless the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied:

FIRST - to the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND - to the payment to the Persons entitled thereto of the unpaid principal of and any premium on the Bonds (other than Bonds called for redemption for the payment of which moneys shall be held pursuant to the provisions of the Indenture) which shall have become due, in order of their maturities, with interest from the date upon which they became due and, if the amount available shall not be sufficient to pay in full the principal of and premium, if any, and interest on the Bonds due on any particular date, then to the payment ratably, according to amounts due respectively for principal, interest and premium, if any, to the Persons entitled thereto, without any discrimination or privilege; and

THIRD - to the payment to the Persons entitled thereto of the principal of, premium, if any, on, or interest on the Bonds which may thereafter become due and

payable, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with interest and premium, if any, then due and owing thereon, payment shall be made ratably according to the amount of interest, principal and premium, if any, due on such date to the Persons entitled thereto, without any discrimination or privilege.

(2) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal, premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority of principal and premium over interest or of interest over principal and premium, or of any installment of interest over any other installment of interest, or of any Bonds over any other Bonds, ratably, according to the amounts due respectively for principal, premium, if any, and interest, to the Persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to the provisions of item (1) of the preceding paragraph, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for such application and the likelihood of additional moneys becoming available in the future. Whenever the Trustee shall apply such moneys under the Indenture, the Trustee shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. Whenever moneys are to be applied pursuant to the provisions of the Indenture, such moneys shall be applied as soon as practicable upon receipt thereof. In either case, the Trustee shall give such notice as the Trustee may deem appropriate of the deposit with the Trustee of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee and a new Bond is issued or the Bond is cancelled if fully paid.

#### Notice of Defaults; Opportunity to Cure (Section 614)

Anything in the Indenture to the contrary notwithstanding, no Event of Default described in items (2) or (3) of the first paragraph under the caption “Events of Default and Remedies on Default” shall constitute an Event of Default until the Trustee shall have received written notice thereof or shall have actual notice thereof and until actual notice of such default by registered or certified mail is given by the Trustee or by the Holders of not less than fifty-one percent (51%) of the aggregate principal amount of Bonds then Outstanding to the Issuer and the Institution (with a copy to the Trustee if given by the Holders), and the Issuer and the Institution have had thirty (30) days after receipt of such notice to correct said default or caused said default to be corrected within the applicable period; provided, however, if said default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer or the Institution within the applicable period and diligently pursued until the default is corrected.

#### Acceptance of the Trusts (Section 701)

The Trustee accepts the trusts imposed upon it by the Indenture and agrees to perform said trusts upon certain terms and conditions, including but not limited to the following:

(1) The Trustee may execute any of the trusts or powers of the Indenture and perform any of its duties under the Indenture by or through attorneys, agents, receivers or employees, but shall not be answerable for the conduct of the same if appointed without gross negligence, and shall be entitled to advice of counsel concerning all matters of the trusts of the Indenture and the duties under the Indenture, and may in all cases pay such reasonable



compensation to all such attorneys, agents, receivers and employees as may be reasonably employed in connection with the trusts of the Indenture. The Trustee may act upon the opinion or advice of any attorney appointed without gross negligence, who may be the attorney or attorneys for the Issuer, and shall not be responsible for any loss or damage resulting from any action or nonaction in reliance upon any such opinion or advice.

(2) Except as expressly provided herein, the Trustee shall not be responsible for any recital in the Indenture or in the Bonds (except in respect to the authentication certificate of the Trustee endorsed on the Bonds), or for the validity of the execution by the Issuer or the Institution of the Indenture or of any supplements thereto or instruments of further assurance or of any other Financing Document, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for insuring the Property subject to the Lien of the Financing Documents, or for the value or title of any of the Property subject to the Lien of the Financing Documents, or for the payment of, or for minimizing taxes, charges, assessments or Liens upon the same, or otherwise as to the maintenance of the security hereof, except as to the safekeeping of the pledged collateral held by the Trustee and except that, in the event the Trustee enters into possession of part or all of the Property subject to the Lien of the Financing Documents pursuant to any provision thereof, it shall use due diligence in preserving the same, and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenant, condition or agreement on the part of the Issuer or the Institution, but the Trustee may require of the Issuer and the Institution full information and advice as to the performance of the covenants, conditions and agreements aforesaid and as to the condition of the Property subject to the Lien of the Financing Documents.

(3) The Trustee may become the Owner of Bonds secured by the Indenture with the same rights which it would have if not the Trustee. In addition, any national banking association, bank or trust company acting as a Trustee, Registrar or Paying Agent, and its directors, officers, employees or agents, may in good faith buy, sell, own, hold and deal in any of the Bonds, and may join in any action which any Bondholder may be entitled to take with like effect as if such association, bank or trust company were not such Trustee, Registrar or Paying Agent.

(4) Before taking any action under the Indenture (except declaring an Event of Default, a mandatory redemption or an acceleration of the Bonds pursuant to the Indenture), the Trustee may require that a security and indemnity reasonably satisfactory to it be deposited with it for the reimbursement of all fees, costs and expenses including, but not limited to, reasonable attorney's fees and expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its gross negligence or willful misconduct by reason of any action so taken.

(5) The Trustee shall not be required to take notice or be deemed to have notice of the occurrence of any Event of Default other than an Event of Default under item (1) of the first paragraph under the caption "Events of Default and Remedies on Default" above, unless the Trustee shall have actual knowledge of such Event of Default or unless the Trustee shall be specifically notified in writing of such Event of Default by the Issuer or the Institution or the Owners of at least fifty-one percent (51%) in aggregate principal amount of Bonds Outstanding under the Indenture, and all notices or other instruments required by the Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Office of the Trustee, and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no Event of Default, except as aforesaid.

Appointment of Successor Trustee by the Bondholders; Temporary Trustee (Section 708)

In case the Trustee under the Indenture shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting under the Indenture, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing signed by such Owners, or by their duly authorized attorneys; provided, nevertheless, that in case of vacancy, the Issuer (at the written direction of the Institution) by an instrument executed and signed by the Chairman or Vice Chairman and attested by the Secretary or Assistant Secretary of the Issuer under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by such Bondholders in the manner above provided; and any such temporary Trustee so appointed by the Issuer (at the written direction of the Institution) shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders.

Every such successor or temporary Trustee appointed pursuant to the provisions of the paragraph above shall (1) be a trust company or bank organized under the laws of the United States of America or any state thereof and which is in good standing, (2) be located within or outside the State, (3) be duly authorized to exercise trust powers in the State, (4) be subject to examination by a federal or state authority, and (5) maintain a reported capital and surplus of not less than \$20,000,000 (or a combined capital and surplus in excess of \$5,000,000 and the obligations of which, whether now in existence or hereafter incurred, are fully guaranteed by a corporation organized and doing business under the laws of the United States, any state or territory thereof or of the District of Columbia, that has a combined capital and surplus of at least \$50,000,000), if there be one able and willing to accept the trust on reasonable and customary terms.

Supplemental Indentures not Requiring Consent of Bondholders (Section 801)

The Issuer and the Trustee, without the consent of or notice to any of the Bondholders, may enter into an indenture or indentures supplemental to the Indenture and not inconsistent with the terms and provisions hereof or, in the sole judgment of the Trustee, materially adverse to the interests of the Trustee or the Holders of the Bonds, for any one or more of the following purposes:

- (1) to cure any ambiguity, inconsistency or formal defect or omission in the Indenture;
- (2) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (3) to subject additional rights and revenues to the Lien of the Indenture, or to identify more precisely the Trust Estate;
- (4) to obtain or maintain a rating on the Bonds from Moody's or Standard & Poor's;
- (5) to comply with the provisions of the Code necessary to maintain the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes;
- (6) to modify, amend or supplement the Indenture or any indenture supplemental to the Indenture in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar Federal statute hereafter in effect or under any state blue sky law;

- (7) to enable the issuance of Additional Bonds;
- (8) to permit the Bonds to be converted to certificated securities to be held by the registered Owners thereof;
- (9) to enable the issuance of Parity Obligations, in accordance with the Pledge and Security Agreement; or
- (10) for any other purpose not materially adverse to the interests of the Holders of the Bonds.

Supplemental Indentures Requiring Consent of Bondholders (Section 802)

Except for supplemental indentures as provided in the Indenture, the Holders of not less than two-thirds in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary or desirable by the Issuer or the Trustee for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Indenture or in any supplemental indenture; provided, however, that nothing contained in the Indenture shall permit or be construed as permitting (1) without the consent of the Holder of such Bond, (a) a reduction in the rate, or extension of the time of payment, of interest on any Bond, (b) a reduction of any premium payable on the redemption of any Bond, or an extension of time for such payment, or (c) a reduction in the principal amount payable on any Bond, or an extension of time in which the principal amount of any Bond is payable, whether at the stated or declared maturity or redemption thereof, (2) the creation of any Lien prior to or on a parity with the Lien of the Indenture (other than that parity Lien created to secure the Additional Bonds), (3) a reduction in the aforesaid aggregate principal amount of Bonds, the Holders of which are required to consent to any such supplemental indenture, without the consent of the Holders of all the Bonds at the time Outstanding which would be affected by the action to be taken, (4) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, or (5) a privilege or priority of any Bond or Bonds over any other Bond or Bonds.

Supplemental Indentures; Consent of the Institution (Section 803)

Supplemental indentures which affect the rights or liabilities of the Institution under the Indenture require the consent of the Institution.

Amendments to the Loan Agreement or other Financing Documents not Requiring Consent of Bondholders (Section 901)

The Issuer, the Institution and the Trustee may, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Loan Agreement or any other Financing Document (other than the Indenture) as may be required (1) by the provisions of any Financing Document, (2) for the purpose of curing any ambiguity, inconsistency or formal defect therein or omission therefrom, (3) so as to identify more precisely the Trust Estate or the Project Facility, (4) in connection with any supplemental indenture entered into pursuant to Section 801 of the Indenture, or to effect any purpose for which there could be a supplemental indenture pursuant to Section 801 of the Indenture, (5) to obtain or maintain a rating on the Bonds from Moody's or Standard & Poor's, (6) to permit the issuance of Additional Bonds, (7) to comply with the provisions of the Code necessary to maintain the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax

purposes, (8) to enable the issuance of Parity Obligations, in accordance with the Pledge and Security Agreement, or (9) in connection with any other supplemental indenture, but only if any such amendment, change or modification, in the sole judgment of the Trustee, is not materially adverse to the interests of the Trustee or the Bondholders.

Amendments to Loan Agreement or other Financing Documents Requiring Consent of Bondholders  
(Section 902)

Except for the amendments, changes or modifications as provided under the above caption, neither the Issuer, the Institution nor the Trustee shall consent to any other amendment, change or modification of the Loan Agreement or any other Financing Document (other than the Indenture) without mailing notice thereof to, and obtaining the written approval or consent thereto of, the Holders of not less than two-thirds in aggregate principal amount of the Bonds at the time Outstanding given as provided in the Indenture.

Satisfaction and Discharge of Lien (Section 1001)

If the Issuer (1) shall pay or cause to be paid, to the Holders and Owners of the Bonds, the principal of the Bonds and premium, if any, due on the Bonds, at the times and in the manner stipulated therein and in the Indenture, (2) shall pay or cause to be paid from any source, to the Holders and Owners of the Bonds, the interest to become due on the Bonds, at the times and in the manner stipulated therein and in the Indenture, (3) shall have paid all fees, costs and expenses including, but not limited to, reasonable attorney's fees of the Trustee and each paying agent and (4) shall cause to be delivered an opinion of Independent Counsel stating that all conditions precedent with respect to the satisfaction and discharge of the Indenture have been met, then the Indenture and the trust and rights thereby granted shall cease, terminate and be void, and thereupon the Trustee shall (a) cancel and discharge the Lien of the Indenture upon the Trust Estate and the Trustee's rights under the other Financing Documents and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy same, (b) reconvey to the Issuer the Loan Agreement and the trust conveyed by the Indenture, and (c) assign and deliver to the Institution any interest in Property at the time subject to the Lien of the Indenture and the other Financing Documents which may then be in its possession, except amounts held by the Trustee for the payment of principal of, and the interest and premium, if any, on, the Bonds.

All Outstanding Bonds shall, prior to the maturity or Redemption Date thereof, be deemed to have been paid if, under circumstances which, in the opinion of Bond Counsel, do not adversely affect the exclusion under the Code of interest on the Tax-Exempt Bonds from the gross income of the Holders thereof for Federal income tax purposes, the following conditions shall have been fulfilled: (1) in case any of the Bonds are to be redeemed on any date prior to their maturity, the Institution shall have given to the Trustee in form satisfactory to it irrevocable instructions to give notice of redemption of such Bonds on said date as provided in the Indenture; and (2) there shall be on deposit with the Trustee moneys, which shall be either cash or Defeasance Obligations, in an amount sufficient, without the need for further investment or reinvestment, but including any scheduled interest on or increment to such obligations, to pay when due the principal, premium, if any, and interest due and to become due on the Bonds on and prior to the Redemption Date or Maturity Date thereof, as the case may be, and to pay the Trustee for its Ordinary Services and Ordinary Expenses and for its Extraordinary Services and Extraordinary Expenses under the Indenture.

The Trustee may rely upon an opinion of an Accountant as to the sufficiency of the cash or such Defeasance Obligations on deposit.

Limitations on Issuer Liability *(Section 1109)*

The obligations and agreements of the Issuer contained in the Indenture or in any other document executed by the Issuer in connection therewith shall (A) be deemed obligations and agreements of the Issuer, and not of any member, officer, agent or employee of the Issuer in his or her individual capacity, (B) not be an obligation of the State of New York or of City of Albany, New York, and (C) be limited obligations of the Issuer, payable solely from the revenues of the Issuer derived from the Loan Agreement (except for revenues derived by the Issuer with respect to the Unassigned Rights).

[THIS PAGE INTENTIONALLY LEFT BLANK]

## APPENDIX E

### Summary of Certain Provisions of the Loan Agreement

Pursuant to the Loan Agreement, the Issuer will make the Loan to the Institution of the proceeds of the Initial Bonds for the purpose of assisting in financing the Initial Project. Reference is made to the Loan Agreement for complete details of the terms thereof. The following is a brief summary of certain provisions of the Loan Agreement and should not be considered a full statement thereof.

#### Representations, Warranties and Covenants of the Issuer (Section 2.1)

The Issuer will make the following representations, warranties and covenants, among others:

(1) The Issuer is duly established under the provisions of the Enabling Act and has the power to enter into the Loan Agreement and to carry out the obligations thereunder. By proper official action, the Issuer has been duly authorized to execute, deliver and perform the Loan Agreement and the other Financing Documents to which the Issuer is a party.

(2) Subject to the limitations contained in the Loan Agreement, so long as the Bonds shall be Outstanding, the Issuer will not take any action (or omit to take any action required by the Financing Documents or which the Trustee or the Institution, together with Bond Counsel, advise the Issuer in writing should be taken) or allow any action to be taken, which action (or omission) would in any way (a) cause the proceeds from the sale of the Bonds to be applied in a manner contrary to that provided in the Financing Documents, or (b) adversely affect the exclusion of the interest paid or payable on any Tax-Exempt Bond from gross income for federal income tax purposes. Notwithstanding the foregoing, there shall be no such obligation upon the Issuer with respect to the use or investment of its administrative fee, provided, however, that if the Institution is required to rebate any amount with respect to such administrative fee, the Issuer shall provide, upon the reasonable request of the Institution, such information concerning the investment of such administrative fee as shall be requested by the Institution and as shall be reasonably available to the Issuer.

#### Representations and Covenants of the Institution (Section 2.2)

The Institution makes the following representations and covenants, among others:

(1) The Institution is a not-for-profit corporation duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State, has the power to enter into the Loan Agreement and the other Financing Documents to which the Institution is a party and to carry out its obligations thereunder, has been duly authorized to execute the Loan Agreement and the other Financing Documents to which the Institution is a party, and is qualified to do business in all jurisdictions in which its operations or ownership of Properties so require. The Loan Agreement and the other Financing Documents to which the Institution is a party, and the transactions contemplated thereby, have been duly authorized by all necessary action on the part of the board of trustees of the Institution.

(2) The Institution will not take any action (or omit to take any action required by the Financing Documents or which the Trustee or the Issuer, together with Bond Counsel, advise the Institution in writing should be taken), or allow any action to be taken, which action (or omission)

would in any way (a) adversely affect the exclusion of the interest paid or payable on the Tax-Exempt Bonds from gross income for federal income tax purposes, or (b) cause the proceeds of the Bonds to be applied in a manner contrary to that provided in the Financing Documents.

(3) The Initial Project Facility and the operation thereof will comply in all material respects with all Applicable Laws, and the Institution will defend and save the Issuer and its members, directors, officers, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith. The Institution shall cause all notices required by all Applicable Laws to be given, and shall comply or cause compliance in all material respects with all Applicable Laws, and the Institution will defend and save the Issuer and its officers, members, agents, directors and employees harmless from all fines and penalties due to failure to comply therewith.

(4) All of the proceeds of the Initial Bonds shall be used to pay the costs of the Initial Project, and the total cost of the Initial Project is expected to be at least equal to \$9,315,000.

(5) The Institution will comply with all of the terms, conditions and provisions of the Tax Regulatory Agreement. All of the representations, certifications, statements of reasonable expectation and covenants made by the Institution in the Tax Regulatory Agreement are hereby declared to be for the benefit of, among others, the Issuer and are incorporated in the Loan Agreement as though set forth in full therein.

(6) The Institution represents that (a) the Institution is an organization described in Section 501(c)(3) of the Code, or corresponding provisions of prior law; (b) the Institution has received a letter or other notification from the Internal Revenue Service to that effect; (c) such letter or other notification has not been modified, limited or revoked; (d) the Institution is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification; (e) the facts and circumstances which form the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist; and (f) the Institution is exempt from federal income taxes under Section 501(a) of the Code. The Institution agrees that it shall not perform any act or enter into any agreement which shall adversely affect such federal income tax status and shall conduct its operations in a manner which will conform to the standards necessary to qualify the Institution as a charitable organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law.

(7) All property to be financed or refinanced from moneys on deposit in the Project Fund will be owned by the Institution.

#### Covenant with Trustee, Bondholders (Section 2.3)

The Issuer and the Institution agree that the Loan Agreement is executed in part to induce the purchase of the Bonds by the Holders and Beneficial Owners from time to time of the Bonds. Accordingly, all representations, covenants and agreements on the part of the Issuer and the Institution set forth in the Loan Agreement (other than the Unassigned Rights) are declared to be for the benefit of the Issuer, the Trustee and the Holders and Beneficial Owners from time to time of the Bonds.

#### Acquisition, Construction, Reconstruction and Installation of the Project Facility (Section 3.1)

The Company and CHF II have previously undertaken and completed the acquisition, construction, reconstruction and installation of the Initial Project Facility. Upon the redemption of the



Prior Bonds, the Institution will acquire ownership of the Initial Project Facility for federal income tax purposes, and the Initial Project Facility will be used by the Institution in activities which do not constitute an “unrelated trade or business” within the meaning of Section 513(a) of the Code.

#### Issuance of the Initial Bonds; Loan of the Proceeds Thereof (Section 3.2)

In order to make the Loan for the purposes of financing a portion of the Cost of the Project relating to the Initial Project, together with other costs and incidental expenses in connection therewith, the Issuer agrees that it will use its best efforts to (a) issue and deliver the Initial Bonds in the aggregate principal amount of \$9,315,000 and (b) cause the Initial Bonds to be delivered to the Underwriter as original purchaser of the Initial Bonds, all as provided in the Initial Bond Resolution, the Certificate of Determination, the Initial Bond Purchase Agreement and the Indenture.

As provided in the Indenture, the proceeds from the sale of the Initial Bonds shall be loaned by the Issuer to the Institution and paid as follows: (1) a sum equal to any accrued interest, if any, paid by the Underwriter as original purchaser shall be deposited by the Issuer with the Trustee and deposited by the Trustee into the Bond Fund, and (2) the balance of the proceeds from the sale of the Bonds shall be deposited by the Issuer with the Trustee and deposited by the Trustee into the Project Fund. As provided in the Indenture, the Trustee will advance the proceeds of the sale of the Initial Bonds, upon receipt thereof to the Institution in accordance with the provisions of the Indenture. Pending disbursement pursuant to the provisions of the Loan Agreement and the Indenture, the proceeds of the Initial Bonds deposited in accordance with the provisions of the Indenture, together with any investment earnings thereon, shall constitute a part of the Trust Estate assigned by the Issuer to the payment of Debt Service Payments as provided in the Indenture.

#### Application of Proceeds of the Initial Bonds (Section 3.3)

The sale of the Initial Bonds shall be delivered by the Issuer with the Trustee for deposit in the Project Fund as provided in the Indenture.

Pursuant to the Indenture, upon submission to the Trustee of a Request for Disbursement certified by an Authorized Representative of the Institution and complying with the requirements of the Indenture:

(1) a portion of the moneys on deposit in the Project Fund shall be disbursed to or at the direction of the Institution for deposit with the Prior Trustee for the purpose of providing for the redemption of the Prior Bonds on December 1, 2022; and

(2) the balance of the moneys on deposit in the Project Fund relating to the Initial Bonds shall be applied at closing or within thirty (30) days of the issuance of the Initial Bonds to pay the following items of cost and expenses incurred on or subsequent to the Inducement Date (except to the extent that the Institution obtains a letter from Bond Counsel to the effect that payments of amounts incurred prior to such date will not adversely affect the tax-exempt status of the interest paid or payable on the Tax-Exempt Bonds) in connection with the Initial Project, and for no other purpose:

(a) all costs incurred in connection with the redemption of the Prior Bonds;

(b) all fees, taxes, charges and other expenses for recording or filing, as the case may be, the Financing Documents, any other agreement contemplated hereby, any

financing statements and any title curative documents in order to perfect or protect the Issuer's, the Trustee's or the Institution's respective interests in the Initial Project Facility, and any security interests contemplated by the Financing Documents;

(c) all legal, accounting, financial advisory, investment banking, underwriting, rating agency, blue sky, legal investment and any other fees, discounts, costs and expenses incurred by the Issuer, the Institution or the Trustee in connection with the preparation, reproduction, authorization, issuance, execution, delivery and sale of the Bonds and the other Financing Documents and all other documents in connection therewith, with the acquisition, construction, reconstruction and/or installation of the Initial Project Facility, and with any other transaction contemplated by the Initial Bonds, the Indenture and the Loan Agreement;

(d) the administration, acceptance and/or commitment fees, costs and expenses (including, but not limited to, reasonable attorneys' fees) of the Issuer and the Trustee; and

(e) reimbursement to the Institution for any of the above enumerated costs and expenses paid and incurred by the Institution subsequent to the Inducement Date.

Any disbursements from the Project Fund for the payment of the Project Costs relating to the Initial Project pursuant to the preceding paragraph shall be made by the Trustee only upon the written order of the Authorized Representative of the Institution.

Any moneys relating to the Initial Bonds remaining in the Project Fund after the date of completion of the Initial Project and the payment, or provision for payment, in full of the Project Costs relating to the Initial Project, at the direction of the Authorized Representative of the Institution, promptly shall be:

- (1) used for the purchase of Initial Bonds in the open market for the purpose of cancellation at prices not exceeding the full market value thereof plus accrued interest thereon to the date of payment therefor;
- (2) paid into the Bond Fund to be applied to the redemption of the Initial Bonds; or
- (3) used for a combination of the foregoing as is provided in that direction.

In all such cases, any payments made pursuant to the preceding paragraph shall be made only to the extent that such use or application will not, in the opinion of Bond Counsel or under ruling of the Internal Revenue Service, result in the interest on the Initial Bonds becoming included in the gross income of the Holders thereof for federal income tax purposes.

#### Completion of the Project (Section 3.4)

The Institution will proceed with due diligence to commence and complete the Initial Project.

### Completion by the Institution (Section 3.5)

In the event that the proceeds of the Bonds are not sufficient to pay in full all costs of the Initial Project, the Institution agrees to complete the Initial Project and to pay all such sums as may be in excess of the moneys available therefor in the Project Fund.

### Investment of Fund Moneys (Section 3.6)

At the oral (promptly confirmed in writing) or written request of the Authorized Representative of the Institution, any moneys held as part of any Fund created under the Indenture shall be invested or reinvested by the Trustee in Authorized Investments. The Institution covenants that the Institution will restrict that investment and reinvestment and the use of the proceeds of the Tax-Exempt Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery of and payment for the Tax-Exempt Bonds, so that the Tax-Exempt Bonds will not constitute arbitrage bonds under Section 148 of the Code.

### Rebate Fund (Section 3.7)

The Institution agrees to make such payments to the Trustee as are required of it under Section 407 of the Indenture and to pay the costs and expenses of the independent certified public accounting firm or firm of attorneys engaged in accordance with said Section 407 of the Indenture. The obligation of the Institution to make such payments shall remain in effect and be binding upon the Institution notwithstanding the release and discharge of the Indenture.

### Loan Payments and other Amounts Payable (Section 5.1)

Upon the terms and conditions of the Loan Agreement, the Issuer will make the Loan to the Institution. In consideration of and in repayment of the Loan, the Institution shall make, as Loan Payments, payments sufficient in amount to pay when due the Debt Service Payments due and payable on the Bonds. The Institution shall pay Loan Payments as follows:

(1) on or before the fifth (5th) Business Day immediately preceding each Interest Payment Date, the Institution shall cause immediately available funds to be delivered to the Trustee for deposit into the Bond Fund, in an amount equal to the amount due as interest on the Bonds on the next succeeding Interest Payment Date, so that the amount on deposit in the Bond Fund and available for the payment of interest on the fifth (5th) Business Day next preceding such Interest Payment Date, when added to the amount in the Bond Fund and available to the Trustee for such purpose, shall equal the interest payable on the Bonds on such Interest Payment Date;

(2) on or before the fifth (5th) Business Day immediately preceding each Bond Payment Date upon which a Sinking Fund Payment is due on the Bonds, the Institution shall cause immediately available funds to be delivered to the Trustee for deposit into the Bond Fund, in an amount equal to the amount due as a Sinking Fund Payment on the Bonds on such Bond Payment Date; and

(3) on or before the fifth (5th) Business Day immediately preceding each Bond Payment Date upon which a principal payment is due on the Bonds, the Institution shall cause immediately available funds to be delivered to the Trustee for deposit into the Bond Fund, in an amount equal to the amount due as principal on the Bonds on such Bond Payment Date.

The Institution shall pay as additional Loan Payments under the Loan Agreement any premium when due on the Bonds and the following:

(1) Within thirty (30) days after receipt of a written demand therefor from the Trustee, the Bond Registrar or any Paying Agent, the Institution shall pay to the Trustee, the Bond Registrar or any Paying Agent, as the case may be, the following amounts: (a) the reasonable fees, costs and expenses of the Trustee, the Bond Registrar or Paying Agent, as applicable, for performing its obligations under the Indenture and the other Financing Documents; (b) the sum of the expenses of the Trustee, the Bond Registrar or Paying Agent reasonably incurred in performing the obligations of (i) the Institution under the Loan Agreement, or (ii) the Issuer under the Bonds, the Indenture or the Loan Agreement; and (c) the reasonable attorneys' fees of the Trustee, the Bond Registrar or Paying Agent incurred in connection with the foregoing and other moneys due the Trustee, the Bond Registrar or Paying Agent pursuant to the provisions of any of the Financing Documents.

(2) (a) On the Closing Date, the Institution shall pay to the Issuer, (i) a lump sum payment in an amount equal to the Issuer's administrative fee for the issuance of the Initial Bonds; plus (ii) an additional lump sum payment in an amount equal to the fees and expenses of general counsel and Bond Counsel to the Issuer relating to the Project.

(b) Within thirty (30) days after receipt of a demand therefor from the Issuer, the Institution shall pay to the Issuer the sum of the reasonable expenses (including, without limitation, reasonable attorney's fees and expenses) of the Issuer and the members, directors, officers, agents, servants and employees thereof incurred by reason of the Issuer's making of the Loan, the financing and/or refinancing of the Initial Project Facility, the issuance and delivery of any Bonds, the marketing or remarketing of any Bonds or in connection with the carrying out of the Issuer's duties and obligations under the Loan Agreement or any of the other Financing Documents, and any other fee or expense of the Issuer with respect to the Project Facility, the Bonds or any of the other Financing Documents, the payment of which is not otherwise provided for under the Loan Agreement.

In the event the Institution fails to make any of the above payments for a period of more than ten (10) days from the date such payment is due, the Institution shall pay the same, together with interest thereon, at the Default Interest Rate, from the date on which such payment was due until the date on which such payment is made.

The Institution shall be entitled to a credit against the Loan Payments next required to be made under the Loan Agreement to the extent that the balance of the Bond Fund is then in excess of amounts required (1) for payment of Bonds theretofore matured or theretofore called for redemption, (2) for payment of interest for which checks or drafts have been drawn and mailed by the Trustee, and (3) for deposit in the Bond Fund for use other than for the payment of Debt Service Payments on the Interest Payment Date next following the applicable date such Loan Payments are due pursuant to the Loan Agreement. In any event, however, if on any Bond Payment Date, the balance in the Bond Fund is insufficient to make required payments of Debt Service Payments on the Bonds, the Institution forthwith will pay to the Trustee, for the account of the Issuer and for deposit into the Bond Fund, any deficiency.

### Nature of Obligations of Institution under the Loan Agreement *(Section 5.2)*

The obligations of the Institution under the Loan Agreement will be general obligations of the Institution and shall be absolute and unconditional irrespective of any defense or any right of set-off, recoupment, counterclaim or abatement that the Institution may otherwise have against the Issuer or the Trustee. The Institution agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants contained in, the Loan Agreement, or terminate the Loan Agreement for any cause whatsoever.

### Prepayment of Loan Payments *(Section 5.3)*

At any time that the Bonds are subject to redemption under the Indenture, the Institution may, at its option, prepay, in whole or in part, the Loan Payments payable under the Loan Agreement by causing there to be moneys in an amount equal to the Redemption Price of the Bonds being redeemed, or the Purchase Price of Bonds being purchased in lieu of redemption, on deposit with the Trustee at least ten (10) days prior to the date such moneys are to be applied to the redemption (or purchase in lieu of redemption) of such Bonds under the Indenture.

### Maintenance and Modification of the Project Facility *(Section 6.1)*

So long as any of the Bonds are Outstanding, and during the term of the Loan Agreement, the Institution shall keep and maintain or make arrangements with others to keep and maintain the Initial Project Facility in accordance with the purposes and requirements of the Enabling Act and the Code.

### Taxes, Assessments And Utility Charges *(Section 6.2)*

The Institution will pay or cause to be paid all taxes, assessments, and utility charges associated with the Initial Project Facility.

### Insurance Required *(Section 6.3)*

The Institution is required to maintain certain insurance to protect the interests of the Institution, the Issuer and the Trustee.

### Damage, Destruction and Condemnation *(Section 7.1 and Section 7.2)*

In the case of damage to or the destruction or Condemnation of the Initial Project Facility, the Institution, but not the Issuer, will have an obligation to replace, repair, rebuild or restore the Initial Project Facility, using insurance or Condemnation proceeds for this purpose to the extent available, unless the Institution elects not to replace, repair, rebuild or restore the Initial Project Facility and to cause a defeasance and/or redemption of the Bonds in accordance with the Indenture and the Tax Documents. If the Institution opts to provide for the defeasance and/or redemption of the Bonds and if the Net Proceeds collected under any and all policies of insurance or of any Condemnation award are less than the amount necessary to defease and/or redeem the Bonds in full and pay any and all amounts payable under the Financing Documents to the Issuer and the Trustee, the Institution will be required to pay to the Trustee the difference between such amounts and the Net Proceeds of all insurance settlements and Condemnation awards so that all of the Bonds then Outstanding will be defeased and/or redeemed and any and all amounts payable under the Financing Documents to the Issuer and the Trustee will be paid in full.

### Termination (Section 8.17)

Upon (1) payment in full of the Loan evidenced by the Bonds, (2) termination of the Pledge and Assignment, (3) payment in full of all other Indebtedness evidenced by the Loan Agreement and (4) performance by the Institution of all other obligations of the Institution to the Issuer pursuant to the provisions of the Loan Agreement (collectively, the “Termination Preconditions”), the Loan Agreement shall terminate, except as provided in Section 11.8 thereof (Survival of Obligations). Upon satisfaction of the Termination Preconditions, the Issuer agrees to execute and deliver to the Institution the Termination of Loan Agreement.

### Use of the Project Facility (Section 8.18)

Subsequent to the Closing Date, (A) the Institution shall not use the Initial Project Facility, or permit the Initial Project Facility to be used, by any Nonexempt Person or in any “unrelated trade or business”, within the meaning of Section 513(a) of the Code, in such manner or to such extent as would cause the interest paid or payable on the Tax-Exempt Bonds to be includable in the gross income of the recipients thereof for federal income tax purposes or loss of the Institution’s status as an exempt organization under Section 501(c)(3) of the Code, and (B) the Institution shall be entitled to use the Initial Project Facility as Student housing and other directly and indirectly related activities for use by the Institution, but not (except as otherwise permitted by the Loan Agreement) (1) as facilities used or to be used primarily for sectarian instruction or as a place of religious worship or (2) primarily as in connection with any part of a program of a school or department of divinity for any religious denomination.

### Assignment of the Loan Agreement (Section 9.1)

The Loan Agreement may not be assigned by the Institution, in whole or in part, without the prior written consent of the Issuer and the Trustee.

### Merger of the Issuer (Section 9.2)

Nothing contained in the Loan Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or assignment by the Issuer of its rights and interests hereunder to, any other public instrumentality or a political subdivision of the State or City of Albany, New York which has the legal authority to perform the obligations of the Issuer under the Loan Agreement, provided that (1) the exclusion of the interest payable on the Tax-Exempt Bonds from gross income for Federal income tax purposes shall not be adversely affect thereby; and (2) upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of the Loan Agreement, the Bonds and the Indenture to be kept and performed by the Issuer shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Issuer’s rights and interests under the Loan Agreement shall be assigned.

### Sale or Lease of the Project Facility (Section 9.3)

Except for leases or subleases of portions of the Initial Project Facility entered into in the ordinary course of business and in compliance with the provisions of the Tax Documents, the Institution may not sell, lease, transfer, convey or otherwise dispose of the Initial Project Facility or any part thereof without the prior written consent of the Issuer, which consent shall not be unreasonably withheld or delayed; provided, however, that the prior written consent of the Issuer shall not be required when the Institution

proposes to sublease a portion of the Initial Project Facility and such sublease is consistent with Section 8.18 of the Loan Agreement and the provisions of the Tax Documents.

In no event, however, shall the Issuer consent to any sale, lease, transfer, sublease, conveyance or other disposition of the Initial Project Facility, or any part thereof, prior to receipt of an opinion of Bond Counsel that such disposition will not adversely affect the exclusion of the interest paid or payable on the Tax-Exempt Bonds from gross income of the holders thereof for Federal income tax purposes.

Notwithstanding anything to the contrary contained herein, in any instance where the Institution reasonably determines that any portion of the Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Institution may remove such portion of the Equipment and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Issuer, provided that such removed Equipment is forthwith replaced with similar items of Equipment having a similar value, free from all Liens other than any Liens created by the Financing Documents.

In the Initial Tax Regulatory Agreement, the Institution has covenanted that the Institution will not do anything that would cause the change in use provisions contained in Section 150(b)(3) of the Code to become applicable to the Series 2022A Bonds (any such event being hereinafter referred to as a “Change in Use”), unless the Institution first receives an opinion of Bond Counsel that such change in use will not adversely affect the exclusion from gross income from federal income tax purposes of interest paid or payable on the Series 2022A Bonds. Notwithstanding anything to the contrary contained in the Loan Agreement, the Institution agrees that, before any Change in Use shall occur, the Institution shall first file with the Issuer and the Trustee an opinion of Bond Counsel that such action will not adversely affect the exclusion from gross income for federal income tax purposes of interest paid or payable on the Series 2022A Bonds (a “Change in Use Opinion”). If, in connection with obtaining any such Change in Use Opinion, Bond Counsel indicates that an amount of money is required to be applied to the redemption of the Series 2022A Bonds, the Institution shall transfer such amount to the Trustee for deposit in the Bond Fund and use to redeem Bonds as provided in the Indenture.

#### Events of Default Defined (Section 10.1)

Under the Loan Agreement, one or more of the following events will constitute an “Event of Default”:

- (1) A default by the Institution in the due and punctual payment of the basic Loan Payments due pursuant to the Loan Agreement.
- (2) The Institution shall fail to deliver to the Trustee, or cause to be delivered on its behalf, the moneys needed to redeem any outstanding Bonds in the manner and upon the date requested in writing by the Trustee as provided in Article III of the Indenture.
- (3) A default in the performance or observance of any other of the material covenants, conditions or agreements on the part of the Institution in the Loan Agreement and the continuance thereof for a period of thirty (30) days after written notice is given by the Issuer or the Trustee to the Institution (with a copy to the Trustee, if given by the Issuer), or, if such covenant, condition or agreement is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Institution to commence to cure within such thirty (30) day period and to thereafter prosecute the same with due diligence and, in any event, to cure such default within sixty (60) days after such written notice is given.

(4) The occurrence of an “Event of Default” under any of the other Financing Documents.

(5) Any material representation or warranty made by the Institution in the Loan Agreement or in any other Financing Document proves to have been false at the time it was made.

(6) The Institution shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.

(7) Any sale, conveyance, lease agreement or any other change of ownership of the Project Facility, whether occurring voluntarily or involuntarily, or by operation of law or otherwise, by the Institution (except pursuant to a Permitted Encumbrance) of the Institution’s interest in the Project Facility or any part thereof, except as permitted in the Loan Agreement, the other Financing Documents or a Permitted Encumbrance.

(8) (a) The filing by the Institution (as debtor) of a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy statute; (b) the failure by the Institution within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the Institution’s ability to carry out its obligations under the Loan Agreement; (c) the commencement of a case under the Bankruptcy Code against the Institution as the debtor or commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Institution and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days; (d) the entry of an order for relief by a court of competent jurisdiction under the Bankruptcy Code or any other federal or state bankruptcy statute with respect to the debts of the Institution; or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Institution, unless such order, judgment or decree is vacated, dismissed or dissolved within sixty (60) days of such appointment.

(9) The removal of the Equipment or any portion thereof outside City of Albany, New York, without the prior written consent of the Issuer, other than in connection with a removal permitted under Section 9.3 of the Loan Agreement.

(10) Any provision of the Loan Agreement or any of the other Financing Documents shall at any time for any reason cease to be valid and binding on the related obligor thereunder or shall be declared to be null and void by any court or governmental authority or agency having jurisdiction over the Institution, or the validity or the enforceability thereof shall be contested by the Institution, the Issuer or the Trustee, in a judicial or administrative proceeding.

(11) Any Financing Document shall cease to be in full force and effect, or any Lien created or purported to be created in any collateral pursuant to any Financing Document shall fail to be a valid, enforceable and perfected Lien in favor of the secured party or parties named in such Financing Document, having the priority purported to be given such Lien under such Financing Documents, or the Institution, the Trustee or any Governmental Authority shall assert any of the foregoing, unless such failure of validity, enforceability or perfection is caused by the negligence or intentional act of the Trustee or the Issuer.



Notwithstanding the foregoing, if by reason of force majeure (as hereinafter defined) either party to the Loan Agreement shall be unable, in whole or in part, to carry out its obligations under the Loan Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Trustee within a reasonable time after the occurrence of the event or cause relied upon, the obligations under the Loan Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this provision shall not be deemed an Event of Default under the Loan Agreement. Notwithstanding this provision, an event of force majeure shall not excuse, delay or in any way diminish certain obligations of the Institution to make certain payments, to obtain and continue in full force and effect certain insurance, to provide certain indemnity required by the Loan Agreement and to comply with certain other provisions of the Loan Agreement. The term “force majeure” as used herein shall include acts outside of the control of the Issuer and the Institution, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, and partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

#### Remedies on Default (Section 10.2)

Whenever any Event of Default shall have occurred and be continuing, the Issuer and/or the Trustee may, to the extent permitted by law, take any one or more of the following remedial steps:

- (1) declare, by written notice to the Institution, to be immediately due and payable
  - (a) all unpaid basic Loan Payments payable pursuant to the Loan Agreement and (b) all other payments due under the Loan Agreement or any of the other Financing Documents;
- (2) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due under the Loan Agreement and to enforce the obligations, agreements or covenants of the Institution under the Loan Agreement;
- (3) terminate disbursement of the Bond Proceeds; or
- (4) exercise any remedies available pursuant to any of the other Financing Documents.

#### No Recourse; Special Obligation (Section 11.10)

The obligations and agreements of the Issuer contained in the Loan Agreement and in the other Financing Documents and any other instrument or document executed in connection therewith, and any other instrument or document supplemental thereto, will be deemed the obligations and agreements of the Issuer, and not of any member, officer, director, agent, servant or employee of the Issuer in his individual capacity, and the members, officers, directors, agents, servants and employees of the Issuer will not be liable personally on the Loan Agreement or such other documents or be subject to any personal liability

or accountability based upon or in respect of the Loan Agreement or such other documents or of any transaction contemplated by the Loan Agreement or such other documents.

The obligations and agreements of the Issuer contained in the Loan Agreement or such other documents will not constitute or give rise to an obligation of the State of New York or of City of Albany, New York, and neither the State of New York nor City of Albany, New York will be liable hereon or thereon, and, further, such obligations and agreements will not constitute or give rise to a general obligation of the Issuer, but rather will constitute limited obligations of the Issuer payable solely from the revenues of the Issuer derived and to be derived from the sale or other disposition of the Project Facility (except for revenues derived by the Issuer with respect to the Unassigned Rights).

No order or decree of specific performance with respect to any of the obligations of the Issuer under the Loan Agreement will be sought or enforced against the Issuer unless (A) the party seeking such order or decree will first have requested the Issuer in writing to take the action sought in such order or decree of specific performance, and ten (10) days will have elapsed from the date of receipt of such request, and the Issuer will have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten days, will have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (B) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree will have placed in an account with the Issuer an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents, servants or employees will be subject to potential liability, the party seeking such order or decree (1) agrees to indemnify and hold harmless the Issuer and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Issuer, furnishes to the Issuer satisfactory security to protect the Issuer and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request. Any failure to provide the indemnity and/or security required in this paragraph shall not affect the full force and effect of an Event of Default under the Loan Agreement.

## APPENDIX F

### Form of Continuing Disclosure Undertaking

#### **CONTINUING DISCLOSURE UNDERTAKING**

This Continuing Disclosure Undertaking (the “Disclosure Undertaking”) is dated as of November 1, 2022 and is executed and delivered by Albany College of Pharmacy and Health Sciences (the “Borrower”) in connection with the issuance of \$6,505,000 City of Albany Capital Resource Corporation Tax-Exempt Revenue Bonds (Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022A (the “Series 2022A Bonds”) and \$2,810,000 Taxable Revenue Bonds (Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022B (the “Series 2022B Bonds” and together with the Series 2022A Bonds, the “Bonds”). The Bonds are being issued pursuant to a Trust Indenture, dated as of November 1, 2022 (the “Indenture”), between the City of Albany Capital Resource Corporation (the “Issuer”) and Manufacturers and Traders Trust Company, as Trustee (the “Trustee”). The proceeds of the Bonds are being loaned by the Issuer to the Borrower pursuant to a Loan Agreement, dated as of November 1, 2022, between the Issuer and the Borrower (the “Loan Agreement”). For valuable consideration, the receipt of which is acknowledged, the Borrower covenants and agrees as follows:

SECTION 1. Purpose of the Disclosure Undertaking. This Disclosure Undertaking is being executed and delivered by the Borrower for the benefit of the Bondholders and the beneficial owners of the Bonds, and in order to assist the Participating Underwriter (as hereinafter defined) in complying with the Rule (as hereinafter defined). The Borrower acknowledges that the Issuer has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Disclosure Undertaking, and has no liability to any person, including any Holder (as hereinafter defined) of the Bonds, with respect to any such reports, notices or disclosures.

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

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

“Bondholder” or the term “Holder”, when used with reference to a Bond or Bonds, shall mean any person who shall be the registered owner of any Bond and any beneficial owner thereof.

“Disclosure Representative” shall mean the Chief Financial Officer of the Borrower or his or her designee, or such other person as the Borrower shall designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean any Dissemination Agent, which is designated in writing by the Borrower and which has filed with the Trustee a written acceptance of such designation.

“Financial Obligation” means a (i) a debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

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

“MSRB” shall mean the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, or any successor thereto or to the functions of the MSRB contemplated by this Disclosure Undertaking.

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

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

### SECTION 3. Provision of Annual Reports.

(a) The Borrower, commencing for the fiscal year ended June 30, 2023, shall, or shall cause the Dissemination Agent to, not later than December 1 of each year (or in the event of a change in the Borrower’s fiscal year from the present July 1 to June 30 fiscal year, within 120 days after the end of such fiscal year), provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Undertaking. On or prior to said date (except that in the event the Borrower elects to have the Dissemination Agent file such report, five (5) Business Days prior to such date) such Annual Report shall be provided by the Borrower to the Dissemination Agent together with either (i) a letter authorizing the Dissemination Agent to file the Annual Report with the MSRB, or (ii) a certificate stating that the Borrower has provided the Annual Report to the MSRB and the date on which such Annual Report was provided. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Undertaking; provided that the audited financial statements of the Borrower may be submitted separately from the balance of the Annual Report; and provided further that audited financial statements of the Borrower shall be submitted as soon as practicable after the audited financial statements become available. The Borrower shall promptly notify the Dissemination Agent of any change in the Borrower’s fiscal year.

(b) If by 15 days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Borrower to request a report regarding compliance with the provisions governing the Annual Report.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent shall send a reminder notice to the Borrower and shall send a notice to the MSRB in substantially the form attached as Exhibit A hereto.

(d) The Dissemination Agent shall file a report with the Borrower and the Trustee (if the Dissemination Agent is not the Trustee) certifying that the Borrower has filed a report (directly or through the Dissemination Agent) purporting to be an Annual Report pursuant to this Disclosure Undertaking, and stating the date it was provided (if such report was provided).

SECTION 4. Content of Annual Reports. The Borrower's Annual Report shall contain or incorporate by reference the following:

(a) audited financial statements (including footnotes) of the Borrower, which financial statements may be individual, combined or consolidated, prepared in accordance with generally accepted accounting/auditing principles as in effect from time to time, consistently applied unless otherwise explained in footnotes to the financial statements provided, consisting of:

(i) balance sheet as of the close of the most recent fiscal year of the Borrower (with comparative totals for the immediately preceding fiscal year);

(ii) statement of activity for the most recent fiscal year of the Borrower (with comparative totals for the immediately preceding fiscal year); and

(iii) statement of cash flows for the most recent fiscal year of the Borrower (with comparative totals for the immediately preceding fiscal year); and

(b) operating data of the Borrower for such preceding fiscal year, prepared from the records of the Borrower, regarding, without limitation, financial and operating data of the type included in the final Official Statement for the Bonds concerning the Borrower, which shall include annual or year- end information for the Borrower as described in "Appendix A" of such final Official Statement including but not limited to the information set forth under the following headings:

"Admissions and Student Enrollment", "Enrollment", "Student Quality and Profile", "Tuition and Fees", "Student Financial Aid", "Endowment", "Cash and Investments", "Litigation", and "Fundraising Activities."

together with a narrative explanation, if necessary to avoid misunderstanding, regarding the presentation of financial and operating data concerning the Borrower and the financial and operating condition of the Borrower; provided, however, that the references above to specific section headings of Appendix A of the final Official Statement used in connection with the Bonds as a means of identification shall not prevent the Borrower from reorganizing such material in subsequent official statements or Annual Reports.

(c) Any or all of the items listed above may be incorporated by reference from other documents, including financial statements provided under (a) above, the original Official Statement for the Bonds, or other official statements of debt issues with respect to which the

Borrower is an “obligated person” (as defined by the Rule), which have been (i) made available to the public on the MSRB’s Electronic Municipal Markets Access (EMMA) System, the current internet web address of which is [www.emma.msrb.org](http://www.emma.msrb.org), or (ii) filed with the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Borrower shall clearly identify each such other document so incorporated by reference.

#### SECTION 5. Reporting of Listed Events.

(a) The Borrower shall, or shall cause the Dissemination Agent to, give notice of the occurrence of any of the following Listed Events relating to the Bonds to the MSRB in a timely manner not later than ten (10) Business Days after the occurrence of any such Listed Event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Reserved;
- (4) Reserved;
- (5) Reserved;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) Modifications to the rights of the Bond owners, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution or sale of property securing repayment of the Bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the Borrower (or any other obligated person, as defined in the Rule);

Note to clause (12): For the purposes of the event identified in clause (12) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower (or any other obligated person, as defined in the Rule) in a proceeding under the U.S. Bankruptcy Code or in any other proceeding

under state or federal law in which a court or government authority has assumed jurisdiction over substantially all of the assets or business of the Borrower (or any other obligated person, as defined in the Rule), or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower (or any other obligated person, as defined in the Rule);

(13) The consummation of a merger, consolidation, or acquisition involving the Borrower (or any other obligated person, as defined in the Rule) or the sale of all or substantially all of the assets of the Borrower (or any other obligated person, as defined in the Rule), other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(14) Appointment of a successor or additional Trustee or the change of the name of the Trustee, if material.

(15) Incurrence of a Financial Obligation of the Borrower, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Borrower, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Borrower, any of which reflect financial difficulties.

(b) The Dissemination Agent shall, promptly after obtaining actual knowledge of the occurrence or possible occurrence of any of the Listed Events set forth in subsection (a) above, contact the Disclosure Representative and inform such person of the event. “Actual knowledge” for purposes of this subsection (b) shall mean actual knowledge of an officer of the Corporate Trust Administration of the Dissemination Agent.

(c) Whenever the Borrower obtains knowledge of the occurrence of a Listed Event set forth in clauses (2), (7), (8) (relating to Bond calls only), (10), (13), (14), (15) or (16) of subsection (a) above, whether because of a notice from the Dissemination Agent pursuant to subsection (b) or otherwise, the Borrower shall as soon as possible determine if such event would constitute material information for Bondholders, and if such event is determined by the Borrower to be material, the Borrower shall, or shall cause the Dissemination Agent to, give notice of such event to the MSRB not later than ten (10) Business Days after the occurrence of such event.

(d) If the Borrower elects to have the Dissemination Agent file notice of any Listed Event, the Borrower will provide the notice to the Dissemination Agent within 5 Business

Days after the occurrence of the Listed Event, along with an instruction to file the notice with the MSRB.

#### SECTION 6. Termination of Reporting Obligation.

(a) The Borrower's and the Dissemination Agent's obligations under this Disclosure Undertaking shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If the Borrower's obligations under the Loan Agreement are assumed in full by some other entity, such person shall be responsible for compliance with this Disclosure Undertaking in the same manner as if it were the Borrower. The original Borrower shall have no further responsibility hereunder only to the extent that the Borrower ceases to be an obligated person with respect to the Bonds within the meaning of the Rule.

(b) In addition, the Borrower's obligations under the provisions of this Disclosure Undertaking shall terminate (in whole or in part, as the case may be) in the event that (1) the Borrower delivers to the Dissemination Agent and the Trustee an opinion of nationally recognized bond counsel or counsel expert in federal securities laws, addressed to the Dissemination Agent and the Trustee, to the effect that those portions of the Rule which require the provisions of this Disclosure Undertaking, or any of such provisions, do not or no longer apply to the Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, as shall be specified in such opinion (but such termination of the Borrower's obligations shall be effective only to the extent specifically addressed by such opinion), and (2) the Dissemination Agent delivers copies of such opinion to (i) the MSRB, (ii) the Trustee (if other than the Dissemination Agent), and (iii) KeyBanc Capital Markets Inc., as the Participating Underwriter. The Dissemination Agent shall so deliver such opinion promptly.

#### SECTION 7. Dissemination Agent.

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

(b) The Dissemination Agent, or any successor thereof, may at any time resign and be discharged of its duties and obligations hereunder by giving not less than thirty (30) days written notice to the Borrower and the registered owners of the Bonds, specifying the date when such resignation shall take effect. Such resignation shall take effect upon the date a successor shall have been appointed by the Borrower or by a court upon the application of the Dissemination Agent.

(c) In case the Dissemination Agent, or any successor thereof, shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Dissemination Agent or of its property shall be appointed, or if any public officer shall take charge of control of the Dissemination Agent, or of its property or affairs, the Borrower shall forthwith appoint a Dissemination Agent to act. The



Borrower shall give or cause to be given written notice of any such appointment to the registered Owners of the Bonds, the Trustee (if the Trustee is not the Dissemination Agent), and the Issuer.

(d) Any company into which the Dissemination Agent may be merged or with which it may be consolidated or any company resulting from any merger or consolidation to which it shall be a party or any company to which such Dissemination Agent may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Dissemination Agent, without any further act or deed.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Undertaking, the Borrower and the Dissemination Agent may amend this Disclosure Undertaking (and the Dissemination Agent shall agree to any amendment not modifying or otherwise affecting its duties, obligations or liabilities in such a way as they are expanded or increased) and any provision of this Disclosure Undertaking may be waived, if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the Borrower or the type of business conducted thereby, (2) this Disclosure Undertaking as so amended would have complied with the requirements of the Rule as of the date of this Disclosure Undertaking, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the Borrower shall have delivered an opinion of counsel, addressed to the Borrower, the Dissemination Agent and the Trustee, to the same effect as set forth in clause (2) above, (4) either (i) the Borrower shall have delivered to the Trustee and the Dissemination Agent an opinion of counsel, or a determination by a person, in each case unaffiliated with the Borrower (such as bond counsel) and acceptable to the Borrower, to the effect that the amendment does not materially impair the interests of the Holders of the Bonds or (ii) the Holders of the Bonds consent to the amendment to this Disclosure Undertaking pursuant to the same procedures as are required for amendments to the Indenture with consent of the Holders of the Bonds pursuant to the Indenture as in effect on the date of this Disclosure Undertaking, and (5) the Borrower shall have delivered copies of such opinion(s) and amendment to the MSRB. The Dissemination Agent may rely and act upon such opinions.

SECTION 9. Additional Information. Nothing in this Disclosure Undertaking shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Disclosure Undertaking or any other means of communication, or including any other information in any Annual Report or notice of the occurrence of a Listed Event, in addition to that which is required by this Disclosure Undertaking. If the Borrower chooses to include any information in any Annual Report or notice of the occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Undertaking, the Borrower shall have no obligation under this Disclosure Undertaking to update such information or include it in any future Annual Report or notice of the occurrence of a Listed Event. Nothing in this Disclosure Undertaking shall be deemed to prevent Regions Bank from providing a notice or disclosure as it may deem appropriate pursuant to any other capacity it may be acting in related to the Bonds.

SECTION 10. Default. In the event of a failure of the Borrower or the Dissemination Agent to comply with any provision of this Disclosure Undertaking, the Dissemination Agent may (and, at the request of any of the Holders of at least 25% of the aggregate principal amount of

Outstanding Bonds who have provided security and indemnity deemed acceptable to the Dissemination Agent, shall), or any party who can establish beneficial ownership of any of the Bonds, or any Bondholder may, after providing fifteen (15) days written notice to the Borrower to give the Borrower opportunity to comply within such fifteen-day period, take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Borrower to comply with its obligations under this Disclosure Undertaking. A default under this Disclosure Undertaking shall not be deemed an Event of Default under the Indenture or under the Loan Agreement, and the sole remedy available to the Dissemination Agent, any beneficial owners of the Bonds or the Bondholders under this Disclosure Undertaking in the event of any failure of the Borrower or the Dissemination Agent to comply with this Disclosure Undertaking shall be an action to compel performance.

#### SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent.

(a) The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Undertaking. To the extent that the Dissemination Agent is required under the terms of this Disclosure Undertaking to report any information, it is only required to report information that it receives from the Borrower in the form in which it is received, and the Dissemination Agent shall be under no responsibility or duty with respect to the accuracy and content of the information which it receives from the Borrower. The Borrower agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including reasonable attorneys' fees and expenses) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or misconduct. The obligations of the Borrower under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

(b) Unless otherwise provided by contract with the Dissemination Agent, the Borrower shall pay or cause to be paid to the Dissemination Agent after reasonable notice to the Borrower in light of the reimbursement sought to be received, reasonable reimbursement for its reasonable expenses, charges, counsel fees and expenses and other disbursements and those of its attorneys, agents, and employees, incurred in and about the performance of its powers and duties hereunder. The Borrower shall indemnify and save the Dissemination Agent harmless against any expenses and liabilities which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or default. None of the provisions contained in this Disclosure Undertaking shall require the Dissemination Agent to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers. The obligations of the Borrower under this Section to compensate the Dissemination Agent, to pay or reimburse the Dissemination Agent for expenses, disbursements, charges and counsel fees and to indemnify and hold harmless the Dissemination Agent shall survive the termination of this Disclosure Undertaking.

(c) In no event shall the Dissemination Agent be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to, lost profits), even if the Dissemination Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

SECTION 12. Transmission of Notices, Documents and Information.

(a) Unless otherwise required by the MSRB, all notices, documents and information provided to the MSRB pursuant to this Disclosure Undertaking shall be provided to the MSRB's Electronic Municipal Markets Access (EMMA) System, the current internet web address of which is [www.emma.msrb.org](http://www.emma.msrb.org).

(b) All notices, documents and information provided to the MSRB shall be provided in an electronic format as prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

SECTION 13. Beneficiaries. This Disclosure Undertaking shall inure solely to the benefit of the Issuer, the Borrower, the Trustee, the Dissemination Agent, the Participating Underwriter, parties who can establish beneficial ownership of the Bonds and the Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 14. Counterparts. This Disclosure Undertaking may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 15. Notices. The parties hereto may be given notices required hereunder at the addresses set forth for them in the Loan Agreement or the Indenture.

SECTION 16. Applicable Law. This Disclosure Undertaking shall be governed by the laws of the State of New York, and by applicable federal laws.

Dated as of November 1, 2022

BORROWER:

**ALBANY COLLEGE OF PHARMACY  
AND HEALTH SCIENCES**

By: \_\_\_\_\_  
Michele D. Vien, Vice President of  
Finance and CFO

**EXHIBIT A****To Continuing Disclosure Undertaking****NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Name of Bond Issue: \$6,505,000 City of Albany Capital Resource Corporation Tax-Exempt Revenue Bonds (Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022A and \$2,810,000 Taxable Revenue Bonds (Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022B

Name of Borrower: Albany College of Pharmacy and Health Sciences

Date of Issuance: November 30, 2022

NOTICE IS HEREBY GIVEN that Albany College of Pharmacy and Health Sciences (the “Borrower”) has not yet provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Undertaking executed by the Borrower, dated as of November 1, 2022. The Borrower has informed \_\_\_\_\_ (the “Dissemination Agent”) that the Annual Report will be filed with the Dissemination Agent by \_\_\_\_\_.

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

\_\_\_\_\_  
,as Dissemination Agent

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

cc: Borrower

## APPENDIX G

### Form of Bond Counsel Opinion

*Upon issuance and delivery of the Initial Bonds, Hodgson Russ LLP, Bond Counsel, proposes to deliver its final approving opinion in substantially the following form:*

November \_\_, 2022

City of Albany Capital Resource Corporation  
21 Lodge Street  
Albany, New York 12207

Re: City of Albany Capital Resource Corporation  
Tax-Exempt Revenue Bonds  
(Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022A  
in the aggregate principal amount of \$6,505,000

City of Albany Capital Resource Corporation  
Taxable Revenue Bonds  
(Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022B  
in the aggregate principal amount of \$2,810,000

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance on the date hereof of the Tax-Exempt Revenue Bonds (Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022A in the aggregate principal amount of \$6,505,000 (the “Series 2022A Bonds”) and Taxable Revenue Bonds (Albany College of Pharmacy and Health Sciences Refunding Project), Series 2022B in the aggregate principal amount of \$2,810,000 (the “Series 2022B Bonds”) and collectively with the Series 2022A Bonds, the “Initial Bonds”) by City of Albany Capital Resource Corporation (the “Issuer”) (a public instrumentality of City of Albany, New York), a New York not-for-profit corporation, created pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”).

The Initial Bonds are being issued under and pursuant to a bond resolution adopted by the members of the Issuer on October 20, 2022, a certificate of determination dated November \_\_, 2022 (the “Certificate of Determination”) executed by the Chairperson, Vice Chairperson or Chief Executive Officer of the Issuer and a trust indenture dated as of November 1, 2022 (the “Indenture”) by and between the Issuer and Manufacturers and Traders Trust Company, as trustee (the “Trustee”), in connection with a project (the “Initial Project”) to be undertaken by the Issuer for the benefit of Albany College of Pharmacy and Health Sciences (the “Institution”), said Initial Project consisting of the following:

(A) the refunding of all or a portion of the following bonds previously issued by the City of Albany Industrial Development Agency (the “Prior Issuer”):

(1) Civic Facility Revenue Bonds (CHF-Holland Suites, L.L.C. Project – Letter of Credit Secured), Series 2007A in the original aggregate principal amount of \$12,780,000 (the “Series 2007A Bonds”), which Series 2007A Bonds were issued on May 3, 2007 for the purpose of financing a portion of the costs of a project (the “Series 2007 Project”) consisting of the following: (a) the acquisition of a leasehold interest (the “2007 Lease Interest”) and a license interest (the “2007 License Interest”, and collectively with the 2007 Lease Interest, the “2007 Initial Land”) in (i) a portion (the “2007 Leased Building Portion”) of an existing building (the “Existing Building”) located on an approximately 7.1 acres parcel of land (the “Institution Parcel”) owned by the Institution and located at 84 Holland Avenue in the City of Albany, Albany County, New York, (ii) approximately 177 parking spaces (the “Leased Parking Spaces”) located on the Institution Parcel and designated from time to time by the Institution and CHF-Holland Suites, L.L.C. (the “Company”) and (iii) any improvements located in or on the 2007 Leased Building Portion or the Leased Parking Spaces (the “Leased Improvements”) (the 2007 Leased Building Portion, the Leased Parking Spaces and the Leased Improvements being sometimes collectively referred to as the “Leased Premises”), (b) the renovation of the Leased Premises (the “Initial Improvements”) (the Leased Premises as improved by the Initial Improvements being sometimes referred to as the “2007 Initial Facility”), and (c) the acquisition and installation thereon and therein of various furniture, fixtures, machinery and equipment (the “2007 Initial Equipment”) (the 2007 Initial Land, the 2007 Initial Facility and the 2007 Initial Equipment hereinafter collectively referred to as the “2007 Initial Project Facility”), all of the foregoing to constitute a facility to be owned by the Company and operated as a dormitory for college and university students of certain educational institutions, including, but not limited to, the Institution, and

(2) Tax-Exempt Civic Facility Revenue Bonds (CHF-Holland Suites II, L.L.C. Project – Letter of Credit Secured), Series 2008A in the original aggregate principal amount of \$6,495,000 (the “Series 2008A Bonds”), which Series 2008A Bonds were issued on January 25, 2008 for the purpose of financing a portion of the costs of a project (the “Series 2008 Project”) consisting of the following: (a) the acquisition of a leasehold interest (the “2008 Lease Interest”) and a license interest (the “2008 License Interest”, and collectively with the 2008 Lease Interest, the “2008 Initial Land”) in an approximately 36,000 square foot portion (the “2008 Leased Building Portion”) of the Existing Building located on the Institution’s Parcel, (b) the renovation of the 2008 Leased Building Portion (the 2008 Leased Building Portion, as renovated being referred to as the “2008 Initial Facility”), and (c) the acquisition and installation thereon and therein of various furniture, fixtures, machinery and equipment (the “2008 Initial Equipment”) (the 2008 Initial Land, the 2008 Initial Facility and the 2008 Initial Equipment hereinafter collectively referred to as the “2008 Initial Project Facility,” and collectively with the 2007 Initial Project Facility, the “Initial Project Facility”), all of the foregoing to constitute a facility to be owned and operated by CHF-Holland Suites II, L.L.C. (“CHF II”) as a dormitory for college and university students of certain educational institutions, including, but not limited to, the Institution; and

(B) the financing of all or a portion of the costs of the foregoing by the issuance of the Initial Bonds; (C) the paying of a portion of the costs incidental to the issuance of the Initial Bonds, including issuance costs of the Initial Bonds, any hedge termination fees and any reserve funds as may be necessary to secure the Initial Bonds and (D) the making of a loan (the “Loan”)

City of Albany Capital Resource Corporation

November \_\_\_\_, 2022

Page 3

of the proceeds of the Initial Bonds to the Institution pursuant to a loan agreement dated as of November 1, 2022 (the “Loan Agreement”) by and between the Issuer, as lender, and the Institution, as borrower.

The Initial Bonds are dated the date hereof, are issued as fully registered bonds without coupons and mature and bear interest at the rates set forth therein. The Initial Bonds are subject to (A) optional, special and mandatory redemption prior to maturity, and (B) acceleration prior to maturity, all as set forth in the Indenture and in the Initial Bonds.

The principal of, redemption premium, if any, and interest on the Initial Bonds are payable from loan payments to be made by the Institution under the Loan Agreement. As security for the Initial Bonds, the Issuer has executed and delivered to the Trustee a pledge and assignment dated as of November 1, 2022 (the “Pledge and Assignment”) which assigns to the Trustee certain of the Issuer’s rights under the Loan Agreement.

The (A) Institution’s obligation (1) to make all loan payments under the Loan Agreement and (2) to perform all obligations related thereto and (B) Issuer’s obligation to repay the Initial Bonds will be further secured by a guaranty dated as of November 1, 2022 (the “Guaranty”) from the Institution to the Trustee.

The Institution’s obligations pursuant to the Guaranty will be secured by a pledge and security agreement (the “Pledge and Security Agreement”) from the Institution to the Trustee, pursuant to which the Institution grants to the Trustee a security interest in the “Pledged Revenues” of the Institution (as defined therein) subject to a certain intercreditor agreement dated as of October 1, 2014 (the “2014 Interc Creditor Agreement”).

We have examined a specimen Initial Bond and executed counterparts of the Indenture, the Loan Agreement and the Pledge and Assignment (collectively, the “Issuer Documents”) and a certain tax regulatory agreement dated the date hereof from the Institution to the Trustee and the Issuer (the “Tax Regulatory Agreement”) and such certified proceedings and such other documents as we deemed necessary to render this opinion.

With respect to the due authorization, execution and delivery by the Institution of the agreements to which it is a party, we have relied on the opinion of Bond, Schoeneck & King PLLC, counsel to the Institution. With respect to the due authorization, execution and delivery by Manufacturers and Traders Trust Company, as trustee (both in its corporate capacity as signatory of the Indenture and in its capacity as Trustee) of the agreements to which it is a party, we have relied on the opinion of Barclay Damon LLP, counsel to the Trustee.

In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with the original documents of all documents submitted to us as copies. Furthermore, in rendering the following opinions, we have assumed that all documents executed by a person or persons other than the Issuer were duly executed and delivered by said other person or persons and that said documents constitute legal, valid and binding obligations of said person or persons enforceable against said person or persons in accordance with their terms.

In rendering the opinions expressed in paragraphs (D) and (E) below, we note that the exclusion of the interest on the Series 2022A Bonds from gross income for federal income tax purposes may be dependent, among other things, on compliance with the applicable requirements of Sections 145, 147, 148

City of Albany Capital Resource Corporation

November \_\_\_\_, 2022

Page 4

and 149 of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations thereunder (collectively, the “Tax Requirements”). In our opinion, the Tax Regulatory Agreement and the other Financing Documents (as defined in the Indenture) establish requirements and procedures, compliance with which will satisfy the Tax Requirements. It should be noted, however, that compliance with certain Tax Requirements necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 2022A Bonds may necessitate the taking of action, or refraining to take action, by persons not within the control of the Issuer or the Institution.

Based upon our examination of the foregoing and in reliance upon the matters and subject to the limitations contained herein, we are of the opinion, as of the date hereof and under existing law, as follows:

(A) The Issuer was duly created and is validly existing as a not-for-profit corporation under the laws of the State of New York with the corporate power to enter into and perform its obligations under the Issuer Documents and to issue the Initial Bonds.

(B) The Issuer Documents have been duly authorized, executed and delivered by the Issuer and are valid and binding special obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as specified below.

(C) The Initial Bonds have been duly authorized, executed and delivered by the Issuer and, assuming due authentication thereof by the Trustee, are valid and binding special obligations of the Issuer payable with respect to the Issuer solely from the revenues derived by the Issuer from the revenues derived from the Loan Agreement.

(D) The interest on the Series 2022A Bonds is excludable from gross income for federal income tax purposes and is not an “item of tax preference” for purposes of the individual and corporate alternative minimum taxes imposed by the Code; provided, however, that (a) the Institution or another Person, by failing to comply with the Tax Requirements, may cause interest on the Series 2022A Bonds to become subject to federal income taxation from the date of issuance thereof, and (b) interest on the Series 2022A Bonds is included in determining (i) the branch profits tax imposed on foreign corporations doing business in the United States under Section 884 of the Code, (ii) passive investment income for purposes of computing the tax on net passive income imposed on certain subchapter S corporations under Section 1375 of the Code, (iii) the modified adjusted gross income of a taxpayer for purposes of computing the portion of Social Security or Railroad Retirement benefits included in gross income under Section 86 of the Code, and (iv) for tax years beginning after December 31, 2022, the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code.

(E) The Series 2022A Bonds do not constitute “arbitrage bonds”, within the meaning of Section 148 of the Code, except as specified below.

(F) So long as interest on the Series 2022A Bonds is excluded from gross income for federal income tax purposes, the interest on the Series 2022A Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York).

(G) For tax years beginning after December 31, 2022, interest on the Series 2022A Bonds will be included in the “adjusted financial statement income” of certain corporations that are subject to the alternative minimum tax under Section 55 of the Code.



City of Albany Capital Resource Corporation

November \_\_\_\_, 2022

Page 5

(H) The interest on the Series 2022B Bonds is not excludable from gross income for federal income tax purposes and interest on the Series 2022B Bonds is not exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York).

(I) The Initial Bonds do not constitute a debt of the State of New York or of the City of Albany, New York, and neither the State of New York nor the City of Albany, New York is liable thereon.

We call your attention to the fact that the Institution or another person, by failing to comply with the Tax Requirements as set forth in the Code and the Tax Regulatory Agreement, may cause interest on the Series 2022A Bonds to become subject to federal income taxation from the date hereof. We express no opinion regarding other federal tax consequences arising with respect to the Series 2022A Bonds.

Any opinion concerning the validity, binding effect or enforceability of any document (A) means that (1) such document constitutes an effective contract under applicable law, (2) such document is not invalid in its entirety under applicable law because of a specific statutory prohibition or public policy, and is not subject in its entirety to a contractual defense under applicable law and (3) subject to the following sentence, some remedy is available under applicable law if the person concerning whom such opinion is given is in material default under such document, but (B) does not mean that (1) any particular remedy is available under applicable law upon such material default or (2) every provision of such document will be upheld or enforced in any or each circumstance by a court applying applicable law. Furthermore, the validity, binding effect or enforceability of any document may be limited to or otherwise affected by (A) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statute, rule, regulation or other law affecting the enforcement of creditors' rights and remedies generally or (B) the unavailability of, or any limitation on the availability of, any particular right or remedy (whether in a proceeding in equity or law) because of the discretion of a court or because of any equitable principle or requirement as to commercial reasonableness, conscionability or good faith.

We express no opinion with respect to (A) title to all or any portion of the Initial Project Facility, (B) the priority of any liens, charges, security interests or encumbrances affecting the Initial Project Facility or any part thereof (or the effectiveness of any remedy which is dependent upon the existence of title to the Initial Project Facility or the priority of any such lien, charge, security interest or encumbrance), (C) any laws, regulations, judgments, permits or orders with respect to zoning, subdivision matters or requirements for the physical commencement and continuance of the construction, reconstruction, installation, occupancy or operation of the Initial Project Facility or with respect to the requirements of filing or recording of any of the Financing Documents, or (D) the laws of any jurisdiction other than the State of New York and other than the securities and the tax laws of the United States of America.

Certain agreements, requirements and procedures contained or referred to in the Indenture, the Loan Agreement, the Tax Regulatory Agreement and the other Financing Documents may be changed and certain actions may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents. No opinion with respect to the exclusion of interest on the Series 2022A Bonds from gross income for federal income tax purposes is expressed herein as to the Series 2022A Bonds if any such change occurs or action is taken or omitted upon the advice or approval of counsel other than Hodgson Russ LLP.

City of Albany Capital Resource Corporation

November \_\_\_\_, 2022

Page 6

The scope of our engagement has extended solely to the examination of the facts and law incident to rendering the opinions expressed herein. Attention is called to the fact that we have not been requested to examine and have not examined any documents or information relating to the Institution or the Initial Project Facility other than specifically hereinabove referred to, and no opinion is expressed as to any financial or other information, or the adequacy thereof, which has been or may be supplied to any purchaser of the Initial Bonds.

Our opinions set forth herein are based upon the facts in existence and the laws in effect on the date hereof and we expressly disclaim any obligation to update our opinions herein, regardless of whether changes in such facts or laws come to our attention after the delivery hereof

We have rendered this opinion solely for your benefit and this opinion may not be relied upon by, nor copies hereof delivered to, any other person without our prior written approval.

Very truly yours,

HODGSON RUSS LLP

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





EST. 1881

Albany College of Pharmacy  
AND HEALTH SCIENCES



Printed by: ImageMaster, LLC  
www.imagemaster.com