

RESOLUTION NO. 03- 242

A RESOLUTION PROVIDING FOR AND AUTHORIZING THE ISSUANCE BY ST. JOHNS COUNTY, FLORIDA, OF ITS EDUCATIONAL FACILITIES REVENUE BONDS (FLAGLER COLLEGE, INC. PROJECT), SERIES 2003, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$5,500,000, AND PROVIDING FOR AND AUTHORIZING A LOAN BY THE COUNTY TO FLAGLER COLLEGE, INC., A FLORIDA NOT FOR PROFIT CORPORATION, IN A PRINCIPAL AMOUNT EQUAL TO THE PRINCIPAL AMOUNT OF SAID BONDS, FOR THE PURPOSE OF FINANCING ALL OR A PART OF THE COST OF THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF NEW STUDENT HOUSING FACILITIES AND RELATED PARKING SPACES TO BE LOCATED ON SAID CORPORATION'S CAMPUS IN ST. JOHNS COUNTY, FLORIDA; PROVIDING THAT SAID BONDS SHALL NOT CONSTITUTE A GENERAL DEBT OR LIABILITY OF THE COUNTY, OR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, BUT SHALL BE PAYABLE SOLELY FROM THE REVENUES HEREIN PROVIDED; APPOINTING A BOND TRUSTEE; AUTHORIZING A NEGOTIATED SALE OF SAID BONDS; AUTHORIZING THE AWARD OF THE SALE OF SAID BONDS; APPROVING A PRELIMINARY OFFICIAL STATEMENT RELATING TO THE BONDS AND AUTHORIZING A FINAL OFFICIAL STATEMENT RELATING TO THE BONDS; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS REQUIRED IN CONNECTION WITH THE FOREGOING; PROVIDING CERTAIN OTHER DETAILS IN CONNECTION THEREWITH; ALL PURSUANT TO CHAPTER 125, FLORIDA STATUTES, AS AMENDED, AND OTHER APPLICABLE PROVISIONS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to Chapter 125, Florida Statutes, as amended, Ordinance No. 03- 101 of St. Johns County, Florida (the "Issuer") enacted on DEC 2, 2003, and other applicable provisions of law. The Issuer is acting through its Board of County Commissioners (the "Governing Body"), which is vested with the general legislative powers of the Issuer.

SECTION 2. DEFINITIONS. Unless the context otherwise requires, all terms used herein in capitalized forms shall have the meanings specified in this section. Words importing the singular shall include the plural, words importing the plural shall include the singular, and words importing persons shall include corporations and other entities or associations.

“Act” means Chapter 125, Florida Statutes, as amended, and Ordinance No. 03-101 of the Issuer enacted on DECEMBER 2, 2003.

“Bond Counsel” means the law firm of Foley & Lardner, Jacksonville, Florida.

“Bond Purchase Agreement” means the Bond Purchase Agreement to be executed by and among the Issuer, the Borrower and the Purchaser, substantially in the form attached hereto as Exhibit C and incorporated herein by reference.

“Bonds” means the bonds of the Issuer to be designated “St. Johns County, Florida Educational Facilities Revenue Bonds (Flagler College, Inc. Project), Series 2003,” in an aggregate principal amount not to exceed \$5,500,000, substantially in the form and with the rates of interest, maturity dates and other details provided for herein, in the Trust Indenture and in the Bond Purchase Agreement, to be authorized and issued by the Issuer, authenticated by the Trustee and delivered under the Trust Indenture. See Exhibit A to the Trust Indenture for the form of the Bonds.

“Borrower” means Flagler College, Inc., a Florida not for profit corporation, and any successor, surviving, resulting or transferee Person as provided in the Loan Agreement.

“Chair” means the Chair or Vice Chair of the Governing Body, or such other person as may be authorized by the Issuer to act in the place of the Chair or Vice Chair.

“Clerk” means the Clerk of the Circuit Court of St. Johns County, Florida, ex officio Clerk of the Governing Body.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and the Regulations thereunder, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

“County” means St. Johns County, Florida.

“County Administrator” means the County Administrator of the Issuer.

“Credit Provider” means SunTrust Bank, a Georgia banking corporation, and its successors and assigns.

“Governing Body” means the Board of County Commissioners of the Issuer.

“Issuer” means St. Johns County, Florida, a political subdivision of the State, and its successors and assigns.

“Letter of Credit” means the irrevocable direct pay Letter of Credit to be executed by the Credit Provider, in favor of the Trustee, substantially in the form attached hereto as Exhibit D and incorporated herein by reference.

“Loan Agreement” means the Loan Agreement to be executed by and between the Issuer and the Borrower, substantially in the form attached hereto as Exhibit B and incorporated herein by reference.

“Official Statement” means the Official Statement relating to the offering and sale of the Bonds, substantially in the form attached hereto as Exhibit F and incorporated herein by reference.

“Person” or words importing persons means firms, associations, partnerships (including, without limitation, general and limited partnerships), joint ventures, limited liability companies, corporations, societies, estates, trusts, public or governmental bodies, other legal entities and natural persons.

“Preliminary Official Statement” shall mean the Preliminary Official Statement relating to the Bonds, attached hereto as Exhibit E and incorporated herein by reference.

“Project” means the project of the Borrower described in Section 3(B) of this Resolution and in Exhibit A to the Loan Agreement.

“Purchaser” means SunTrust Capital Markets, Inc., a Tennessee corporation, and its successors and assigns.

“Remarketing Agent” means SunTrust Capital Markets, Inc., a Tennessee corporation, in its capacity as such, and any Person meeting the qualifications of and designated from time to time to act as Remarketing Agent under Article XIII of the Trust Indenture.

“Remarketing Agreement” means a Remarketing Agreement to be executed by and between the Borrower and the Remarketing Agent, substantially in the form attached hereto as Exhibit G and incorporated herein by reference.

“State” means the State of Florida.

“Trust Indenture” means the Indenture of Trust to be executed by and between the Issuer and the Trustee, substantially in the form attached hereto as Exhibit A and incorporated herein by reference.

“Trustee” means SunTrust Bank, a Georgia banking corporation, and any successor banking organization, banking association or trust Borrower at the time serving as corporate trustee under the provisions of the Trust Indenture.

SECTION 3. FINDINGS. The Issuer hereby finds, determines and declares as follows:

A. The Issuer is a political subdivision of the State duly created and validly existing under the laws of the State, and is duly authorized and empowered by the Act to finance the acquisition, construction, reconstruction, improvement, rehabilitation, renovation, expansion and enlargement, or additions to, furnishing and equipping of any capital "project" as defined in the Act, including land, rights in land, buildings and other structures, machinery, equipment, appurtenances and facilities incidental thereto, and other improvements necessary and convenient therefor, and to obtain funds to finance the cost thereof by the issuance of its revenue bonds, for the purposes of promoting and fostering the economic growth and development of the County, advancing and improving the economic prosperity and welfare of the County and its inhabitants, increasing the opportunities for this and future generations of youth and adults to learn and to develop their intellectual and mental capabilities, and otherwise providing for and contributing to the higher education, health, safety and welfare of the inhabitants of the County.

B. The Borrower has requested that the Issuer issue the Bonds for the purpose of financing all or a part of the cost of a capital project consisting of (a) the acquisition, construction and installation of new student housing facilities to be located on the northeast corner of the intersection of Cedar Street and Martin Luther King Avenue on a site containing approximately one acre, in St. Augustine, Florida, consisting of the construction of a new three-story building containing approximately 33,000 square feet and the acquisition and installation of related fixtures, furnishings and equipment, (b) and the construction of related parking spaces, consisting of the construction of approximately 48 new parking spaces on the site of the new building between the new building and the adjacent property, and the improvement of an existing parking lot located on the southeast corner of the intersection of Cedar Street and Martin Luther King Avenue, to provide approximately 52 parking spaces, all to be located on the Borrower's campus, the main address of which is 74 King Street in St. Augustine, and to be owned and operated by the Borrower (collectively, the "Project").

C. A public hearing was held by the Governing Body of the Issuer, on December 2, 2003, upon public notice published in the St. Augustine Record, a newspaper of general circulation in St. Johns County, Florida, not less than 14 days prior to the scheduled date of such public hearing, at which hearing members of the public were offered reasonable opportunity to be heard on all matters pertaining to the location and nature of the proposed Project and to the issuance of the Bonds. The public hearing provided a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the proposed issuance of the Bonds and the location and nature of the Project, and was held in a location which, under the facts and circumstances, was convenient for residents of the affected governmental units. The notice was reasonably designed to inform residents of the affected governmental units of the proposed issue, stated that the Issuer would be the issuer of the Bonds, stated the time and place for the hearing, and contained the information required by the Code. The 14-day period was adequate for notice to be brought to the attention of all interested persons, exceeds the normal periods for notices of public hearings conducted by other affected governmental units, various agencies thereof and the State, and provided sufficient time for interested persons to prepare for and express their views at such hearing.

D. Bond Counsel has prepared and the Borrower has requested the Issuer to approve and authorize the issuance of the Bonds and the execution and delivery of related documents submitted to the Issuer and described in this Resolution.

E. Upon consideration of the documents described herein and the information presented to the Issuer at or prior to the adoption of this Resolution, including the information and views presented at the aforesaid public hearing, the Issuer has made and does hereby make the following findings and determinations:

(1) The Borrower is an “Institution for Higher Education” within the meaning of the Act, and the Project will be located within the County.

(2) The Borrower has shown that the Project is appropriate to the needs and circumstances of, and shall make a significant contribution to the educational and economic growth of, the County and will serve a public purpose by advancing the economic prosperity, public health, the education and/or general welfare of the County and its people, and shall server other predominantly public purposes as set forth in the Act.

(3) The Borrower has adequately shown that it is a financially responsible party fully capable and willing to fulfill its obligations under the Loan Agreement, including the obligations to make payments in the amounts and at the times required, to operate, repair and maintain, at its own expense, the Project, and to serve the purposes of the Act and such other responsibilities as may be required under the Loan Agreement, taking into consideration the factors set forth in the Act.

(4) The County and/or the City of St. Augustine will be able to cope satisfactorily with the impact of the Project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair and maintenance of the Project and on account of any increases in population or other circumstances resulting therefrom.

(5) Adequate provision has been made for the operation, repair and maintenance of the Project at the expense of the Borrower and for the payment of principal of and interest on the Bonds.

(6) The costs to be paid from the proceeds of the Bonds are “costs” of a “project” within the meaning of the Act.

(7) Upon the issuance of the Bonds, the Issuer shall receive the opinion of Bond Counsel to the effect (among other things) that the interest on the Bonds will be excludable from gross income for federal income tax purposes.

(8) The Borrower has shown that the Project will benefit the people of the County, increase their commerce, welfare and prosperity and improve their health and living conditions by assisting the youth and adults in the County in achieving higher levels of learning and advanced development of their intellectual and mental capacities;

and that it will serve other predominately public purposes as set forth in the Act. It is desirable and will further the public purposes of the Act, and it will most effectively serve the purposes of the Act, for the Issuer to finance the Project and to issue and sell the Bonds under the Trust Indenture for the purpose of providing funds to finance the Project, all as provided in the documents referred to herein, which contain such provisions as are necessary or convenient to effectuate the purposes of the Act.

(9) The Issuer is not obligated to pay the Bonds except from the proceeds derived from the repayment of the loan to the Borrower, or from the other security pledged therefor, and neither the faith and credit of the Issuer nor the faith and credit or taxing power of the County, or of the State or any political subdivision thereof, is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. No owner or holder of any of the Bonds shall ever have the power, directly or indirectly, to compel the exercise of the ad valorem taxing power for the payment of the principal of or premium, if any, or interest on any of the Bonds.

(10) The payments required to be made by the Borrower under the Loan Agreement will be sufficient to pay the principal of and premium, if any, and interest on the Bonds, when and as the same shall become due, and all other costs incurred in connection with the Project, except as may be paid out of the proceeds of sale of the Bonds or otherwise, and to make all other payments required by the Trust Indenture.

(11) The Borrower, in order to enhance the marketability of the Bonds, has requested the Credit Provider to issue the Letter of Credit to the Trustee to provide for and secure the payment of the principal and interest on the Bonds as provided in the Trust Indenture. The Credit Provider will issue the Letter of Credit concurrently with the issuance and delivery of the Bonds.

(12) A negotiated sale of the Bonds is required and necessary and is in the best interest of the Issuer for the following reasons: the Bonds will be special and limited obligations of the Issuer payable out of moneys derived by the Issuer from the Borrower's operations and as otherwise provided herein; the Borrower will be required to pay all costs of the administration of the Project and to operate and maintain the Project at its own expense; the cost of issuance of the Bonds, which must be borne directly by the Borrower, would most likely be greater if the Bonds are sold at public sale by competitive bids than if the Bonds are sold at negotiated sale, and there is no basis for, considering prevailing marketing conditions, or any expectation that, the terms and conditions of a sale of the Bonds at public sale by competitive bids would be any more favorable than at negotiated sale; because prevailing market conditions are uncertain, it is desirable to sell the Bonds at a predetermined price; and revenue bonds having the characteristics of the Bonds are typically sold at negotiated sale.

(13) The Purchaser will use reasonable efforts to submit to the Issuer an offer to purchase the Bonds in the form of the Bond Purchase Agreement upon terms acceptable to the Issuer as hereinafter authorized, and the Issuer does hereby find and determine that it is in the best financial interest of the Issuer to accept the offer of the Purchaser to purchase the Bonds at a negotiated sale and to authorize the execution and delivery of the Bond Purchase

Agreement in the manner and upon the terms hereinafter provided. Upon the execution of the Bond Purchase Agreement by the Issuer, the Borrower and the Purchaser, the Bonds shall be sold to the Purchaser pursuant to the terms and provisions of the Bond Purchase Agreement.

(14) Prior to the execution of a Bond Purchase Agreement, the Purchaser shall provide the Issuer with a disclosure statement, satisfactory to the Issuer, containing the information required by Section 218.385, Florida Statutes, as amended, such satisfaction to be evidenced by the Issuer's execution and delivery of the Bond Purchase Agreement. The Issuer shall not require any further disclosure pursuant to Section 218.385, Florida Statutes, as amended.

(15) All requirements precedent to the adoption of this Resolution, of the Constitution and other laws of the State, including the Act, have been complied with.

(16) The purposes of the Act will be most effectively served by the acquisition, construction and installation of the Project by the Borrower, as independent contractor and not as agent of the Issuer, as provided in the Loan Agreement.

**SECTION 4. FINANCING OF PROJECT AUTHORIZED.** The financing by the Issuer of the Project in the manner provided herein is hereby authorized.

**SECTION 5. AUTHORIZATION OF BONDS.** For the purpose of providing funds to (i) pay or reimburse costs of the Project, and (ii) pay the costs of issuing the Bonds, and subject and pursuant to the provisions hereof, the issuance of the Bonds in an aggregate principal amount of not to exceed \$5,500,000 is hereby authorized. The Bonds shall be designated as provided in Section 2 hereof, shall be issued in one or more series and shall be subject to payment as provided in the Trust Indenture and shall be issued in the name of and delivered to the Purchaser, or as directed by the Purchaser, as provided in the Bond Purchase Agreement. The Chair, Clerk and/or County Administrator are hereby authorized to sign and deliver the Bonds to the Purchaser upon the complete execution of the Trust Indenture, the Loan Agreement and the Remarketing Agreement by each of the parties thereto.

The Bonds shall be in the aggregate principal amounts, dated such dates, shall bear interest at such rates, shall be payable or shall mature on such dates and in such amounts, shall be issued in such denominations, shall be subject to optional and mandatory redemption and tender at such time or times, and upon such terms and conditions, shall be payable at the place or places and in the manner, shall be executed, authenticated and delivered, shall otherwise be in such forms, and subject to such terms and conditions, all as provided in the Trust Indenture and the Bond Purchase Agreement. Authority for the issuance of such aggregate principal amount of the Bonds herein authorized which shall not be hereafter delivered to the Purchaser pursuant to the provisions of the Bond Purchase Agreement is hereby cancelled and rescinded.

The Bonds and the premium, if any, and the interest thereon shall not be deemed to constitute a general debt, liability or obligation of the Issuer, the County or the State, or of any political subdivision thereof, or a pledge of the faith and credit of the Issuer, the County or the State or of any political subdivision thereof, but shall be payable solely from the revenues

provided therefor, and the Issuer is not obligated to pay the Bonds or the interest thereon except from the revenues and proceeds pledged therefor and neither the faith and credit nor the taxing power of the Issuer, the County, the State or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the Bonds.

**SECTION 6. AUTHORIZATION OF EXECUTION AND DELIVERY OF LOAN AGREEMENT.** As authorized by and in conformity with the Act, it is desirable and in the public interest that the Issuer loan funds to the Borrower to finance the Project in the manner provided herein and in the Loan Agreement, such loan to be evidenced by and to be made pursuant to the Loan Agreement. The Loan Agreement, substantially in the form attached hereto as Exhibit B, with such changes, corrections, insertions and deletions as may be approved by the Chair, such approval to be evidenced conclusively by execution thereof, is hereby approved and authorized; the Issuer hereby authorizes and directs the Chair to date and execute the Loan Agreement, and to deliver the Loan Agreement to the Borrower; and all of the provisions of each Loan Agreement, when executed and delivered by the Issuer as authorized herein and by the Borrower, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

**SECTION 7. AUTHORIZATION OF EXECUTION AND DELIVERY OF TRUST INDENTURE.** In order to secure the payment of the principal of and premium, if any, and interest on the Bonds herein authorized, according to their tenor, purport and effect, and in order to secure the performance and observance of all the covenants, agreements and conditions in the Bonds, the Issuer has agreed to enter into the Trust Indenture with the Trustee. The Trust Indenture, substantially in the form attached hereto as Exhibit A, with such changes, corrections, insertions and deletions as may be approved by the Chair, such approval to be evidenced conclusively by execution thereof, is hereby approved and authorized; the Issuer hereby authorizes and directs the Chair, to date and execute the Trust Indenture, and deliver the Trust Indenture to the Trustee; and all of the provisions of the Trust Indenture, when executed and delivered by the Issuer as authorized herein and by the Trustee, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

**SECTION 8. SALE OF BONDS; AUTHORIZATION OF EXECUTION AND DELIVERY OF THE BOND PURCHASE AGREEMENT.** A negotiated sale of the Bonds is hereby authorized. The Chair or the County Administrator is hereby authorized and directed to award the sale of the Bonds to the Purchaser pursuant to the provisions of the Bond Purchase Agreement. The Bond Purchase Agreement, substantially in the form attached hereto as Exhibit C, with such changes, corrections, insertions and deletions as may be approved by the Borrower, the Purchaser and the Chair or the County Administrator, such approval to be evidenced conclusively by their execution thereof, is hereby approved and authorized; the Issuer hereby authorizes and directs the Chair or the County Administrator to date and execute the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Purchaser; and all of the provisions of the Bond Purchase Agreement when executed and delivered by the Issuer as authorized herein and by the Borrower and the Purchaser, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.



SECTION 9. APPROVAL OF LETTER OF CREDIT SECURING BONDS. To provide additional security for the payment of the Bonds, the Borrower has agreed to obtain a Letter of Credit from the Credit Provider. The Letter of Credit, substantially in the form attached hereto as Exhibit D, is hereby approved, subject to such changes, insertions and omissions and such filling of blanks therein as may be approved in such form by the Borrower and the Credit Provider and by the Chair, such approval by the Chair to be evidenced conclusively by such officer's execution of the Trust Indenture; and all of the provisions of the Letter of Credit, when executed by the Credit Provider and delivered to the Trustee as authorized herein, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 10. APPROVAL OF REMARKETING AGREEMENT. In order to obtain the lowest possible interest rate in connection with the initial issuance of the Bonds, the Borrower has agreed to permit the Bonds to contain provisions allowing them to be "put" back to the Borrower by the holders of the Bonds and then be remarketed, and to the extent that they cannot be remarketed, the Letter of Credit will be drawn upon to provide funds for the Borrower to purchase the Bonds. In order to accommodate such plan of financing, the Borrower has agreed to enter into a Remarketing Agreement with the Remarketing Agent. The Remarketing Agreement, substantially in the form attached hereto as Exhibit G, is hereby approved, subject to such changes, insertions and omissions and such filling of blanks therein as may be approved in such form by the Borrower and the Remarketing Agent and by the Chair, such approval by the Chair to be evidenced conclusively by such officer's execution of the related Trust Indenture; and all the provisions of the Remarketing Agreement, when executed and delivered by the Borrower and the Remarketing Agent, shall be deemed to be a part of this Resolution as fully as if incorporated verbatim herein. The Issuer hereby delegates to the Remarketing Agent under the Remarketing Agreement such authority that is set forth in the Remarketing Agreement as is necessary for the establishment of the interest rate on the Bonds pursuant to the terms of the Indenture and the Remarketing Agreement and to carry out all duties established by the Remarketing Agreement.

SECTION 11. AUTHORIZATION OF PRELIMINARY OFFICIAL STATEMENT. The Preliminary Official Statement attached hereto as Exhibit E, with such changes, corrections, insertions and deletions as may be approved by the Chair of the Issuer, is hereby authorized to be delivered by the Issuer to the Purchaser for distribution prior to or contemporaneously with the issuance and delivery of the Bonds. The Chair of the Issuer is hereby authorized to approve the final form and content of the Preliminary Official Statement on behalf of the Issuer and such approval shall be evidenced by delivery of the Preliminary Official Statement to the Purchaser.

SECTION 12. APPROVAL AND AUTHORIZATION OF OFFICIAL STATEMENT. An official statement relating to the Bonds in substantially the form of the Preliminary Official Statement attached hereto as Exhibit E, with such changes, corrections, insertions and deletions as may be approved by the Chair or the County Administrator, is hereby authorized to be delivered by the Issuer to the Purchaser for distribution prior to or contemporaneously with the issuance and delivery of the Bonds. The Chair or the County Administrator is hereby authorized to approve the final form and content of the Official Statement on behalf of the Issuer and is authorized to deem the Official Statement final as of its date on behalf of the Issuer for purposes

of Rule 15c2-12 and to execute a certificate to that effect to be delivered to the Purchaser. The Chair or the County Administrator is hereby authorized to evidence the Issuer's approval thereof by execution of one or more copies of the Official Statement, and approval of all such changes, corrections, insertions and deletions shall be conclusively presumed from such execution of any copy of any Official Statement.

SECTION 13. ASSIGNMENT OF LOAN AGREEMENT. All rights of the Issuer under the Loan Agreement (other than certain rights of the Issuer reserved therein) will be assigned by the Issuer to the Trustee under the terms of the Trust Indenture.

SECTION 14. APPOINTMENT OF TRUSTEE. SunTrust Bank, with its designated corporate trust office presently located in the City of Orlando, Florida, is hereby appointed as the Trustee under the Trust Indenture and as registrar, paying agent and tender agent with respect to the Bonds.

SECTION 15. VALIDATION. The Bonds shall not be required to be validated pursuant to Chapter 75, Florida Statutes, as amended; provided, however, that if required by counsel to the Issuer, counsel to the Borrower or Bond Counsel, the Bonds may be validated and in such event Issuer's counsel is hereby authorized, at the expense of the Borrower, to prepare validation pleadings on behalf of the Issuer and to take any and all action as Issuer's counsel may deem necessary or desirable for the validation of the Bonds.

SECTION 16. DESIGNATIONS OF SIGNATORIES. The Chair is hereby authorized to designate by written certificate one or more authorized signatories to execute any and all instruments, documents and certificates in his place. Such signature shall have the effect of the Chair's signature as authorized in this Resolution.

SECTION 17. AUTHORIZATION OF EXECUTION OF OTHER CERTIFICATES AND INSTRUMENTS. The Chair and the Clerk are hereby authorized and directed, either alone or jointly, to execute and deliver: (i) certificates of the Issuer certifying such facts as the Issuer's counsel or Bond Counsel shall require in connection with the issuance, sale and delivery of the Bonds, (ii) such certificates as may be required under Section 103 of the Code or under the provisions of Florida law, (iii) such amendments and supplements to the Trust Indenture and the Loan Agreement and other agreements and instruments as shall be necessary or desirable in connection with the delivery of any credit enhancement or liquidity facilities relating to the Bonds, after consultation with and approval by counsel to the Issuer, and (iv) such other agreements and instruments, including but not limited to, tax compliance agreements, deeds, assignments, bills of sale and financing statements, as shall be necessary or desirable to perform the Issuer's obligations under the Loan Agreement, Trust Indenture and Bond Purchase Agreement, and to consummate the transactions hereby authorized.

SECTION 18. NO PERSONAL LIABILITY. No representation, statement, covenant, warranty, stipulation, obligation or agreement herein contained, or contained in the Bonds or the documents referred to herein or any certificate or other instrument to be executed on behalf of the Issuer in connection with the issuance of the Bonds, shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member of the

Governing Body, officer, employee or agent of the Issuer in his or her individual capacity, and none of the foregoing persons nor any officer of the Issuer executing the Bonds or any document referred to herein or any certificate or other instrument to be executed in connection with the issuance of the Bonds shall be liable personally thereon or be subject, to any personal liability or accountability by reason of the execution or delivery thereof.

**SECTION 19. NO THIRD PARTY BENEFICIARIES.** Except as otherwise expressly provided herein, in the Bonds or in the documents referred to herein, nothing in this Resolution, the Bonds or the documents, express or implied, is intended or shall be construed to confer upon any person, firm, corporation or other organization, other than the Issuer, the Borrower, the Trustee, the Credit Provider and the Purchaser (and subsequent holders from time to time) of the Bonds any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, or of the Bonds or the documents, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the Issuer, the Borrower, the Trustee, the Credit Provider and the Purchaser (and subsequent holders from time to time) of the Bonds .

**SECTION 20. PREREQUISITES PERFORMED.** All acts, conditions and things relating to the passage of this Resolution, to the issuance, sale and delivery of the Bonds, and to the execution and delivery of the Loan Agreement, Trust Indenture and Bond Purchase Agreement, required by the Constitution or other laws of the State, to happen, exist and be performed precedent to the passage hereof, and precedent to the issuance, sale and delivery of the Bonds, to the execution and delivery of the Loan Agreement, Trust Indenture and Bond Purchase Agreement, have either happened, exist and have been performed as so required or will have happened, will exist and will have been performed prior to such execution and delivery.

**SECTION 21. COMPLIANCE WITH CHAPTER 218, PART III, FLA. STATS.** The Issuer hereby approves and authorizes the completion, execution and filing with the Division of Bond Finance of the State Board of Administration of the State of Florida, at the expense of the Borrower, of advance notice of the impending sale of the Bonds, of Bond Information Form BF 2003/2004, and of a copy of Internal Revenue Service Form 8038, and any other acts as may be necessary to comply with Chapter 218, Part III, Florida Statutes, as amended.

**SECTION 22. GENERAL AUTHORITY.** The members of the Governing Body and the Issuer's officers, attorneys, agents and employees are hereby authorized to do all acts and things required of them by this Resolution, the Bonds, and the Loan Agreement, Trust Indenture and Bond Purchase Agreement, and to do all acts and things which are desirable and consistent with the requirements hereof or of the Bonds, and the Loan Agreement, Trust Indenture and Bond Purchase Agreement, for the full, punctual and complete performance of all the terms, covenants and agreements contained herein or in the Bonds, or in the Loan Agreement, Trust Indenture and Bond Purchase Agreement.

**SECTION 23. SEVERABILITY OF INVALID PROVISIONS.** If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants,

agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions, and shall in no way affect the validity of any of the other provisions hereof or of the Bonds.

SECTION 24. REPEALING CLAUSE. All resolutions or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

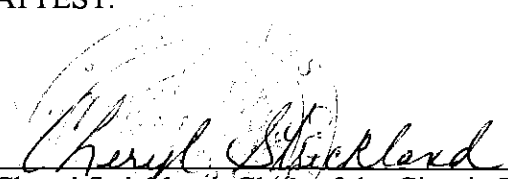
SECTION 25. EFFECTIVE DATE. This Resolution shall become effective on the later of December 9, 2003 or the date that St. Johns County ordinance number 2003-101 becomes effective.

PASSED, APPROVED AND ADOPTED this 9 day of December, 2003.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By:   
Karen R. Stern, Chair

ATTEST:

  
Cheryl Strickland, Clerk of the Circuit Court  
for St. Johns County, ex officio Clerk of the  
Board of County Commissioners

Effective date: 12-09-03

**LIST OF EXHIBITS**

EXHIBIT A – Indenture of Trust

EXHIBIT B – Loan Agreement

EXHIBIT C – Bond Purchase Agreement

EXHIBIT D – Letter of Credit

EXHIBIT E – Preliminary Official Statement

EXHIBIT F – Remarketing Agreement

**EXHIBIT A**

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ST. JOHNS COUNTY, FLORIDA

AND

SUNTRUST BANK,  
as Trustee

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INDENTURE OF TRUST

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Dated as of December 1, 2003

Relating to

\$5,500,000  
St. Johns County, Florida  
Educational Facilities Revenue Bonds  
(Flagler College, Inc. Project),  
Series 2003

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(This Table of Contents is not a part of the Indenture of Trust and is only for convenience of reference.)

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## **INDENTURE OF TRUST**

**THIS INDENTURE OF TRUST**, dated as of December 1, 2003, between ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida created and existing under the Constitution and Laws of the State of Florida (the "Issuer") and SUNTRUST BANK, a Georgia banking corporation (the "Trustee");

### **W I T N E S S E T H :**

**WHEREAS**, the Issuer is empowered pursuant to Chapter 125, Florida Statutes, as amended, and Ordinance No. 03-\_\_\_\_ of the Issuer enacted on \_\_\_\_\_, 2003 (the "Act"), to issue its bonds for the purpose of financing the acquisition, construction, reconstruction, improvement, rehabilitation, renovation, expansion and enlargement, or additions to, furnishing and equipping of any capital project for any "project" (as defined in the Act), including land, rights in land, buildings and other structures, machinery, equipment, appurtenances and facilities incidental thereto, and other improvements necessary or convenient therefore, and to obtain funds to finance the cost thereof by the issuance of its revenue bonds for the purposes or promoting and fostering the economic growth and development of the Issuer, advancing and improving the economic prosperity and the welfare of the Issuer and its inhabitants, increasing the opportunities for this and future generations of youth and adults to learn and to develop their intellectual and mental capabilities, and otherwise providing for and contributing to the health, safety and welfare of the inhabitants of the Issuer, and the Issuer is further authorized by the Act to pledge and assign as security for the payment of the principal of and interest on such bonds any revenues derived by the Issuer pursuant to financing agreements with respect to such projects; and

**WHEREAS**, Flagler College, Inc., a Florida not-for-profit corporation (the "Borrower"), has requested that the Issuer finance, pursuant to such authority and in accordance with the Act, the costs of acquiring, constructing and installing the Project hereinafter described; and

**WHEREAS**, based upon representations by the Borrower, the Issuer has found and determined that the Issuer's financing of the costs of acquiring, constructing and installing the Project to be acquired, constructed and installed in the manner provided in the Act and pursuant to the provisions of the Loan Agreement hereinafter described will constitute the carrying out of a vital public purposes, which will benefit and protect the health, safety and general welfare, and will promote and improve the higher education of the inhabitants of the Issuer, and will serve one or more of the public purposes set forth above, and has authorized the financing of the Project in the manner hereinafter provided; and

**WHEREAS**, in furtherance of the Issuer's public purpose, the Issuer proposes to issue its \$5,500,000 in principal amount Educational Facilities Revenue Bonds (Flagler College, Inc. Project), Series 2003 (the "Bonds") pursuant to this Indenture, to finance the acquisition, construction and equipping of new student housing facilities, and related parking, to be located on the Borrower's campus in St. Augustine, Florida (the "Project"), and to lend the proceeds of the sale of the Bonds to Flagler College, Inc., a Florida not for profit corporation (the

“Borrower”), pursuant to a Loan Agreement (the “Agreement”) of even date herewith between the Issuer and the Borrower; and

**WHEREAS**, it has been determined that the estimated amount necessary to finance the cost of the acquisition, construction and equipping of the Project, including necessary expenses incidental to the issuance of the Bonds, will require the issuance, sale and delivery of Bonds in the aggregate principal amount of \$5,500,000, as hereinafter provided; and

**WHEREAS**, all things necessary to make the Bonds when authenticated by the Trustee and issued as in this Indenture provided, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid assignment and pledge of the payments under the Agreement (except for “Reserved Rights” as hereinafter defined) for payment of the principal or Purchase Price of, premium, if any, and interest on the Bonds, and to constitute this Indenture a valid assignment of the rights of the Issuer under the Agreement except as otherwise stated herein, have been done and performed, and the creation, execution and delivery of this Indenture, and the issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

### **GRANTING CLAUSES**

That the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts and Trustee duties hereby created and of the purchase and acceptance of the Bonds by the Owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect and to secure the performance and observance by the Issuer of all the covenants expressed herein and in the Bonds, does hereby assign and grant a security interest in the following to the Trustee, and its successors in trust and assigns forever, for the securing of the performance of the obligations of the Issuer hereinafter set forth:

#### **GRANTING CLAUSE FIRST**

All right, title and interest of the Issuer in and to the Agreement (except for Reserved Rights), including, but not limited to, the present and continuing right to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Agreement, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is or may become entitled to do under the Agreement.

#### **GRANTING CLAUSE SECOND**

All right, title and interest of the Issuer in and to all moneys and securities from time to time held by the Trustee under the terms of this Indenture, other than moneys for the payment of the Purchase Price and moneys held in the Rebate Fund.

### GRANTING CLAUSE THIRD

Any and all other property rights and interests of every kind and nature from time to time hereafter by delivery or by writing of any kind granted, bargained, sold, alienated, demised, released, conveyed, assigned, transferred, mortgaged, pledged, hypothecated or otherwise subjected hereto, as and for additional security herewith, by the Borrower or any other person on its behalf or with its written consent or by the Issuer or any other person on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

**TO HAVE AND TO HOLD** all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its respective successors in said trust and assigns forever;

**IN TRUST NEVERTHELESS**, upon the terms and trusts herein set forth (a) first, for the equal and proportionate benefit, security and protection of all present and future Owners of the Bonds, from time to time, issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds except in the case of funds held hereunder for the benefit of particular Owners of Bonds, and (b) second, for the benefit of the Credit Provider to the extent provided herein;

**PROVIDED, HOWEVER**, that if the Issuer, by and through the Borrower, their successors or assigns shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner set forth in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made on the Bonds as required hereunder, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly cause to be kept, performed and observed all of its covenants and conditions pursuant to the terms of this Indenture, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon the final payment thereof this Indenture and the rights hereby granted shall cease, determine and be void, except to the extent specifically provided in *Article VIII* hereof; otherwise this Indenture shall remain in full force and effect.

**THIS INDENTURE FURTHER WITNESSETH**, and it is declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said property, rights and interests, including, without limitation, the amounts payable under the Agreement and any other amounts hereby assigned and pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as herein expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant with the Trustee and with the respective Owners of the Bonds as follows:

**ARTICLE I**  
**DEFINITIONS**

**Section 1.1. Definitions.**

All capitalized, undefined terms used herein shall have the meanings ascribed to such terms in Article II of the Agreement (as defined below). In addition, unless the context shall otherwise require, the following words and phrases when used in this Indenture shall have the meanings specified in this Section:

**“Act”** means Chapter 125, Florida Statutes, as amended, and Ordinance No. 03-\_\_\_\_ of the Issuer enacted on \_\_\_\_\_, 2003.

**“Act of Bankruptcy”** means the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) by or against the Borrower or any affiliate of the Borrower under any applicable bankruptcy, insolvency, reorganization or similar law, now or hereafter in effect.

**“Agreement”** means the Loan Agreement dated as of this date between the Issuer and the Borrower, and any amendments and supplements thereto.

**“Bond Counsel”** means a firm of nationally recognized standing in the field of municipal finance law whose opinions are generally accepted by purchasers of public obligations and who is acceptable to the Trustee.

**“Bond Fund”** means the fund created in *Section 6.1* hereof, in which there is established a General Account, a Credit Facility Account and a Remarketing Account.

**“Bond Purchase Agreement”** means the Bond Purchase Agreement dated [December 15, 2003] among the Issuer, Borrower and SunTrust Capital Markets, Inc.

**“Bond Register”** means the books of the Issuer kept by the Trustee to evidence the registration and transfer of the Bonds.

**“Bonds”** means the St. Johns County, Florida Educational Facilities Revenue Bonds (Flagler College, Inc. Project), Series 2003 issued by the Issuer pursuant to this Indenture.

**“Book-Entry System”** means the system maintained by the Securities Depository described in *Section 2.16* herein.

**“Borrower”** means (i) Flagler College, Inc., a Florida not for profit corporation, and (ii) any surviving, resulting, or transferee entity as provided in the Agreement.

**“Borrower Representative”** means the person or persons at the time designated to act on behalf of the Borrower by written certificate furnished to the Issuer and the Trustee containing the specimen signatures of such person or persons and signed on behalf of the Borrower by its President or Vice President. Such certificate may designate an alternate or alternates.

**“Business Day”** means any day other than (a) a Saturday or Sunday, (b) a day on which the Trustee or the Credit Provider is required or permitted by law to close, and (c) a day on which the New York Stock Exchange is closed.

**“Calculation Period”** is defined in *Section 2.5* hereof.

**“Chairman”** means the Chairman or Vice Chairman of the Board of County Commissioners of the Issuer, or such other person as may be duly authorized by the Issuer to act on his or her behalf.

**“Clerk”** means the Clerk of the Board of County Commissioners of the Issuer, or such other person as may be duly authorized by the Clerk of the Board of County Commissioners to act on his or her behalf.

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

**“Commercial Paper Period”** is defined in *Section 2.5* hereof.

**“Commercial Paper Rate”** means an interest rate on the Bonds set under *Section 2.5* hereof.

**“Conversion Date”** means the date established for the conversion of the interest rate on the Bonds from one type of Interest Period to another type of Interest Period pursuant to *Section 2.7* hereof (whether or not such conversion actually occurs), which date shall be an Interest Payment Date.

**“Conversion Option”** means the option granted to the Borrower in *Section 2.7* hereof to convert from one type of Interest Period to another type of Interest Period.

**“Credit Agreement”** means the Letter of Credit Agreement dated as of the date of this Indenture between the Borrower and the initial Credit Provider with respect to the Credit Facility, and any amendments or supplements thereto, together with any letter of credit, reimbursement or similar agreement between the Borrower and any subsequent Credit Provider, and any amendments and supplements thereto.

**“Credit Facility”** means the Letter of Credit and any Substitute Credit Facility provided by the Borrower pursuant to *Section 4.4* of the Agreement.



**“Credit Facility Period”** shall mean any Interest Period during which payment of the principal and Purchase Price of, and the interest and redemption premium (if any) on, the Bonds are secured by a Credit Facility.

**“Credit Facility Termination Date”** means the later of (a) that date upon which the Credit Facility shall expire or terminate pursuant to its terms, or (b) that date to which the expiration or termination of the Credit Facility may be extended, from time to time, either by extension or renewal of the existing Credit Facility.

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

**“Daily Period”** is defined in *Section 2.3* hereof.

**“Daily Rate”** means an interest rate on the Bonds set under *Section 2.3* hereof.

**“Default”** means any Default under this Indenture as specified in and defined by *Section 9.1* hereof.

**“Demand Purchase Option”** means the option granted to Owners of Bonds, while the Bonds bear interest at the Daily Rate or the Weekly Rate, to require that Bonds be purchased pursuant to *Section 4.2* hereof.

**“Determination of Taxability”** means a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on any Bond is or was includable in the gross income of an Owner of the Bonds for Federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the Borrower has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Owner of a Bond, and until the conclusion of any appellate review, if sought.

**“First Optional Redemption Date”** means, with respect to a Long Term Period less than or equal to 5 years, the first day of the 24th calendar month from the beginning of such Long Term Period; with respect to a Long Term Period greater than 5 years but less than or equal to 10 years, the first day of the 60th calendar month from the beginning of such Long Term Period; and with respect to a Long Term Period greater than 10 years, the first day of the 72nd calendar month from the beginning of such Long Term Period.

**“Fitch”** means Fitch IBCA, Inc., its successors and their assigns, and, if such corporation 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 Borrower, with the consent of the Remarketing Agent and the Credit Provider, by written notice to the Trustee.

**“Government Obligations”** means direct general obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed as to full and timely payment by, the United States of America, which obligations are noncallable.

**“Indenture”** means this Indenture of Trust, and any amendments or supplements hereto.

**“Independent Counsel”** means an attorney duly admitted to practice law before the highest court of any state and who is not a full-time employee, director, officer, or partner of the Issuer or the Borrower.

**“Interest Payment Date”** is defined in the form of the Bonds appearing in Exhibit “A” hereto.

**“Interest Period”** means each Daily Period, Weekly Period, Commercial Paper Period and Long Term Period.

**“Issuer”** means St. Johns County, Florida, and its successors and assigns.

**“Issuer Representative”** means the person or persons at the time designated to act on behalf of the Issuer by written certificate furnished to the Borrower and the Trustee containing the specimen signatures of such person or persons and signed on behalf of the Issuer by its duly authorized agent. Such certificate may designate an alternate or alternates.

**“Letter of Credit”** means that certain letter of credit, dated the date of issuance of the Bonds, issued by SunTrust Bank, a Georgia banking corporation.

**“Long Term Period”** is defined in *Section 2.6* hereof.

**“Long Term Rate”** means an interest rate on the Bonds set under *Section 2.6* hereof.

**“Mandatory Purchase Date”** means (a) each Conversion Date other than a conversion between the Daily Period and Weekly Period, (b) each day immediately following the end of a Calculation Period, (c) the first day of any Long Term Period, (d) the Interest Payment Date immediately before the Credit Facility Termination Date (provided that such Interest Payment Date shall precede the Credit Facility Termination Date by not less than 2 Business Days), (e) the Interest Payment Date concurrent with the effective date of a Substitute Credit Facility, and (f) the first Interest Payment Date following the occurrence of a Determination of Taxability for which the Trustee can give notice pursuant to the provisions of *Section 4.1(b)* hereof.

**“Maximum Rate”** means an interest rate per annum equal to the lesser of the maximum rate permitted by law and 12%. The Maximum Rate may be adjusted by an amendment to this Indenture, after the date of initial issuance and delivery of the Bonds, provided that (a) such Maximum Rate shall at no time exceed the maximum rate permitted by law, and (b) such adjustment to the Maximum Rate shall not become effective unless and until the Trustee shall receive (i) satisfactory evidence that the stated amount of the Credit Facility (if any) has been adjusted to reflect the adjusted Maximum Rate and (ii) an opinion of Bond Counsel satisfactory to the Trustee to the effect that such adjustment will not adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes.

**“Moody’s”** means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, 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 Borrower, with the consent of the Remarketing Agent and the Credit Provider, by written notice to the Trustee.

**“Outstanding”** or **“Bonds Outstanding”** means all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

- (a) Bonds canceled after purchase in the open market or because of payment at, or redemption prior to, maturity;
- (b) Bonds paid or deemed paid pursuant to *Article VIII* hereof;
- (c) Bonds in lieu of which others have been authenticated under *Section 2.12* or *Section 2.13* hereof; and
- (d) Bonds deemed tendered hereunder and for which another Bond has been issued.

**“Owner”** means the person or persons in whose name or names a Bond shall be registered on the books of the Issuer kept by the Trustee for that purpose in accordance with provisions of this Indenture.

**“Par”** means one hundred percent (100%) of the principal amount of any Bond, or of the aggregate principal amount of the Bonds Outstanding, as the context may require, exclusive of accrued interest.

**“Participant”** means one of the entities which is a member of the Securities Depository and deposits securities, directly or indirectly, in the Book-Entry System.

**“Pledged Bonds”** means any Bonds which shall, at the time of determination thereof, be pledged to the Credit Provider pursuant to the Credit Agreement.

**“Project Fund”** means the fund created in *Section 6.5* hereof.

**“Purchase Price”** means an amount equal to 100% of the principal amount of any Bond tendered or deemed tendered pursuant to *Sections 4.1 or 4.2* hereof, plus, in the case of purchase pursuant to *Section 4.2* hereof, accrued and unpaid interest thereon to the date of purchase.

**“Rebate Fund”** means the fund created in *Section 6.13* hereof.

**“Record Date”** is defined in the form of the Bonds attached as *Exhibit "A"* hereto.

**“Remarketing Agent”** means the Remarketing Agent acting as such under the Remarketing Agreement. The Remarketing Agent must be a Participant in the Book-Entry System with respect to the Bonds. “Principal Office” of the Remarketing Agent means the principal office of the Remarketing Agent designated in the Remarketing Agreement.

**“Remarketing Agreement”** means the Remarketing Agreement dated as of this date between the Borrower and SunTrust Capital Markets, Inc., its successors and assigns, and any

amendments or supplements thereto, together with any similar agreement entered into between the Borrower and any successor Remarketing Agent.

**“Reserved Rights”** means amounts payable to the Issuer under *Sections 4.02(b), 4.02(e), [4.02(f)], 7.02 and 8.04* of the Agreement and the right of the Issuer to receive notices.

**“Responsible Officer”** when used with respect to the Trustee, means any officer within the corporate trust administrative department of the Trustee, including any vice president, any assistant vice president, any trust officer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

**“Securities Depository”** means The Depository Trust Borrower, New York, New York, or its nominee, and its successors and assigns.

**“State”** means the State of Florida.

**“S&P”** means Standard & Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Borrower, with the consent of the Remarketing Agent and the Credit Provider, during any Credit Facility Period, by written notice to the Trustee.

**“Substitute Credit Facility”** means a letter of credit, line of credit, insurance policy or other credit facility securing the payment of the principal and Purchase Price of, redemption premium (if any) and interest on the Bonds, delivered to the Trustee in accordance with *Section 4.04* of the Agreement.

**“Tender Date”** means (a) during any Daily Period, any Business Day and (b) during any Weekly Period, the seventh day (unless such day is not a Business Day, in which case the next succeeding Business Day) following receipt by the Trustee of notice from the Owner that such Owner has elected to tender bonds (as more fully described in *Section 4.2* hereof).

**“Trustee”** means SunTrust Bank, a banking corporation organized and existing under the laws of the State of Georgia and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor Trustee at the time serving as successor Trustee hereunder. “Principal Office” of the Trustee means the address specified in *Section 13.4* hereof or such other address as may be designated in writing to the Remarketing Agent, the Issuer and the Borrower.

**“Trust Estate”** means the property conveyed to the Trustee pursuant to the Granting Clauses hereof.

**“Weekly Period”** is defined in *Section 2.4* hereof.

“**Weekly Rate**” means an interest rate on the Bonds set under *Section 2.4* hereof.

**Section 1.2. Uses of Phrases.**

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words “Bond,” “Bondholder,” “Owner,” “registered owner” and “person” shall include the plural as well as the singular number, and the word “person” shall include corporations and associations, including public bodies, as well as persons. Any percentage of Bonds, specified herein for any purpose, is to be figured on the unpaid principal amount thereof then Outstanding. All references herein to specific Sections of the Code refer to such Sections of the Code and all successor or replacement provisions thereto.

**ARTICLE II**

**THE BONDS**

**Section 2.1. Authorized Amount of Bonds.**

The total principal amount of Bonds that may be issued hereunder shall be, and is hereby expressly limited to, \$5,500,000. The Bonds shall be issued as provided in the Bond Purchase Agreement.

**Section 2.2. Issuance and Terms of Bonds.**

(a) The Bonds shall be designated “\$5,500,000 St. Johns County, Florida Educational Facilities Revenue Bonds (Flagler College, Inc. Project), Series 2003.” The Bonds shall be in substantially the form of Exhibit “A,” which is part of this Indenture, in the denominations provided for in the Bonds.

(b) The Bonds shall be dated the date of initial authentication and delivery, shall bear interest from such date, and shall mature (subject to prior redemption) on December 1, 2033. The Bonds shall bear interest at the Daily Rate, the Weekly Rate, the Commercial Paper Rate or the Long Term Rate, as more fully described in this *Article II*. Borrower may direct a change in the type of Interest Period pursuant to the provisions of **Section 2.7** hereof. Interest on the Bonds will initially be payable at the Weekly Rate. The rate of interest borne by the Bonds shall not exceed the Maximum Rate.

(c) The principal and Purchase Price of and premium, if any, and interest on the Bonds shall be payable as provided for in the Bonds.

**Section 2.3. Daily Period.**

(a) From any Conversion Date after which the Bonds will bear interest at the Daily Rate until the next following Conversion Date (the “Daily Period”), the Bonds shall bear interest at the Daily Rate, as hereinafter described.

(b) The Daily Rate will be determined by the Remarketing Agent (and the authority to so determine the rate is hereby delegated by the Issuer to the Remarketing Agent) as follows: the interest rate for each day shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds at a price of Par on such date. Upon determining the Daily Rate for each date, the Remarketing Agent shall notify the Trustee and the Borrower of such rate by telephone or such other manner as may be appropriate on the date of such determination, which notice shall be promptly confirmed in writing. Such notice shall be provided by not later than 9:30 A.M. New York City time on each Business Day for that Business Day. The Daily Rate for any non-Business Day will be the rate for the last day on which a rate was set.

(c) The determination of the Daily Rate (absent manifest error) shall be conclusive and binding upon the Issuer, the Borrower, the Trustee, the Credit Provider (if any), and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Daily Rate, the Bonds shall bear interest at the Daily Rate in effect on the last day for which a rate was set.

#### **Section 2.4. Weekly Period.**

(a) From the date of issuance of the Bonds until the next following Conversion Date, and from any subsequent Conversion Date after which the Bonds will bear interest at the Weekly Rate until the next following Conversion Date (the "Weekly Period"), the Bonds shall bear interest at the Weekly Rate, as hereinafter described.

(b) The Weekly Rate will be determined by the Remarketing Agent (and the authority to so determine the rate is hereby delegated by the Issuer to the Remarketing Agent) on each Wednesday for the period beginning on such Wednesday and ending on the following Tuesday, as follows: the interest rate shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds at a price of Par on such date. Upon determining the Weekly Rate, the Remarketing Agent shall notify the Trustee and the Borrower of such rate by telephone or such other manner as may be appropriate on the date of such determination, which notice shall be promptly confirmed in writing. Such notice shall be provided by not later than 2:00 P.M. New York City time. If any Wednesday is not a Business Day, then the Weekly Rate shall be established on the next preceding Business Day.

(c) The determination of the Weekly Rate (absent manifest error) shall be conclusive and binding upon the Issuer, the Borrower, the Trustee, the Credit Provider (if any), and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Weekly Rate, the Bonds shall bear interest at the Weekly Rate last in effect.

#### **Section 2.5. Commercial Paper Period.**

(a) From any Conversion Date after which the Bonds will bear interest at a Commercial Paper Rate (the "Commercial Paper Period") until the next following Conversion

Date, the Bonds will bear interest at the various Commercial Paper Rates for periods of not less than one (1) day and not more than 270 days (each, a "Calculation Period"), as hereinafter described. During any Commercial Paper Period, any Bond may have a different Calculation Period and a different Commercial Paper Rate from any other Bond.

(b) At or prior to 12:00 noon New York City time on any Conversion Date after which the Bonds will bear interest at the Commercial Paper Rate and the day immediately after the end of such Calculation Period, the Remarketing Agent shall establish Calculation Periods with respect to Bonds for which no Calculation Period is currently in effect. The Remarketing Agent shall, and the Issuer hereby delegates to the Remarketing Agent the authority to, select the Calculation Periods and the applicable Commercial Paper Rates that, together with all other Calculation Periods and related Commercial Paper Rates, in the sole judgment of the Remarketing Agent, will result in the lowest overall borrowing cost on the Bonds or are otherwise in the best financial interests of the Borrower, as determined in consultation with the Borrower. Any Calculation Period established hereunder may not extend beyond (i) any Conversion Date, (ii) during any Credit Facility Period, the Business Day next preceding the scheduled Credit Facility Termination Date, or (iii) the day prior to the maturity date of the Bonds.

(c) On the first day of each Calculation Period, the Remarketing Agent shall, and the Issuer hereby delegates to the Remarketing Agent the authority to, set rates by 12:00 Noon New York City time for the Bonds for such Calculation Period. With respect to each Calculation Period, the interest rate shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds at a price of Par on the date of such determination. Upon determining the rate for each Calculation Period, the Remarketing Agent shall notify the Trustee and the Borrower of such rates and the related Calculation Periods by telephone or such other manner as may be appropriate by not later than 2:00 P.M. New York City time on the date of such determination, which notice shall be promptly confirmed in writing.

(d) The determination of the Commercial Paper Rates and Calculation Periods (absent manifest error) shall be conclusive and binding upon the Issuer, the Borrower, the Trustee, the Credit Provider (if any), and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Commercial Paper Rates or the Calculation Periods for any Bonds during the Commercial Paper Period, or in the event no Calculation Period may be established pursuant to the terms of *Section 2.5(b)*, then the Calculation Period for any such Bond shall be a period of 30 days and the Commercial Paper Rate for such Calculation Period shall be 70% of the interest rate applicable to 91-day United States Treasury bills determined on the basis of the average per annum discount rate at which 91-day United States Treasury bills shall have been sold at the most recent Treasury auction conducted during the preceding 30 days.

## **Section 2.6. Long Term Period.**

(a) From any Conversion Date after which the Bonds will bear interest at a Long Term Rate (the "Long Term Period") until the next following Conversion Date or the

maturity date of the Bonds, the Bonds will bear interest at a Long Term Rate, as hereinafter described.

(b) The Long Term Rate will be determined by the Remarketing Agent and the authority to so determine the Long Term Rate, as follows: the interest rate for each Long Term Period shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds at a price of Par on the date on which the Long Term Period begins. The Long Term Rate shall be determined by the Remarketing Agent not later than the fifth day preceding the commencement of such Long Term Period, and the Remarketing Agent shall notify the Trustee and the Borrower thereof by telephone or such other manner as may be appropriate by not later than 2:00 P.M. New York City time on such date, which notice shall be promptly confirmed in writing.

(c) The Issuer hereby delegates to the Borrower the authority to determine the duration of each Long Term Period. In that connection, the Borrower shall instruct the Remarketing Agent, not later than the 20th day prior to the commencement of such Long Term Period, to determine the Long Term Rate on the basis of a Long Term Period ending on a specified date that is the last day of any calendar month that is an integral multiple of six (6) calendar months from the beginning of such Long Term Period or the maturity of the Bonds. In the event the Borrower elects at the end of a Long Term Period to have another Long Term Period applicable to the Bonds, the Borrower shall notify the Trustee and the Remarketing Agent in writing, not later than the 20th day prior to the commencement of such new Long Term Period, of such an election with respect to the Long Term Period and of the date on which such new Long Term Period shall begin. If the duration of the Long Term Period will change from an interval of 365 days or less to an interval of more than 365 days, or vice versa, then the Borrower shall furnish to the Trustee, with such notification, an opinion of Bond Counsel to the effect that such election of such Long Term Period will not adversely affect the exclusion from gross income for Federal income tax purposes of interest on the Bonds. The delivery by the Borrower to the Trustee of a letter from Bond Counsel confirming the opinion accompanying the Borrower notification described above on the first day of such Long Term Period is a condition precedent to the beginning of such Long Term Period. In the event that the Borrower fails to deliver to the Trustee the letter of Bond Counsel referred to in the preceding sentence, the Bonds shall be deemed to bear interest at the Weekly Rate, which Weekly Rate shall be 70% of the interest rate for 30-day taxable commercial paper (prime paper placed through dealers) announced by the Federal Reserve Bank of New York on the day on which the Long Term Rate on the Bonds was to be set.

(d) The determination of the Long Term Rate (absent manifest error) shall be conclusive and binding upon the Issuer, the Borrower, the Trustee, the Credit Provider (if any), and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Long Term Rate for any Long Term Period, the Bonds shall be deemed to bear interest at the Weekly Rate, which Weekly Rate shall be 70% of the interest rate for 30-day taxable commercial paper (prime paper placed through dealers) announced by the Federal Reserve Bank of New York on the day on which the Long Term Rate on the Bonds was to be set.



## **Section 2.7. Conversion Option**

(a) The Borrower shall have the option (the "Conversion Option") to direct a change in the type of Interest Period to another type of Interest Period by delivering to the Trustee and the Remarketing Agent written instructions setting forth (i) the Conversion Date, (ii) the new type of Interest Period and (iii) whether such Interest Period will be a Credit Facility Period. If the new Interest Period will not be a Credit Facility Period, such instructions must be accompanied by the prior written consent of the Issuer to such change in the type of the Interest Period. If the new Interest Period is a Commercial Paper Period or a Long Term Period and will be a Credit Facility Period, such instructions will be accompanied by a Substitute Credit Facility, or by an amendment to the existing Credit Facility, providing for the payment of such additional interest and redemption premium (if any) on the Bonds as may be required. The sufficiency of any such Substitute Credit Facility, or of such amendment to an existing Credit Facility, shall be conclusively established by receipt of written notice, in form and substance satisfactory to the Trustee, from any rating agency providing a rating on the Bonds, confirming the rating to be borne by the Bonds. In the event the Bonds are not then rated, then the Trustee may rely upon a notice from the Remarketing Agent to the effect that such Substitute Credit Facility or such amendment to an existing Credit Facility is sufficient. Such instructions shall be delivered at least 20 days prior to the first day of such Interest Period. If the duration of the Interest Period will change from an interval of 365 days or less to an interval of more than 365 days, or vice versa, then with such instructions the Borrower shall furnish to the Trustee an opinion of Bond Counsel to the effect that such change in Interest Period will not adversely affect the exclusion from gross income for Federal income tax purposes of interest on the Bonds. The delivery by the Borrower to the Trustee of a letter from Bond Counsel confirming the opinion accompanying the Borrower notification described above on the Conversion Date is a condition precedent to the change in the type of Interest Period. In the event that the Borrower fails to deliver to the Trustee the letter of Bond Counsel referred to in the preceding sentence, the Bonds shall continue in the Interest Period in place at the time of exercise of the Conversion Option.

(b) Any change in the type of Interest Period must comply with the following: (i) the Conversion Date must be an Interest Payment Date for the Interest Period then in effect (and, with respect to a Long Term Period, must be the last Interest Payment Date for such Long Term Period and (ii) no change in Interest Period shall occur after an Event of Default shall have occurred and be continuing.

## **Section 2.8. Execution; Limited Obligations.**

The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of the Chairman of the Issuer and the Issuer's corporate seal shall be affixed thereto or printed or otherwise reproduced thereon and attested by the manual or facsimile signature of its Clerk. All authorized facsimile signatures shall have the same force and effect as if manually signed. The Bonds shall not be general obligations of the Issuer but limited and special obligations payable solely from the amounts payable under the Agreement and other amounts specifically pledged therefor under this Indenture, and shall be a valid claim of the respective Owners thereof only against the Trust Estate, which amounts are hereby pledged, assigned and otherwise secured for the equal and ratable payment of the Bonds and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Bonds, except as may

be otherwise expressly authorized in this Indenture. No Owner of any Bonds has the right to compel any exercise of taxing power (if any) of the Issuer to pay the Bonds or the interest thereon, and the Bonds do not constitute an indebtedness of the Issuer or a loan of credit thereof within the meaning of any constitutional or statutory provisions.

#### **Section 2.9. Authentication.**

No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication on such Bond substantially in the form set forth in the form of Bond attached hereto as Exhibit "A" shall have been manually executed by the Trustee, and such executed certificate of authentication upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The certificate of authentication on any Bond shall be deemed to have been executed by the Trustee if manually signed by an authorized signatory of the Trustee but it shall not be necessary that the same signatory execute the certificate of authentication on all of the Bonds.

In the event that any Bond is deemed tendered to the Trustee as provided in *Sections 4.1 or 4.2* hereof but is not physically so tendered, the Issuer shall execute and the Trustee shall authenticate a new Bond of like denomination of that deemed tendered.

#### **Section 2.10. Form of Bonds.**

The Bonds and the certificate of authentication to be endorsed thereon are to be in substantially the form set forth in Exhibit "A" attached hereto, with appropriate variations, omissions and insertions as permitted or required by this Indenture.

#### **Section 2.11. Authentication and Delivery of Bonds.**

Prior to the authentication and delivery by the Trustee of the Bonds, there shall be filed or deposited with the Trustee:

(a) a copy, certified by the Clerk of the Issuer, of all resolutions adopted and proceedings had by the Issuer authorizing the issuance of the Bonds, including the resolution authorizing the execution, delivery and performance of this Indenture and the Agreement;

(b) the opinion of Bond Counsel approving the validity of the Bonds and confirming the exclusion from gross income of interest on the Bonds; and

(c) a request and authorization to the Trustee on behalf of the Issuer and signed by an authorized officer of the Issuer to authenticate and deliver the Bonds in such specified denominations as permitted herein to purchasers thereof upon payment to the Trustee, but for the account of the Issuer, of a specified sum of money. Upon payment of the proceeds to the Trustee, the Trustee shall deposit the proceeds pursuant to *Article VI* hereof.

#### **Section 2.12. Mutilated, Lost, Stolen or Destroyed Bonds.**

In the event any Bond is mutilated, lost, stolen, or destroyed, the Issuer shall execute and the Trustee shall authenticate a new Bond of like date and denomination as that mutilated, lost,

stolen or destroyed, provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Issuer or the Trustee, and in the case of any lost, stolen, or destroyed Bond, there first shall be furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with an indemnity satisfactory to them. In the event any such Bond shall have matured, the Trustee, instead of issuing a duplicate Bond, may pay the same without surrender thereof, making such requirements as it deems fit for its protection, including a lost instrument bond. The Issuer and the Trustee may charge the Owner of such Bond with their reasonable fees and expenses for such service. In authenticating a new Bond, the Trustee may conclusively assume that the Issuer is satisfied with the adequacy of the evidence presented concerning the mutilation, loss, theft or destruction of any Bond or with any indemnity furnished in connection therewith if, after notification of the same, the Trustee has not received within two days following such notification written notice from the Issuer to the contrary.

### **Section 2.13. Transfer of Bonds; Persons Treated as Owners.**

The Trustee shall keep books for the transfer of the Bonds as provided in this Indenture. Upon surrender for transfer of any Bond at the Principal Office of the Trustee, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney duly authorized in writing, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds in authorized denominations for a like aggregate principal amount. Subject to the provisions of *Section 2.16* hereof relating to the transfer of ownership of Bonds held in the Book-Entry System, any Bond, upon surrender thereof at the Principal Office of the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or its attorney duly authorized in writing, may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of Bonds of any denominations authorized by this Indenture in an aggregate principal amount equal to the principal amount of such Bond. In each case, the Trustee may require the payment by the Owner of the Bond requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

The Trustee shall not be required to exchange or register a transfer of (a) any Bonds during the fifteen day period next preceding the selection of Bonds to be redeemed and thereafter until the date of the mailing of a notice of redemption of Bonds selected for redemption, or (b) any Bonds selected, called or being called for redemption in whole or in part except, in the case of any Bond to be redeemed in part, the portion thereof not so to be redeemed; provided that the foregoing shall not apply to the registration or transfer of any Bond which has been tendered to the Trustee pursuant to *Section 4.2* hereof, and in any such case, for purposes of selection for redemption, the Bond so tendered and the Bond issued to the transferee thereof pursuant to *Section 4.4* hereof shall be deemed and treated as the same Bond. If any Bond shall be transferred and delivered pursuant to *Section 4.4(a)* hereof after such Bond has been (i) called for redemption, (ii) accelerated pursuant to *Section 9.1(f)*, or (iii) tendered pursuant to *Sections 4.1 or 4.2*, the Trustee shall deliver to such transferee a copy of the applicable redemption notice, acceleration notice, or tender notice indicating that the Bond delivered to such transferee has previously been called for redemption, acceleration or tender, and such Bonds shall not be delivered by the Trustee to the transferee until the transferee shall acknowledge receipt of such notice in writing.

Subject to the provisions of *Section 2.16* hereof relating to Bonds held in the Book-Entry System, the Trustee and the Issuer may treat the person in whose name a Bond is registered as the absolute Owner thereof for all purposes, and neither the Issuer nor the Trustee shall be bound by any notice or knowledge to the contrary, but such registration may be changed as hereinabove provided. All payments made to the Owner shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

#### **Section 2.14. Destruction of Bonds.**

Subject to the provisions of *Section 2.16* hereof relating to Bonds held in the Book-Entry System, whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, or for replacement pursuant to *Section 2.12* hereof, such Bond shall be promptly cancelled and cremated or otherwise destroyed by the Trustee, and, upon the request of the Borrower and the Issuer, counterparts of a certificate of destruction evidencing such cremation or other destruction shall be furnished by the Trustee to the Issuer and the Borrower.

#### **Section 2.15. Temporary Bonds.**

Until Bonds in definitive form are ready for delivery, the Issuer may execute, and upon the request of the Issuer, the Trustee shall authenticate and deliver, subject to the provisions, limitations and conditions set forth above, one or more Bonds in temporary form, whether printed, typewritten, lithographed or otherwise produced, substantially in the form of the definitive Bonds, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the liens and benefits of this Indenture.

Upon presentation and surrender of any Bond or Bonds in temporary form, the Issuer shall, at the request of the Trustee, execute and deliver to the Trustee, and the Trustee shall authenticate and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Trustee without making any charge therefor to the Owner of such Bond in temporary form. Notwithstanding the foregoing, Bonds in definitive form may be issued hereunder in typewritten form.

#### **Section 2.16. Book-Entry System.**

Upon the initial issuance and delivery of the Bonds, the Bonds shall be issued in the name of the Securities Depository or its nominee, as registered owner of the Bonds, and held in the custody of the Securities Depository or its designee. A single certificate (or such number of certificates required by the procedures of the Securities Depository) will be issued and delivered to the Securities Depository (or its designee) for the Bonds, and the Beneficial Owners will not receive physical delivery of Bond certificates except as provided herein. For so long as the Securities Depository shall continue to serve as securities depository for the Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Bonds is to receive, hold or deliver any Bond certificate. The Issuer, the Borrower and the Trustee will recognize the Securities Depository or its nominee as the Owner for all purposes, including notices.

The Issuer, the Borrower, the Trustee and the Remarketing Agent may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Participants in the Book-Entry System with respect to the Bonds and (ii) a certificate of any such Participant as to the identity of, and the respective principal amount of Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Bonds, the beneficial ownership thereof is determined by a Book-Entry System at the Securities Depository, the requirements in this Indenture of holding, delivering or transferring Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Securities Depository as to registering or transferring the book-entry Bonds to produce the same effect. Any provision hereof permitting or requiring delivery of Bonds shall, while the Bonds are in the Book-Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law.

Except as otherwise specifically provided in this Indenture and the Bonds with respect to the rights of Participants and Beneficial Owners, when a Book-Entry System is in effect, the Issuer, the Trustee, the Remarketing Agent and the Borrower may treat the Securities Depository (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of (i) payment of the principal or Purchase Price of, premium, if any, and interest on the Bonds or portion thereof to be redeemed or purchased, (ii) giving any notice permitted or required to be given to Owners under this Indenture, and (iii) the giving of any direction or consent or the making of any request by the Owners hereunder, and none of the Issuer, the Trustee, the Remarketing Agent nor the Borrower shall be affected by any notice to the contrary. None of the Issuer, the Borrower, the Trustee or the Remarketing Agent will have any responsibility or obligations to the Securities Depository, any Participant, any Beneficial Owner or any other person which is not shown on the Bond Register, with respect to (i) the accuracy of any records maintained by the Securities Depository or any Participant; (ii) the payment by the Securities Depository or by any Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption or Purchase Price of, or interest on, any Bonds; (iii) the delivery of any notice by the Securities Depository or any Participant; (iv) the selection of the Participants or the Beneficial Owners to receive payment in the event of any partial redemption of the Bonds; or (v) any consent given or any other action taken by the Securities Depository or any Participant. The Trustee shall pay all principal of, premium, if any, and interest on the Bonds registered in the name of a nominee of the Securities Depository only to or "upon the order of" the Securities Depository (as that term is used in the Uniform Commercial Code as adopted in Florida), and all such payments shall be valid and effective to fully satisfy and discharge the Borrower's obligations with respect to the principal of, premium, if any, and interest on such Bonds to the extent of the sum or sums so paid.

The Book-Entry System may be discontinued by the Trustee and the Issuer, at the direction and expense of the Borrower, and the Issuer and the Trustee will cause the delivery of Bond certificates to such Beneficial Owners of the Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under the following circumstances:

(a) The Securities Depository determines to discontinue providing its service with respect to the Bonds and no successor Securities Depository is appointed. Such a

determination may be made at any time by giving 30 days' notice to the Issuer, the Borrower and the Trustee and discharging its responsibilities with respect thereto under applicable law.

(b) The Borrower determines not to continue the Book-Entry System through a Securities Depository.

In the event the Book-Entry System is discontinued, the Trustee shall mail a notice to the Securities Depository for distribution to the Beneficial Owners stating that the Securities Depository will no longer serve as securities depository, the procedures for obtaining Bonds and the provisions of this Indenture which govern the Bonds, including, but not limited to, provisions regarding authorized denominations, transfer and exchange, principal and interest payment and other related matters.

When the Book-Entry System is not in effect, all references herein to the Securities Depository shall be of no further force or effect and the Trustee shall, at the expense of the Borrower, issue Bonds directly to the Beneficial Owners.

The Trustee reserves the right to initially issue the Bonds directly to the Beneficial Owners of the Bonds if the Trustee receives an opinion of Bond Counsel that determines that use of the Book-Entry System would cause the interest on the Bonds to be included in gross income of the Owners for federal income tax purposes.

### ARTICLE III

#### REDEMPTION OF BONDS BEFORE MATURITY

##### Section 3.1. Extraordinary Redemption.

During any Long Term Period, the Bonds are subject to redemption in whole by the Issuer, at the option of the Borrower, at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to (but not including) the redemption date, in the event all or substantially all of the Project shall have been damaged or destroyed, or there occurs the condemnation of all or substantially all of the Project or the taking by eminent domain of such use or control of the Project as to render it, in the judgment of the Borrower, unsatisfactory for its intended use for a period of time longer than one year.

##### Section 3.2. Optional Redemption by the Borrower.

During any Daily Period or Weekly Period, the Bonds are subject to redemption by the Issuer, at the option of the Borrower, in whole at any time or in part on any Interest Payment Date, less than all of such Bonds to be selected by lot or in such other manner as the Trustee shall determine (except as otherwise provided in *Section 3.6* hereof), at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to (but not including) the redemption date.

On any Conversion Date or on the day following the end of the Calculation Period if such day is the end of the Calculation Period for all Bonds, the Bonds are subject to redemption by the

Issuer, at the option of the Borrower, in whole or in part, less than all of such Bonds to be selected by lot or in such manner as the Trustee shall determine (except as otherwise provided in **Section 3.6** hereof), at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to (but not including) the redemption date.

During any Long Term Period, the Bonds are subject to redemption by the Issuer, at the option of the Borrower, on or after the First Optional Redemption Date, in whole at any time or in part on any Interest Payment Date, less than all of such Bonds to be selected by lot or in such other manner as the Trustee shall determine (except as otherwise provided in **Section 3.6** hereof), at the redemption prices (expressed as percentages of principal amount) set forth in the following table plus accrued interest to (but not including) the redemption date:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
First Optional Redemption Date through the last day of the twelfth calendar month following such First Optional Redemption Date	102%
First anniversary of the First Optional Redemption Date through the last day of the twelfth calendar month following such first anniversary	101%
Second anniversary of the First Optional Redemption Date and thereafter	100%

**Section 3.3. Notice of Redemption.**

Notice of the call for redemption shall be given by the Trustee by mailing a copy of the redemption notice (a) by first class mail at least 30 days but not more than 60 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed in whole or in part at the address shown on the registration books and (b) by registered or certified mail, or overnight delivery service at least 30 days prior to the date fixed for redemption, to all of the following registered securities depositories then in the business of holding substantial amounts of bonds of the type comprising the Bonds (such depositories now being The Depository Trust Company of New York, New York and to one or more national information services that disseminate notices of redemption of bonds such as the Bonds (such as Financial Information Inc.'s Financial Daily Called Bond Service, Interactive Data Corporation's Bond Service, Kenny Information Service's Called Bond Service, Moody's Investors Service's Municipal and Government and Standard & Poor's Called Bond Record). No defect in any notice delivered pursuant to clause (b) above nor any failure to give all or any portion of such notice shall in any manner defeat the effectiveness of a call for redemption if notice is given as prescribed in clause (a) above. Any notice mailed as provided in this **Section 3.3** shall be conclusively presumed to have been duly given, whether or not the Owner receives the notice. Each notice of redemption given hereunder shall contain (i) information identifying the Bonds or portions thereof to be redeemed (ii) the CUSIP numbers of all Bonds being redeemed; (iii) the date of issue of the Bonds as originally issued; (iv) the rate of interest borne by each Bond being redeemed; (v) the maturity date of each Bond being

redeemed; and (vi) any other descriptive information needed to identify accurately the Bonds being redeemed; provided, however, that no notice shall be deemed defective if the information required in clause (i) above is provided in such notice.

Failure to mail any such notice, or the mailing of defective notice, to any Owner, shall not affect the proceeding for redemption as to any Owner to whom proper notice is mailed. Notwithstanding the foregoing provisions of this *Section 3.3*, delivery by the Trustee of a copy of a redemption notice to a transferee of a Bond which has been called for redemption, pursuant to the requirements of *Section 2.13* hereof, shall be deemed to satisfy the requirements of the first sentence of this *Section 3.3* with respect to any such transferee.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

#### **Section 3.4. Redemption Payments.**

Pursuant to *Section 6.12* hereof, during any Credit Facility Period, the Trustee is authorized and directed to draw upon the Credit Facility in order to provide for the payment of the redemption price of the Bonds called for redemption, and is hereby authorized and directed to apply such funds to the payment of the principal of the Bonds or portions thereof called, together with accrued interest thereon to the redemption date. In the event the Bonds called for redemption are not secured by a Credit Facility, then if on or prior to the date fixed for redemption, sufficient moneys shall be on deposit with the Trustee to pay the redemption price of the Bonds called for redemption, the Trustee is hereby authorized and directed to apply such funds to the payment of the principal of the Bonds or portions thereof called, together with accrued interest thereon to the redemption date and any required premium. Upon the giving of notice and the deposit of moneys for redemption at the required times on or prior to the date fixed for redemption, as provided in this Article, interest on the Bonds or portions thereof thus called shall no longer accrue after the date fixed for redemption.

#### **Section 3.5. Cancellation.**

All Bonds which have been redeemed shall not be reissued but shall be canceled and cremated or otherwise destroyed by the Trustee in accordance with *Section 2.14* hereof.

#### **Section 3.6. Partial Redemption of Bonds.**

(a) Upon surrender of any Bond for redemption in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the Owner thereof a new Bond or Bonds of authorized denominations, in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

(b) During any Daily Period, Weekly Period or Commercial Paper Period, during which the authorized denominations are \$100,000 or integral multiples of \$5,000 in excess thereof, in the event a Bond is of a denomination larger than \$100,000, a portion of such Bond may be redeemed, but Bonds shall be redeemed only in an amount that causes the



unredeemed portion to be in the principal amount of \$100,000 or any integral multiple of \$5,000 in excess thereof.

(c) During any Long Term Period, in case a Bond is of a denomination larger than \$5,000, a portion of such Bond (\$5,000 or any integral multiple thereof) may be redeemed, but Bonds shall be redeemed only in the principal amount of \$5,000 or any integral multiple thereof.

(d) Notwithstanding anything to the contrary contained in this Indenture, whenever the Bonds which are not held in a Book-Entry System are to be redeemed in part, such Bonds which are Pledged Bonds at the time of selection of Bonds for redemption shall be selected for redemption prior to the selection of any other Bonds. If the aggregate principal amount of Bonds to be redeemed exceeds the aggregate principal amount of Pledged Bonds at the time of selection, the Trustee may select for redemption Bonds in an aggregate principal amount equal to such excess by lot or in such other manner as the Trustee may determine.

## ARTICLE IV

### MANDATORY PURCHASE DATE; DEMAND PURCHASE OPTION

#### Section 4.1. Mandatory Purchase of Bonds on Mandatory Purchase Date.

(a) The Bonds shall be subject to mandatory tender by the Owners thereof for purchase on each Mandatory Purchase Date.

(b) Except when the Bonds are subject to mandatory tender on a day immediately following the end of a Calculation Period, the Trustee shall deliver or mail by first class mail a notice in substantially the form of Exhibit "B" attached hereto at least fifteen days prior to the Mandatory Purchase Date to the Owners of the Bonds at the address shown on the registration books of the Issuer. When the Bonds are subject to mandatory tender on the day immediately following the end of a Calculation Period, the Trustee is not required to deliver or mail any notice to the Owners of the Bonds. Any notice given by the Trustee as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives the notice. Failure to mail any such notice, or the mailing of defective notice, to any Owner, shall not affect the proceeding for purchase as to any Owner to whom proper notice is mailed. The Trustee shall provide the Borrower with a copy of any notice delivered to the Owners of the Bonds pursuant to this *Section 4.1*.

(c) Owners of Bonds shall be required to tender their Bonds to the Trustee for purchase at the Purchase Price, no later than 10:30 A.M. New York City time on the Mandatory Purchase Date, and any such Bonds not so tendered by such time on the Mandatory Purchase Date ("Untendered Bonds") shall be deemed to have been purchased pursuant to this *Section 4.1*. In the event of a failure by an Owner of Bonds to tender its Bonds on or prior to the Mandatory Purchase Date, said Owner shall not be entitled to any payment (including any interest to accrue subsequent to the Mandatory Purchase Date) other than the Purchase Price for such Untendered Bonds, and any Untendered Bonds shall no longer be entitled to the benefits of this Indenture, except for the purpose of payment of the Purchase Price therefor.

## **Section 4.2. Demand Purchase Option.**

Any Bond bearing interest at the Daily Rate or the Weekly Rate shall be purchased from the Owners thereof on any Tender Date at the Purchase Price, as provided below:

(a) While the Book-Entry System is not in effect, upon:

(i) delivery to the Trustee at its Principal Office and to the Remarketing Agent at its Principal Office of a written notice (said notice to be irrevocable and effective upon receipt) which (1) states the aggregate principal amount and Bond numbers of the Bonds to be purchased; and (2) states the date on which such Bonds are to be purchased; and

(ii) delivery to the Trustee at its Delivery Office at or prior to 10:30 A.M. New York City time on the date designated for purchase in the notice described in (i) above of such Bonds to be purchased, with an appropriate endorsement for transfer or accompanied by a bond power endorsed in blank.

(b) While the Book-Entry System is in effect, the ownership interest of any Beneficial Owner of a Bond or portion thereof in an authorized denomination shall be purchased at the Purchase Price if such Beneficial Owner causes the Participant through whom such Beneficial Owner holds such Bonds to (i) deliver to the Trustee at its Principal Office and to the Remarketing Agent at its Principal Office a notice which (1) states the aggregate amount of the beneficial ownership interest to be purchased, and (2) states the date on which such beneficial interest is to be purchased; and (ii) on the same date as delivery of the notice referred to in (i) above, deliver a notice to the Securities Depository irrevocably instructing it to transfer on the registration books of the Securities Depository the beneficial ownership interests in such Bond or portion thereof to the account of the Trustee, for settlement on the purchase date on a “free delivery” basis with a copy of such notice delivered to the Trustee on the same date.

(c) With respect to Bonds bearing interest at the Daily Rate, the written notices described in *Section 4.2(a)* or *(b)*, above, shall be delivered not later than 10:30 A.M. New York City time on the Tender Date and, if the Book-Entry System is not in effect, shall be accompanied by the Bonds referenced in such notices.

## **Section 4.3. Funds for Purchase of Bonds.**

On the date Bonds are to be purchased pursuant to *Sections 4.1 or 4.2* hereof, such Bonds shall be purchased at the Purchase Price only from the funds listed below. Subject to the provisions of *Section 6.12(c)* hereof, funds for the payment of the Purchase Price shall be derived from the following sources in the order of priority indicated:

(a) the proceeds of the sale of such Bonds which have been remarketed by the Remarketing Agent and which proceeds are on deposit with the Trustee prior to 12:00 Noon New York City time on the Mandatory Purchase Date or the Tender Date but, during any Credit Facility Period, only if such Bonds were purchased by an entity other than the Borrower or the Issuer, or any affiliate of the foregoing;

(b) moneys drawn by the Trustee under the Credit Facility, during any Credit Facility Period, pursuant to *Section 6.12* hereof; and

(c) any other moneys furnished to the Trustee and available for such purpose.

#### **Section 4.4. Delivery of Purchased Bonds.**

(a) Bonds purchased with moneys described in *Section 4.3(a)* hereof shall be delivered by the Trustee, at its Delivery Office, to or upon the order of the purchasers thereof and beneficial interests so purchased shall be registered on the books of the Securities Depository in the name of the Participant through whom the new Beneficial Owner has purchased such beneficial interest; provided, however, that during any Credit Facility Period, the Trustee shall not deliver any Bonds, and there shall not be registered any beneficial ownership with respect to Bonds described in this paragraph which were Pledged Bonds, until the Credit Provider has confirmed that the Credit Facility has been reinstated in full.

(b) Bonds purchased with moneys described in *Section 4.3(b)* hereof shall be delivered by the Trustee to or upon the order of the Credit Provider and shall, if requested by the Credit Provider, be marked with a legend indicating that they are Pledged Bonds.

(c) Bonds purchased with moneys described in *Section 4.3(c)* hereof shall, at the direction of the Borrower, (i) be delivered as instructed by the Borrower, or (ii) be delivered to the Trustee for cancellation; provided, however, that any Bonds so purchased after the selection thereof by the Trustee for redemption shall be delivered to the Trustee for cancellation.

(d) While the Book-Entry System is in effect with respect to the Bonds, delivery of Bonds for purchase shall be deemed to have occurred upon transfer of ownership interests therein to the account of the Trustee on the books of the Securities Depository.

(e) While the Book-Entry System is in effect, payment of the Purchase Price of beneficial ownership interests tendered pursuant to *Section 4.2(b)* hereof shall be made by payment to the Participant from whom the notice of tender is received from the sources provided herein for the purchase of Bonds. The Trustee shall hold beneficial ownership interests of Bonds delivered to it pursuant to *Section 4.2(b)* hereof pending settlement in trust for the benefit of the Participant from whom the beneficial interests in the Bonds are received.

Except as provided above, Bonds delivered as provided in this Section shall be registered in the manner directed by the recipient thereof.

#### **Section 4.5. Delivery of Proceeds of Sale of Purchased Bonds.**

Except in the case of the sale of any Pledged Bonds, the proceeds of the sale of any Bonds delivered to the Trustee pursuant to *Sections 4.1 or 4.2* hereof, to the extent not required to pay the Purchase Price thereof in accordance with *Section 4.3* hereof, shall be paid to or upon the order of the Credit Provider, to the extent required to satisfy the obligations of the Borrower under the Credit Agreement, and the balance, if any, shall be paid to or upon the order of the Borrower.

#### **Section 4.6. Duties of Trustee with Respect to Purchase of Bonds.**

(a) The Trustee shall hold all Bonds delivered to it pursuant to *Section 4.1 or 4.2* hereof in trust for the benefit of the respective Owners of Bonds which shall have so delivered such Bonds until moneys representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Owners of Bonds;

(b) The Trustee shall hold all moneys delivered to it pursuant to this Indenture for the purchase of Bonds in a separate account, in trust for the benefit of the person or entity which shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to or for the account of such person or entity, and after such delivery, in trust for the benefit of the person or entity who have not tendered or received payment for their Bonds;

(c) The Trustee shall deliver to the Borrower, the Remarketing Agent and, during any Credit Facility Period, the Credit Provider, a copy of each notice delivered to it in accordance with *Section 4.2* hereof and, immediately upon the delivery to it of Bonds in accordance with said *Section 4.2*, give telephonic or telegraphic notice to the Borrower, the Remarketing Agent and the Credit Provider, during any Credit Facility Period, specifying the principal amount of the Bonds so delivered; and

(d) During any Credit Facility Period, the Trustee shall draw moneys under the Credit Facility as provided in *Section 6.12* hereof to the extent required to provide for timely payment of the Purchase Price of Bonds in accordance with the provisions of *Section 4.3* hereof.

#### **Section 4.7. Remarketing of Bonds.**

The Remarketing Agent shall remarket, in accordance with the terms of the Remarketing Agreement, Bonds or beneficial interests tendered pursuant to the terms of *Section 4.1 or 4.2* hereof at a price equal to the principal amount thereof plus accrued interest thereon from the last previous Interest Payment Date upon which interest has been paid to the date of such remarketing. The Trustee shall not authenticate and release Bonds or beneficial interests in Bonds prior to 12:00 Noon New York City time on the date of any remarketing.

### **ARTICLE V**

#### **GENERAL COVENANTS**

##### **Section 5.1. Payment of Principal, Premium, if any, and Interest.**

The Issuer covenants that it will promptly pay or cause to be paid the principal of, premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates, and in the manner provided herein and in said Bonds according to the true intent and meaning thereof, but solely from the amounts pledged therefor which are from time to time held by the Trustee in the various accounts of the Bond Fund. The principal of, premium, if any, and interest on the Bonds are payable solely from the amounts to be paid under the Agreement and otherwise as provided herein and in the Agreement, which amounts are hereby specifically

pledged to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer. The Issuer shall have no responsibility whatsoever to make payments toward any Purchase Price.

Neither the Issuer, the State, nor any political subdivision of the State shall in any event be liable for the payment of the principal of, premium, if any, or interest on any of the Bonds or for the performance of any pledge, obligation or agreement undertaken by the Issuer except to the extent that the moneys pledged herein are sufficient therefor. No Owner of any Bonds has the right to compel any exercise of taxing power of the State or any political subdivision thereof to pay the Bonds or the interest thereon, and the Bonds do not constitute an indebtedness of the Issuer, the State or any political subdivision of the State, or a loan of credit of any of the foregoing within the meaning of any constitutional or statutory provision.

### **Section 5.2. Performance of Covenants.**

The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, and stipulations of the Issuer contained in this Indenture and in the Agreement, in any and every Bond executed, authenticated and delivered hereunder in accordance with their terms and in all of its proceedings pertaining hereto. The Issuer covenants that it is duly authorized under the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds authorized hereby and to execute this Indenture, to assign the Agreement, and to pledge the amounts to be paid under the Agreement and other amounts hereby pledged in the manner and to the extent herein set forth, that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the Issuer according to the terms thereof and hereof.

### **Section 5.3. Instruments of Further Assurance.**

The Issuer will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular the amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer, except as herein and in the Agreement provided, will not sell, convey, mortgage, encumber or otherwise dispose of any part of the amounts, revenues and receipts payable under the Agreement or its rights under the Agreement.

### **Section 5.4. Recording and Filing.**

The Borrower has agreed pursuant to the Agreement that it will cause all financing statements related to this Indenture and all supplements hereto and all continuations thereof to be recorded and filed in such manner and in such places as may from time to time be required by law in order to preserve and protect fully the security of the Owners of the Bonds and the rights of the Trustee hereunder, and to take or cause to be taken any and all other action necessary to perfect the security interest created by this Indenture.

### **Section 5.5. Inspection of Books.**

All books and records, if any, in the Issuer's possession relating to the Project and the amounts derived from the Project shall at all reasonable times be open to inspection by such accountants or other agents as the Trustee may from time to time designate.

### **Section 5.6. List of Owners of Bonds.**

The Trustee will keep on file a list of names and addresses of the Owners of all Bonds as from time to time registered on the registration books maintained by the Trustee, together with the principal amount and numbers of such Bonds owned by each such Owner. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied for any purpose by the Issuer, the Borrower or by the Owners (or a designated representative thereof) of fifteen percent (15%) or more in aggregate principal amount of Outstanding Bonds, such possession or ownership and the authority of such designated representative to be evidenced to the satisfaction of the Trustee.

### **Section 5.7. Rights Under Agreement.**

The Agreement, a duly executed counterpart of which has been filed with the Trustee, sets forth the covenants and obligations of the Issuer and the Borrower, and reference is hereby made to the Agreement for a detailed statement of said covenants and obligations of the Borrower thereunder, and the Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer (other than Reserved Rights) and all obligations of the Borrower under and pursuant to the Agreement for and on behalf of the Owners of Bonds, whether or not the Issuer is in default hereunder.

### **Section 5.8. Undertaking to Provide Ongoing Disclosure.**

If the Conversion Option to elect a Long Term Period or a Commercial Paper Period is elected, the Borrower has undertaken in Section 6.06 of the Agreement to provide ongoing disclosure for the benefit of the Owners pursuant to Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (17 CFR Part 240 § 240.15C2-12), which undertaking is hereby assigned by the Issuer to the Trustee for the benefit of the Owners. Such assignment is a present absolute assignment and not the assignment of a security interest. Section 6.06 of the Agreement shall be enforceable by any Owner and the Trustee.

### **Section 5.9. Notice of Control.**

The Trustee agrees to provide written notice to the Owners promptly following receipt of any notice from the Borrower pursuant to Section 6.07 of the Agreement.

## ARTICLE VI

### REVENUES AND FUNDS

#### Section 6.1. Creation of the Bond Fund.

There is hereby created and established with the Trustee a trust fund to be designated "St. Johns County, Florida - Bond Fund, Flagler College, Inc. Project," which shall be used to pay when due the principal and Purchase Price of, premium, if any, and interest on the Bonds. Within the Bond Fund there is hereby created and established certain trust accounts, to be designated the "General Account," the "Credit Facility Account," and the "Remarketing Account." Moneys drawn under the Credit Facility (if any) shall be deposited in the Credit Facility Account and shall be held separate and apart from moneys derived from any other source. Moneys received from the Remarketing Agent shall be deposited in the Remarketing Account and shall be held separate and apart from moneys derived from any other source. Unless otherwise specified, all moneys received by the Trustee for deposit into the Bond Fund shall be credited to the General Account. Any reference herein to the "Bond Fund" without further qualification or explanation shall, unless the context indicates otherwise, constitute a reference to the General Account.

#### Section 6.2. Payments into the Bond Fund.

There shall be deposited into the Bond Fund from time to time the following:

- (a) in the Credit Facility Account, moneys drawn under the Credit Facility (during any Credit Facility Period);
- (b) in the Remarketing Account, moneys received by the Trustee from the proceeds of the remarketing of the Bonds; and
- (c) in the General Account, all other moneys received by the Trustee under and pursuant to any of the provisions hereof or of the Agreement which are required to be or which are accompanied by directions that such moneys are to be paid into the Bond Fund.

#### Section 6.3. Use of Moneys in the Bond Fund.

Except as provided in Sections 4.3, 4.5, 4.6, and 6.11 hereof, moneys in the various accounts of the Bond Fund shall be used solely for the payment of the principal of, premium, if any, and interest on the Bonds and for the redemption of the Bonds prior to maturity. Subject to the provisions of *Section 6.12* hereof, funds for such payments of the principal of and premium, if any, and interest on the Bonds shall be derived from the following sources in the order of priority indicated:

- (a) moneys drawn by the Trustee under the Credit Facility during any Credit Facility Period; and
- (b) any other moneys furnished to the Trustee and available for such purpose.

#### **Section 6.4. Payment of Bonds with Proceeds of Refunding Bonds.**

The principal of and interest on the Bonds may be paid from the proceeds of the sale of refunding obligations if, in the opinion of nationally recognized counsel experienced in bankruptcy matters, which opinion shall be satisfactory to the rating agency (if any) then providing the rating borne by the Bonds, the application of such refunding proceeds will not constitute a voidable preference in the event of the occurrence of an Act of Bankruptcy.

#### **Section 6.5. Project Fund.**

There is hereby created and established with the Trustee a trust fund to be designated "St. Johns County, Florida - Project Fund, Flagler College, Inc. Project," which shall be expended in accordance with the provisions of the Agreement.

#### **Section 6.6. Payments into the Project Fund; Disbursements.**

The net proceeds of the issuance and delivery of the Bonds shall be deposited in the Project Fund and shall not be commingled with any other funds. The Trustee is hereby authorized and directed to make each disbursement from the Project Fund required by the provisions of the Agreement. The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, including records of all Requisitions and Issuer certificates made pursuant to the Agreement, and after the Project has been completed and a completion certificate has been filed as provided in *Section 6.8* hereof, the Trustee shall, upon request of the Borrower, file an accounting thereof with the Issuer and the Borrower.

#### **Section 6.7. Use of Money in the Project Fund Upon Default.**

If the principal of the Bonds shall have become due and payable pursuant to *Article IX* hereof, any balance remaining in the Project Fund shall without further authorization be transferred into the General Account of the Bond Fund.

#### **Section 6.8. Completion of the Project.**

The completion of the Project and payment or provision for payment of all Costs of the Project shall be evidenced by the filing with the Trustee of the completion certificate required by the Agreement. As soon as practicable and in any event not more than sixty (60) days from the date of the certificate referred to in the preceding sentence, any balance remaining in the Project Fund (except amounts the Borrower shall have directed the Trustee to retain for any Cost of the Project not then due and payable) shall without further authorization be transferred into the General Account of the Bond Fund and thereafter applied in the manner provided in the Agreement; provided, that during any Credit Facility Period, in the event that a portion of the Bonds is to be redeemed with any balance remaining in the Project Fund and transferred to the General Account of the Bond Fund, the Trustee is authorized and directed to draw upon the Credit Facility to the extent of the redemption price of the Bonds so called for redemption, and promptly thereafter to transfer any amounts on deposit in the General Account of the Bond Fund to the Credit Provider, to the extent necessary to reimburse the Credit Provider for such drawing upon the Credit Facility.



### **Section 6.9. Nonpresentment of Bonds.**

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, if moneys sufficient to pay any such Bond shall have been deposited with the Trustee for the benefit of the Owner thereof, all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such funds, uninvested or invested in Government Obligations maturing overnight, but in any event without liability for interest thereon, for the benefit of the Owner of such Bond, which Owner shall thereafter be restricted exclusively to such funds for any claim of whatever nature on its part under this Indenture with respect to such Bond.

Any moneys so deposited with and held by the Trustee not so applied to the payment of Bonds within two (2) years after the date on which the same shall have become due shall be repaid by the Trustee to the Borrower upon written direction of a Borrower Representative, and thereafter Owners of Bonds shall be entitled to look only to the Borrower for payment, and then to the extent of the amount so repaid, and all liability of the Trustee with respect to such money shall thereupon cease, and the Borrower shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

### **Section 6.10. Moneys to be Held in Trust.**

All moneys required to be deposited with or paid to the Trustee for the account of any fund or account referred to in any provision of this Indenture or the Agreement shall be held by the Trustee in trust, and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien and security interest created hereby, except as otherwise specifically provided herein.

### **Section 6.11. Repayment to the Credit Provider and the Borrower from the Bond Fund or the Project Fund.**

Any amounts remaining in any account of the Bond Fund, the Project Fund, or any other fund or account created hereunder (other than the Rebate Fund) after payment in full of the principal of, premium, if any, and interest on the Bonds, the fees, charges and expenses of the Trustee and all other amounts required to be paid hereunder and in the Agreement, shall be paid immediately to the Credit Provider to the extent of any indebtedness of the Borrower to the Credit Provider under the Credit Agreement, and, after repayment of all such indebtedness, to the Borrower. Moneys remaining in the Rebate Fund after all payments to the United States of America required by the terms of *Section 6.13* hereof shall also be applied as provided in the foregoing sentence. In making any payment to the Credit Provider under this Section, the Trustee may rely conclusively upon a written statement provided by the Credit Provider as to the amount payable to the Credit Provider under the Credit Agreement.

### **Section 6.12. Credit Facility.**

(a) During any Credit Facility Period, the Trustee shall timely draw moneys under the Credit Facility in accordance with the terms thereof (i) to pay when due (whether by reason of maturity, the occurrence of an Interest Payment Date, redemption, acceleration or

otherwise) the principal of, premium, if any, and interest on the Bonds, and (ii) to the extent moneys described in **Section 4.3(a)** hereof are not available therefor prior to 12:00 Noon New York City time on the Mandatory Purchase Date or on the Tender Date, to pay when due the Purchase Price of Bonds.

(b) In the event of a drawing under the Credit Facility to pay the Purchase Price of Bonds upon a Mandatory Purchase Date relating to the issuance and delivery of a Substitute Credit Facility, the Trustee shall draw moneys under the Credit Facility in effect on and prior to such Mandatory Purchase Date and shall not draw upon the Substitute Credit Facility that will become effective on or after such Mandatory Purchase Date.

(c) Notwithstanding any provision to the contrary which may be contained in this Indenture, including, without limitation, **Section 6.12(a)** hereof, (i) in computing the amount to be drawn under the Credit Facility on account of the payment of the principal or Purchase Price of, or premium, if any, or interest on the Bonds, the Trustee shall exclude any such amounts in respect of any Bonds which a Responsible Officer knows are Pledged Bonds on the date such payment is due, and (ii) amounts drawn by the Trustee under the Credit Facility shall not be applied to the payment of the principal or Purchase Price of, or premium, if any, or interest on, any Bonds which a Responsible Officer knows are Pledged Bonds on the date such payment is due.

**Section 6.13. Creation of Rebate Fund; Duties of Trustee; Amounts Held in Rebate Fund.**

(a) There is hereby created and established with the Trustee a trust fund to be held in trust to be designated “St. Johns County, Florida Rebate Fund -- Flagler College, Inc. Project, 2003.”

(b) The Trustee shall make information regarding the Bonds and the investments hereunder available to the Issuer and the Borrower upon request, shall make deposits to and disbursements from the Rebate Fund in accordance with the directions received from the Borrower or the Borrower Representative, shall invest moneys in the Rebate Fund pursuant to said directions and shall deposit income from such investments pursuant to said directions, and shall make payments to the United States of America in accordance with directions received from the Borrower.

(c) Notwithstanding any provision of this Indenture to the contrary, the Trustee shall not be liable or responsible for any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 of the Code or any applicable Treasury regulation (the “Arbitrage Rules”), including, without limitation, the calculation of amounts required to be paid to the United States under the provisions of the Arbitrage Rules, the maximum amount which may be invested in “nonpurpose obligations” as defined in the Code and the fair market value of any investment made hereunder, it being understood and agreed that the sole obligation of the Trustee with respect to investments of funds hereunder shall be to invest the moneys received by the Trustee pursuant to the instructions of the Borrower Representative given in accordance with **Article VII** hereof. The Trustee shall have no responsibility for determining whether or not the investments made pursuant to the

direction of the Borrower Representative or any of the instructions received by the Trustee under this *Section 6.13* comply with the requirements of the Arbitrage Rules and shall have no responsibility for monitoring the obligations of the Borrower or the Issuer for compliance with the provisions of the Indenture with respect to the Arbitrage Rules.

## ARTICLE VII

### INVESTMENT OF MONEYS

#### Section 7.1. Investment of Moneys.

(a) Any moneys held as a part of the Project Fund or any fund other than the Bond Fund or the Rebate Fund shall be invested or reinvested by the Trustee, to the extent permitted by law, at the written request of and as directed by a Borrower Representative, in any of the following qualified investments:

(i) Bonds or obligations of counties, municipal corporations, school districts, political subdivisions, authorities, or bodies of the State;

(ii) Bonds or other obligations of the United States or of subsidiary corporations of the United States Government which are fully guaranteed by such government;

(iii) Obligations of agencies of the United States Government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Central Bank for Cooperatives;

(iv) Bonds or other obligations issued by any Public Housing Agency or Municipal Corporation in the United States, which such bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States Government, or project notes issued by any public housing agency, urban renewal agency, or municipal corporation in the United States which are fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States Government;

(v) Certificates of deposit of national or state banks located within the State which have deposits insured by the Federal Deposit Insurance Corporation and certificates of deposit of federal savings and loan associations and state building and loan associations located within the State which have deposits insured by the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or the Georgia Credit Union Deposit Insurance Corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds. The portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation

or the Georgia Credit Union Deposit Insurance Corporation, if any, shall be secured by deposit, with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank or federal savings and loan association or state building and loan or savings and loan association located within the State, of one or more the following securities in an aggregate principal amount equal at least to the amount of such excess: direct and general obligations of this state or of any county or municipal corporation in the State, obligations of the United States or subsidiary corporations included in paragraph (ii) hereof, obligations of the agencies of the United States Government included in paragraph (iii) hereof, or bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in paragraph (iv) hereof;

(vi) Repurchase agreements with respect to obligations included in (i), (ii), (iii), (iv) or (v) above and any other investments to the extent at the time permitted by then applicable law for the investment of public funds;

(vii) Securities of or other interests in any no-load, open-end management type investment company or investment trust registered under the Investment Company Act of 1940, as from time to time amended, or any common trust fund maintained by any bank or trust company which holds such proceeds as trustee or by an affiliate thereof so long as:

(A) the portfolio of such investment company or investment trust or common trust fund is limited to the obligations referenced in paragraph (ii) hereof and repurchase agreements fully collateralized by any such obligations;

(B) such investment company or investment trust or common trust fund takes delivery of such collateral either directly or through an authorized custodian;

(C) such investment company or investment trust or common trust fund is managed so as to maintain its shares at a constant net asset value; and

(D) securities of or other interests in such investment company or investment trust or common trust fund are purchased and redeemed only through the use of national or state banks having corporate trust powers and located within the State; and

(viii) Any other investment approved by the Credit Provider.

(b) Any moneys held as a part of any account of the Bond Fund or the Rebate Fund shall be invested or reinvested by the Trustee, at the direction of the Borrower, in Government Obligations with such maturities as shall be required in order to assure full and timely payment of amounts required to be paid from the Bond Fund or the Rebate Fund, which maturities shall (in the case of the Bond Fund), in any event, extend no more than thirty (30) days from the date of acquisition thereof; provided, that any moneys held pursuant to the

provisions of **Section 6.9** either shall be held uninvested or shall be invested in Government Obligations maturing on the next Business Day.

(c) The Trustee may make any and all such investments through its own bond or investment department or the bond or investment department of any bank or trust Borrower under common control with the Trustee. All such investments shall at all times be a part of the fund or account from which the moneys used to acquire such investments shall have come and all income and profits on such investments shall be credited to, and losses thereon shall be charged against, such fund. All investments hereunder shall be registered in the name of the Trustee, as Trustee under the Indenture. All investments hereunder shall be held by or under the control of the Trustee. The Trustee shall sell and reduce to cash a sufficient amount of investments of funds in any account of the Bond Fund whenever the cash balance in such account of the Bond Fund is insufficient, together with any other funds available therefor, to pay the principal or Purchase Price of, premium, if any, and interest on the Bonds when due. The Trustee shall not be responsible for any reduction of the value of any investments made in accordance with the directions of the Borrower or a Borrower Representative or any losses incurred in the sale of such investments.

(d) The Issuer covenants and certifies to and for the benefit of the Owners of the Bonds from time to time Outstanding that so long as any of the Bonds remain Outstanding, the Issuer shall not direct that moneys on deposit in any fund or account in connection with the Bonds (whether or not such moneys were derived from the proceeds of the sale of the Bonds or from any other sources), be used in a manner which will cause the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code. Pursuant to such covenants, the Issuer obligates itself to comply throughout the term of the Bonds with any request of the Borrower regarding the requirements of Section 148 of the Code, and any regulations promulgated thereunder.

(e) Unless an opinion is rendered by Bond Counsel to the effect that the following actions are not required in order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the Issuer hereby covenants that it will make payments as directed by the Borrower (but only from moneys provided to the Issuer by or on behalf of the Borrower for such purposes), if any, required to be made to the United States pursuant to the Code in order to establish or maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

## **ARTICLE VIII**

### **DISCHARGE OF INDENTURE**

#### **Section 8.1. Discharge of Indenture.**

If the Issuer shall pay or cause to be paid, in accordance with the provisions of this Indenture, to the Owners of the Bonds, the principal of, premium, if any, and interest due or to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall not then be in default in any of the other covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it or on its part, and if the Issuer shall pay or

cause to be paid to the Trustee all sums of money due or to become due according to the provisions hereof, then these presents and the estate and rights hereby granted shall cease, determine and be void, whereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the Issuer such instruments in writing as shall be requisite to release the lien hereof and reconvey, release, assign and deliver unto the Issuer any and all of the estate, right, title and interest in and to any and all rights or property conveyed, assigned or pledged to the Trustee or otherwise subject to the lien of this Indenture, except (i) amounts in any account of the Bond Fund or Project Fund required to be paid to the Credit Provider or the Borrower under *Section 4.5* or *6.11* hereof, (ii) cash held by the Trustee for the payment of the principal or Purchase Price of, premium, if any, or interest on particular Bonds and (iii) amounts in the Rebate Fund required to be paid to the United States.

### **Section 8.2. Defeasance of Bonds.**

The following provisions of this *Section 8.2* shall apply only during a Long Term Period.

Any Bond shall be deemed to be paid within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided herein) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Government Obligations maturing as to principal and interest in such amounts and at such times as will insure, without further investment or reinvestment thereof, in the opinion of an independent certified public accounting firm of national reputation (a copy of which opinion shall be furnished to the rating agency then providing the rating borne by the Bonds), the availability of sufficient moneys to make such payment, (b) all necessary and proper fees, compensation and expenses of the Trustee and the Issuer pertaining to the Bonds with respect to which such deposit is made, shall have been paid or the payment thereof provided for to the satisfaction of the Trustee, and (c) during any Credit Facility Period, the Issuer shall have given to the Trustee in form satisfactory to the Trustee an opinion of nationally recognized counsel experienced in bankruptcy matters, which opinion shall be satisfactory to the rating agency (if any) then providing the rating borne by the Bonds, to the effect that the application of such moneys will not constitute a voidable preference in the event of the occurrence of an Act of Bankruptcy. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Obligations.

Notwithstanding the foregoing, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds shall have been previously given in accordance with *Article III* of this Indenture, or in the event said Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, until the Borrower shall have given the Trustee, in form satisfactory to the Trustee, irrevocable instructions to notify, as soon as practicable, the Owners of the Bonds that the deposit required by (a)(ii) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this *Section 8.2* and stating the

maturity or redemption date upon which moneys are to be available for the payment of the principal of and the applicable redemption premium, if any, on said Bonds, plus interest thereon to the due date thereof; or (b) the maturity of such Bonds.

Before accepting or using any moneys to be deposited pursuant to this *Section 8.2*, the Trustee may require that the Borrower furnish to it (i) an opinion of Bond Counsel to the effect that such deposit will not adversely affect the exclusion from gross income for Federal income tax purposes of interest on the Bonds and that all conditions hereunder have been satisfied, and (ii) a certificate of an independent certified public accountant to the effect that such deposit will be sufficient to defease the Bonds as provided in this *Section 8.2*. The Trustee shall be fully protected in relying upon such Bond Counsel opinion and/or accountant's certificate in accepting or using any moneys deposited pursuant to this *Article VIII*.

All moneys so deposited with the Trustee as provided in this *Section 8.2* may also be invested and reinvested, at the direction of the Borrower, in noncallable Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of the Trustee pursuant to this *Section 8.2* which is not required for the payment of the Bonds and interest and premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the General Account of the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the General Account of the Bond Fund; provided, however, unless the opinion of Bond Counsel specifically permits any such reinvestment, the Borrower shall furnish to the Trustee an opinion of Bond Counsel to the effect that such reinvestment will not adversely affect the exclusion from gross income for Federal income tax purposes of interest on the Bonds.

The Issuer hereby covenants that no deposit will knowingly be made or accepted and no use knowingly made of any such deposit which would cause the Bonds to be treated as arbitrage bonds within the meaning of Section 148 of the Code.

Notwithstanding any provision of any other article of this Indenture which may be contrary to the provisions of this *Section 8.2*, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this *Section 8.2* for the payment of Bonds (including interest and premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including the interest and premium thereon, if any) with respect to which such moneys or Government Obligations have been so set aside in trust.

## ARTICLE IX

### DEFAULTS AND REMEDIES

#### Section 9.1. Defaults.

If any of the following events occur, it is hereby declared to constitute a "Default":

- (a) Default in the due and punctual payment of interest on any Bond;

(b) Default in the due and punctual payment of the principal of or premium, if any, on any Bond, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;

(c) Default in the due and punctual payment of the Purchase Price of any Bond at the time required by *Sections 4.1 or 4.2* hereof;

(d) At any time during the Credit Facility Period, receipt by the Trustee of written notice from the Credit Provider that an Event of Default has occurred under the Credit Agreement and instructing the Trustee to accelerate the Bonds;

(e) At any time other than during a Credit Facility Period, the occurrence of a Default under the Agreement; and

(f) At any time other than during a Credit Facility Period, default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in this Indenture or in the Bonds contained and failure to remedy the same after notice thereof pursuant to *Section 9.12* hereof.

### **Section 9.2. Acceleration.**

Upon the occurrence of (i) any Default other than under *Section 9.1(d)*, the Trustee may, and at the written request of the Owners of at least a majority in aggregate principal amount of Outstanding Bonds shall, or (ii) any Default under *Section 9.1(d)*, the Trustee shall, by notice in writing delivered to the Issuer and the Borrower (or, if the Book-Entry System is in effect, the Securities Depository), declare the principal of all Bonds and the interest accrued thereon to the date of such acceleration immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately declare all payments required to be made by the Borrower under the Agreement to be immediately due and payable and, during the Credit Facility Period, shall draw moneys under the Credit Facility to pay the principal of all Outstanding Bonds and the accrued interest thereon to the date of acceleration to the extent required by *Section 6.12(a)* hereof. Interest shall cease to accrue on the Bonds on the date of declaration of acceleration under this *Section 9.1(f)*.

### **Section 9.3. Other Remedies; Rights of Owners of Bonds.**

Subject to the provisions of *Section 9.1(f)* hereof, upon the occurrence of a Default, the Trustee may pursue any available remedy at law or in equity against the Borrower to enforce the payment of the principal of, premium, if any, and interest on the Outstanding Bonds. There shall be no monetary remedies or damages available against the Issuer.

Subject to the provisions of *Section 9.1(f)* hereof, if a Default shall have occurred and be continuing and if requested so to do by the Owners of at least a majority in aggregate principal amount of Outstanding Bonds and provided the Trustee is indemnified as provided in *Section 10.1(l)* hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Section and by *Section 9.1(f)* hereof, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Owners of Bonds.



Subject to the provisions of *Section 9.1(f)* hereof, no remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Owners of Bonds) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners of Bonds hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver of any such Default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

No waiver of any Default hereunder, whether by the Trustee or by the Owners of Bonds, shall extend to or shall affect any subsequent Default or shall impair any rights or remedies consequent thereon.

#### **Section 9.4. Right of Owners of Bonds to Direct Proceedings.**

Subject to the provisions of *Section 9.1(f)* hereof, anything in this Indenture to the contrary notwithstanding, the Owners of at least a majority in aggregate principal amount of the Outstanding Bonds shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

#### **Section 9.5. Appointment of Receivers.**

Upon the occurrence of a Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners of Bonds under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

#### **Section 9.6. Waiver.**

Upon the occurrence of a Default, to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through or under it, shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws of any jurisdiction now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws.

#### **Section 9.7. Application of Moneys.**

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article (other than moneys drawn under the Credit Facility, which shall be deposited directly into the Credit Facility Account of the Bond Fund, proceeds of any

remarketing of Bonds, which shall be deposited directly into the Remarketing Account of the Bond Fund, or moneys deposited with the Trustee and held in accordance with *Section 6.9* hereof) 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 owing to or incurred or made by the Trustee, be deposited in the General Account of the Bond Fund and the moneys in each account of the Bond Fund shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become 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 (with interest on overdue installments of such interest, to the extent permitted by law, at the rate of interest borne by the Bonds) 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; and

SECOND: To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on any of the Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), (with interest on overdue installments of principal and premium, if any, to the extent permitted by law, at the rate of interest borne by the Bonds) and, if the amount available shall not be sufficient to pay in full all Bonds due on any particular date, then to the payment ratably according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege; and

THIRD: To the payment to the persons entitled thereto as the same shall become due of the principal of and premium, if any, and interest on the Bonds which may thereafter become due 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.

(b) 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 and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due, respectively, for principal and interest, to the persons entitled thereto without any discrimination or privilege, with interest on overdue installments of interest or principal, to the extent permitted by law, at the rate of interest borne by the Bonds.

(c) If the principal of all the Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of *Section 9.7(b)* hereof, in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of *Section 9.7(a)* hereof.

Whenever moneys are to be applied pursuant to the provisions of this Section, 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 application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it 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 dates shall cease to accrue; provided, that upon an acceleration of Bonds pursuant to *Section 9.1(f)*, interest shall cease to accrue on the Bonds on and after the date of such acceleration. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Owner of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever the principal of, premium, if any, and interest on all Bonds have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining in any account of the Bond Fund shall be paid to the Borrower or the Credit Provider as provided in *Section 6.11* hereof.

Notwithstanding anything to the contrary herein or otherwise, moneys drawn under the Credit Facility shall be applied only to the payment of principal or Purchase Price of and accrued interest on the Bonds.

#### **Section 9.8. Remedies Vested in Trustee.**

All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owners of the Bonds, and any recovery of judgment shall be for the equal and ratable benefit of the Owners of the Outstanding Bonds.

#### **Section 9.9. Rights and Remedies of Owners of Bonds.**

No Owner of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (subject to the provisions of *Section 9.1(f)* hereof) (i) a Default has occurred of which the Trustee has been notified as provided in *Section 10.1(h)* hereof, or of which by said subsection it is deemed to have notice, (ii) the Owners of at least a majority in aggregate principal amount of Outstanding Bonds shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such

action, suit or proceeding and shall have offered to the Trustee indemnity as provided in **Section 10.1(i)**, and (iii) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding. Such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the Owners of all Outstanding Bonds. However, nothing contained in this Indenture shall affect or impair the right of any Owner of Bonds to enforce the payment of the principal or Purchase Price of, premium, if any, and interest on any Bond at and after the maturity thereof, or the obligation of the Borrower to pay the principal of, premium, if any, and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time and place, from the source and in the manner in the Bonds expressed. No Owner of any Bond shall have any right to institute any suit, action or proceeding at equity or at law to enforce a drawing under the Credit Facility or to seek damages or a monetary remedy against the Issuer.

#### **Section 9.10. Termination of Proceedings.**

In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case, the Issuer, the Trustee and the Owners of Bonds shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

#### **Section 9.11. Waivers of Default.**

The Trustee shall waive any Default hereunder and its consequences and rescind any declaration of acceleration of principal upon the written request of the Owners of (1) at least a majority in aggregate principal amount of all Outstanding Bonds in respect of which default in the payment of principal or interest, or both, exists or (2) at least a majority in aggregate principal amount of Outstanding Bonds in the case of any other Default; provided, however, that there shall not be waived any Default hereunder unless and until the Trustee shall have received written notice from the Credit Provider that the Credit Facility has been reinstated in full; and provided further that any Default under subsection (d) of **Section 9.1** hereof may only be waived upon the written request of the Credit Provider (and in such case the consent of the Owners of the Bonds shall not be required); and provided further that there shall not be waived any Default specified in subsection (a) or (b) of **Section 9.1** hereof unless prior to such waiver or rescission, the Borrower shall have caused to be paid to the Trustee (i) all arrears of principal and interest (other than principal of or interest on the Bonds which became due and payable by declaration of acceleration), with interest at the rate then borne by the Bonds on overdue installments, to the extent permitted by law, and (ii) all fees and expenses of the Trustee in connection with such Default. In case of any waiver or rescission described above, or in case any proceeding taken by

the Trustee on account of any such Default shall have been discontinued or concluded or determined adversely, then and in every such case the Issuer, the Trustee and the Owners of Bonds shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Default, or impair any right consequent thereon.

Notwithstanding the foregoing, no waiver, rescission or annulment of a Default hereunder shall be made if the Credit Provider shall theretofore have honored in full a drawing under the Credit Facility in respect of such Default.

**Section 9.12. Notice of Defaults under Section 9.01(e) or (f); Opportunity to Cure Such Defaults.**

Anything herein to the contrary notwithstanding, no Default under *Sections 9.1(e) or (f)* hereof shall be deemed a Default until notice of such Default shall be given to the Borrower by the Trustee or by the Owners of at least a majority in aggregate principal amount of all Outstanding Bonds, and the Borrower shall have had thirty (30) days after receipt of such notice to correct said Default or to cause said Default to be corrected and shall not have corrected 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 a Default if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Default is corrected.

With regard to any Default concerning which notice is given to the Borrower under the provisions of this Section, the Issuer hereby grants the Borrower full authority for the account of the Issuer to perform any covenant or obligation alleged in said notice to constitute a Default, in the name and stead of the Issuer with full power to do any and all things and acts, other than to obligate the Issuer in any manner, to the same extent that the Issuer could do with regard to the Default and perform any such things and acts and with power of substitution.

**Section 9.13. Subrogation Rights of Credit Provider.**

The Credit Provider shall be subrogated to the rights possessed under this Indenture by the Owners of the Bonds, to the extent the Credit Facility is drawn upon and the amount of such drawing is not subsequently reimbursed to the Credit Provider. For purposes of the subrogation rights of the Credit Provider hereunder, (a) any reference herein to the Owners of the Bonds shall mean the Credit Provider, (b) any principal of or interest on the Bonds paid with moneys collected pursuant to the Credit Facility shall be deemed to be unpaid hereunder, and (c) the Credit Provider may exercise any rights it would have hereunder as the Owner of the Bonds. The subrogation rights granted to the Credit Provider in this Indenture are not intended to be exclusive of any other remedy or remedies available to the Credit Provider and such subrogation rights shall be cumulative and shall be in addition to every other remedy given hereunder, under the Credit Agreement or under any other instrument or agreement with respect to the reimbursement of moneys paid by the Credit Provider under the Credit Facility or with respect to the security for the obligations of the Borrower under the Credit Agreement, and every other remedy now or hereafter existing at law or in equity or by statute.

## ARTICLE X

### TRUSTEE

#### Section 10.1. Acceptance of Trusts.

The Trustee certifies that it is a qualified public depository as defined in Chapter 280 Florida Statutes, as amended, and hereby accepts the trusts and duties imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of a Default and after the curing of all Defaults which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants shall be read into this Indenture against the Trustee. In case a Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in the exercise of such rights and powers as an ordinary, prudent man would exercise or use in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees, but shall not be answerable for the conduct of the same if appointed with due care, and shall be entitled to advice of counsel concerning its duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Borrower) selected by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or inaction taken or not taken, as the case may be, in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the certificate of authentication endorsed on the Bonds), or for insuring the Project, or for collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the Project or any lien waivers with respect to the Project, and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Borrower under the Agreement except as hereinafter set forth; but the Trustee may require of the Issuer and the Borrower full information and advice as to the performance of the aforesaid covenants, conditions and agreements. The Trustee shall have no obligation to perform any of the duties of the Issuer under the Agreement.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Owner may be entitled to take with like effect as if it were not the Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested

in any financial or other transactions with the Issuer or the Borrower and may act as a depository, trustee or agent for any committee of Owners secured hereby or other obligations of the Issuer as freely as if it were not the Trustee. The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not the Trustee hereunder.

(e) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed by an Issuer Representative or a Borrower Representative as sufficient evidence of the facts therein contained and prior to the occurrence of a Default of which a Responsible Officer of the Trustee has been notified as provided in *Section 10.1(h)* hereof, or of which by said subsection the Trustee is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of such officials of the Issuer who executed the Bonds (or their successors in office) to the effect that a resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Default hereunder except for Defaults specified in subsections (a), (b), (c) or (d) of *Section 9.1* hereof, unless a Responsible Officer of the Trustee shall be specifically notified in writing of such Default by the Issuer, the Credit Provider or by the Owners of at least fifty percent (50%) in aggregate principal amount of Outstanding Bonds, and all notices or other instruments required by this Indenture to be delivered to the Trustee, must, in order to be effective, be delivered at the Principal Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Default except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect all books and records of the Issuer pertaining to the Project and the Bonds, and to make such copies and memoranda from and with regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of this Indenture or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property or any action whatsoever within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action, deemed desirable by the Trustee for the purpose of establishing the right of the Issuer or the Borrower to the authentication of any Bonds, the withdrawal of any cash or the taking of any other action.

(l) Before suffering, taking or omitting any action under this Indenture or under the Agreement (other than (i) paying the principal or Purchase Price of, redemption premium (if any) and interest on the Bonds as the same shall become due and payable, (ii) drawing upon the Credit Facility (iii) exercising its obligations in connection with a mandatory tender of the Bonds under *Section 4.1*, and (iv) declaring an acceleration under *Section 9.1(f)* as a result of a Default under *Section 9.1(d)*, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of any 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 default in connection with any such action.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent otherwise required herein or required by law.

(n) The Trustee's immunities and protections from liability and its right to compensation and indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal and final payment of the Bonds.

(o) Notwithstanding anything else herein contained, (i) the Trustee shall not be liable for any error of judgment made in good faith unless it is proven that the Trustee was negligent in ascertaining the pertinent facts, and (ii) no provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it believes the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(p) In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

(q) The Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.



(r) The Trustee shall have no responsibility for any registration, filing, recording, reregistration or rerecording of this Indenture or any other document or instrument executed in connection with this Indenture and the issuance and sale of the Bonds including, without limitation, any financing statements or continuation statements with respect thereto.

### **Section 10.2. Fees, Charges and Expenses of the Trustee.**

The Trustee shall be entitled to payment of reasonable fees for its services rendered hereunder and reimbursement of all advances, counsel fees and other expenses reasonably made or incurred by the Trustee in connection with such services including, without limitation, the reasonable compensation, expenses and disbursements of its agents and counsel. Upon the occurrence of a Default, but only upon the occurrence of a Default, the Trustee shall have a first lien with right of payment prior to payment on account of principal of, premium, if any, and interest on any Bond upon the Trust Estate (exclusive of the proceeds of any drawing under the Credit Facility, proceeds of the remarketing of the Bonds, and funds held by the Trustee for matured and unrepresented Bonds) for the foregoing fees, charges and expenses of the Trustee. When the Trustee incurs expenses or renders services after the occurrence of an Act of Bankruptcy with respect to the Borrower, the expenses and the compensation for the services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law. The Issuer shall have no liability to pay any fees, charges or other expenses of the Trustee hereinabove mentioned. Any fees or expenses of the Trustee not provided by the above shall be paid by the Borrower. The rights of the Trustee under this Section shall survive the Trustee's resignation or removal.

### **Section 10.3. Notice to Owners of Bonds if Default Occurs.**

If a Default occurs of which the Trustee has been notified as provided in *Section 10.1(h)* hereof, or of which by said subsection it is deemed to have notice, then the Trustee shall promptly give notice thereof to the Credit Provider and to the Owner of each Bond.

### **Section 10.4. Intervention by the Trustee.**

In any judicial proceeding which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of the Owners of the Bonds, the Trustee may intervene on behalf of the Owners of the Bonds and shall do so if requested in writing by the Credit Provider or the Owners of at least fifty percent (50%) of the aggregate principal amount of Outstanding Bonds.

### **Section 10.5. Successor Trustee.**

Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor,

without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

#### **Section 10.6. Resignation by the Trustee.**

The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days' notice to the Issuer, the Credit Provider, the Remarketing Agent, the Borrower, and the Owner of each Bond. Such resignation shall not take effect (i) until the appointment of a successor Trustee or temporary Trustee and the transfer to said successor or temporary Trustee of the Credit Facility, and (ii) payment in full of all fees and expenses and other amounts payable to the Trustee pursuant hereto or to the Agreement.

#### **Section 10.7. Removal of the Trustee.**

The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by (i) the Owners of at least a majority in aggregate principal amount of Outstanding Bonds, or (ii) provided a Default under Section 8.01 of the Agreement shall not have occurred and be continuing, and with the prior written consent of the Remarketing Agent and the Borrower. Such removal shall not take effect until (i) the appointment of a successor Trustee or temporary Trustee and the transfer to said successor or temporary Trustee of the Credit Facility and (ii) payment in full of all fees and expenses and other amounts payable to the Trustee pursuant thereto or to the Agreement.

#### **Section 10.8. Appointment of Successor Trustee by Owners of Bonds.**

In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, 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 at least a majority in aggregate principal amount of Outstanding Bonds by an instrument or concurrent instruments in writing signed by such Owners, or by their attorneys-in-fact duly authorized, a copy of which shall be delivered personally or sent by registered mail to the Issuer, the Borrower and the Credit Provider. In case of any such vacancy, the Issuer, by an instrument executed by its official who executed the Bonds or his successor in office, may appoint a temporary successor Trustee to fill such vacancy until a successor Trustee shall be appointed by the Owners of Bonds in the manner above provided; and such temporary successor Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee appointed by the Owners of Bonds. If no successor Trustee has accepted appointment in the manner provided in *Section 10.9* hereof within sixty (60) days after the Trustee has given notice of resignation to the Issuer and the Owner of each Bond, the Trustee may petition any court of competent jurisdiction for the appointment of a temporary successor Trustee; provided that any Trustee so appointed shall immediately and without further act be superseded by a Trustee appointed by the Issuer or the Owners of Bonds as provided above. Every successor Trustee appointed pursuant to the provisions of this Section shall be, if there be such an institution willing, qualified and able to accept the trust upon customary terms, a bank or trust Borrower within or without the State, in good standing and having reported capital and surplus of not less than \$50,000,000 and rated

Baa3/Prime-3 or better by Moody's (or a substantially equivalent rating by such other rating agency then providing the rating borne by the Bonds).

**Section 10.9. Acceptance by Successor Trustee.**

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to the Issuer and the Borrower an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but its predecessor shall, nevertheless, on the written request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

**Section 10.10. Appointment of Co-Trustee.**

It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Agreement, and in particular in case of the enforcement thereof on Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, the Trustee may appoint an additional individual or institution as a separate or Co-Trustee, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture or the Agreement to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or Co-Trustee, but only to the extent necessary to enable such separate or Co-Trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or Co-Trustee shall run to and be enforceable by either of them.

Should any deed, conveyance or instrument in writing from the Issuer be required by the separate or Co-Trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any separate or Co-Trustee, or a successor, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or Co-Trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or Co-Trustee. Any Co-Trustee appointed by the Trustee pursuant to this Section may be removed by the Trustee, in which case all powers, rights and remedies vested in the Co-Trustee shall again vest in the Trustee as if no such appointment of a Co-Trustee had been made.

**Section 10.11. Successor Remarketing Agent.**

(a) Any corporation or association into which the Remarketing Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Remarketing Agent hereunder, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

(b) The Remarketing Agent may at any time resign by giving thirty (30) days' notice to the Issuer, the Trustee, the Credit Provider and the Borrower. Such resignation shall not take effect until the appointment of a successor Remarketing Agent.

(c) The Remarketing Agent may be removed at any time by an instrument in writing delivered to the Trustee by the Borrower, with the prior written approval of the Credit Provider. In no event, however, shall any removal of the Remarketing Agent take effect until a successor Remarketing Agent shall have been appointed.

(d) In case the Remarketing Agent shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting as Remarketing Agent, 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 Borrower with the prior written approval of the Issuer and the Credit Provider. Every successor Remarketing Agent appointed pursuant to the provisions of this Section shall be, if there be such an institution willing, qualified and able to accept the duties of the Remarketing Agent upon customary terms, a bank or trust Borrower or any entity, within or without the State, in good standing and having reported capital and surplus of not less than \$10,000,000 and rated Baa3/Prime-3 or better by Moody's (or a substantially equivalent rating by such other rating agency then providing the rating borne by the Bonds). Written notice of such appointment shall immediately be given by the Borrower to the Trustee and the Trustee shall cause written notice of such appointment to be given to the Owners of the Bonds. Any successor Remarketing Agent shall execute and deliver an instrument accepting such appointment and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all rights, powers, duties and obligations of its predecessor, with like effect as if originally named as Remarketing Agent, but such predecessor shall nevertheless, on the written request of the Borrower, the Trustee or the Issuer, or of the successor, execute and deliver such instruments and do such other things as may reasonably be required to more fully and certainly vest and confirm in such successor all rights, powers, duties and obligations of such predecessor. If no successor Remarketing Agent has accepted appointment in the manner provided above within 90 days after the Remarketing Agent has given notice of its resignation as provided above, the Remarketing Agent may petition any court of competent jurisdiction for the appointment of a temporary successor Remarketing Agent; provided that any Remarketing Agent so appointed shall immediately and without further act be superseded by a Remarketing Agent appointed by the Borrower as provided above.

**Section 10.12. Notice to Rating Agencies.**

The Trustee shall provide Fitch, Moody's or S&P, as appropriate, so long as any of such rating agencies shall provide the rating borne by the Bonds, with prompt written notice following the effective date of such event of (i) any successor Trustee and any successor Remarketing Agent, (ii) any Substitute Credit Provider, (iii) any material amendments to this Indenture or the Agreement, (iv) the expiration, termination or extension of any Credit Facility, (v) the exercise of the Conversion Option, (vi) the occurrence of a Mandatory Tender Date, (vii) the redemption in whole of the Bonds or the payment in full of the Bonds at maturity, (viii) the defeasance of the Bonds, or (ix) the acceleration of the Bonds.

**ARTICLE XI**

**SUPPLEMENTAL INDENTURES**

**Section 11.1. Supplemental Indentures Not Requiring Consent of Owners of Bonds.**

The Issuer and the Trustee may, with the consent of the Credit Provider and upon receipt of an opinion of Bond Counsel to the effect that the proposed supplemental indenture will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is authorized by this Indenture, and without consent of, or notice to, any of the Owners of Bonds, enter into an indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Owners of Bonds any additional rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Owners of Bonds or the Trustee;
- (c) To subject to this Indenture additional revenues, properties or collateral;
- (d) To modify, amend or supplement this Indenture or any indenture supplemental hereof in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States of America;
- (e) To evidence the appointment of a separate or Co-Trustee or the succession of a new Trustee hereunder;
- (f) To correct any description of, or to reflect changes in, any of the properties comprising the Trust Estate;
- (g) To make any revisions of this Indenture that shall be required by Fitch, Moody's or S&P in order to obtain or maintain an investment grade rating on the Bonds;

(h) To make any revisions of this Indenture that shall be necessary in connection with the Borrower or the Issuer furnishing a Credit Facility;

(i) To provide for an uncertificated system of registering the Bonds or to provide for changes to or from the Book-Entry System;

(j) To effect any other change herein which, in the judgment of the Trustee, is not to the prejudice of the Trustee or the Owners of Bonds; or

(k) To make revisions to this Indenture that shall become effective only upon, and in connection with, the remarketing of all of the Bonds then Outstanding.

In the event Fitch, S&P and/or Moody's has issued a rating of any of the Bonds, Fitch, S&P and/or Moody's, as the case may be, shall receive prior written notice from the Trustee of the proposed amendment but such notice shall not be a condition of the effectiveness of such amendment.

### **Section 11.2. Supplemental Indentures Requiring Consent of Owners of Bonds.**

Exclusive of supplemental indentures permitted by *Section 11.1* hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Credit Provider and the Owners of not less than a majority in aggregate principal amount of the Outstanding Bonds shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing in this Section or in *Section 11.1* hereof contained shall permit, or be construed as permitting, without the consent of the Credit Provider and the Owners of all Bonds Outstanding, (a) an extension of the maturity of the principal of, or the interest on, any bond issued hereunder, or (b) a reduction in the principal amount or Purchase Price of, or redemption premium on, any Bond or the rate of interest thereon, or (c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (d) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indentures or any modifications or waivers of the provisions of this Indenture or the Agreement, or (e) the creation of any lien ranking prior to or on a parity with the lien of this Indenture on the Trust Estate or any part thereof, except as hereinbefore expressly permitted, or (f) the deprivation of the Owner of any Outstanding Bond of the lien hereby created on the Trust Estate.

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be given to the Credit Provider and to the Owners of the Bonds as provided in *Section 3.3* of this Indenture; provided, that prior to the delivery of such notice, the Trustee may require that an opinion of Bond Counsel be furnished to the effect that the supplemental indenture complies with the provisions of this Indenture and will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax

purposes. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by all Owners of Bonds. If, within sixty (60) days or such longer period as shall be prescribed by the Issuer following such notice, the Credit Provider and the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding (except for those Supplemental Indentures requiring the consent of the Credit Provider and the Owners of all Bonds Outstanding as described above) at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

In the event Fitch, S&P and/or Moody's has issued a rating of any of the Bonds, Fitch, S&P and/or Moody's, as the case may be, shall receive prior written notice from the Trustee of the proposed amendment but such notice shall not be a condition of the effectiveness of such amendment.

During any Credit Facility Period, the Credit Provider shall be deemed the Owner of the Bonds for the purpose of this *Section 11.2*.

### **Section 11.3. Consent of the Borrower.**

Anything herein to the contrary notwithstanding, a supplemental indenture under this Article shall not become effective unless and until the Borrower shall have consented to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution of any such supplemental indenture together with a copy of the proposed supplemental indenture to be mailed to the Borrower at least 15 Business Days prior to the proposed date of execution and delivery of any such supplemental indenture.

### **Section 11.4. Amendment without Consent of Issuer.**

In the event the Issuer is unable to enter into any supplemental indenture permitted by this Article, the Trustee may, without the consent of the Issuer, amend or supplement this Indenture in any manner otherwise permitted by this Article so long as such supplemental indenture does not violate State law or adversely affect the rights, liabilities or duties of the Issuer or the absence of liabilities provided in Section 13.10 of this Indenture.

### **Section 11.5. Execution of Amendments and Supplements by Trustee.**

The Trustee shall not be obligated to sign any amendment or supplement to this Indenture or the Bonds pursuant to this Article if the amendment or supplement, in the judgment of the Trustee, could adversely affect the rights, duties, liabilities, protections, privileges, indemnities or immunities of the Trustee. In signing an amendment or supplement, the Trustee shall be entitled to receive, and shall be fully protected in relying on, an opinion of Bond Counsel stating

that such amendment or supplement is authorized by this Indenture, and will not adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes.

## ARTICLE XII

### AMENDMENT OF AGREEMENT

#### **Section 12.1. Amendments to Agreement Not Requiring Consent of Owners of Bonds.**

The Issuer and the Trustee may, with the consent of the Credit Provider (during any Credit Facility Period) and upon receipt of an opinion of Bond Counsel to the effect that the proposed amendment will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is authorized by this Indenture, and without the consent of or notice to the Owners of Bonds, consent to any amendment, change or modification of the Agreement as may be required (i) by the provisions of the Agreement, (ii) for the purpose of curing any ambiguity or formal defect or omission in the Agreement, (iii) so as to more precisely identify the Project, or to substitute or add additional improvements or equipment to the Project or additional rights or interests in property acquired in accordance with the provisions of the Agreement, (iv) to enter into an indenture or indentures supplemental hereto as provided in *Section 11.1* hereof, (v) to make any revisions that shall be required by Fitch, Moody's and/or S&P in order to obtain or maintain an investment grade rating on the Bonds, (vi) in connection with any other change therein which, in the judgment of the Trustee, is not to the prejudice of the Trustee or the Owners of Bonds or (vii) to make revisions thereto which shall be effective only upon, and in connection with, the remarketing of all of the Bonds then Outstanding.

#### **Section 12.2. Amendments to Agreement Requiring Consent of Owners of Bonds.**

Except for the amendments, changes or modifications as provided in *Section 12.1* hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Agreement without mailing of notice and the written approval or consent of the Credit Provider (during any Credit Facility Period) and the Owners of a majority in aggregate principal amount of the Outstanding Bonds, provided that the consent of the Credit Provider and the Owners of all Bonds Outstanding is required for any amendment, change or modification of the Agreement that would permit the termination or cancellation of the Agreement or a reduction in or postponement of the payments under the Agreement or any change in the provisions relating to payment thereunder. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of the Agreement, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided by *Section 11.2* hereof with respect to supplemental indentures; provided, that prior to the delivery of such notice or request, the Trustee and the Issuer may require that an opinion of Bond Counsel be furnished to the effect that such amendment, change or modification complies with the provisions of this Indenture and will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the



instrument embodying the same are on file at the Principal Office of the Trustee for inspection by all Owners of Bonds.

During any Credit Facility Period, the Credit Provider shall be deemed the Owner of the Bonds for the purpose of this *Section 12.2*.

## ARTICLE XIII

### MISCELLANEOUS

#### **Section 13.1. Consents of Owners of Bonds.**

Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners of Bonds may be in any number of concurrent documents and may be executed by such Owners of Bonds in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the written appointment of any such agent or of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument. The fact and date of the execution by any person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by an officer authorized by law to take acknowledgments of deeds certifying that the person signing such instrument or writing acknowledged to him the execution thereof. The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of owning the same shall be proved by the registration books of the Issuer maintained by the Trustee pursuant to *Section 2.13* hereof.

#### **Section 13.2. Limitation of Rights.**

With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person or company other than the Trustee and the Issuer, the Credit Provider and the Owners of the Bonds, any legal or equitable right, remedy or claim under or with respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Trustee, the Issuer, the Credit Provider and the Owners of the Bonds as herein provided.

#### **Section 13.3. Severability.**

If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

#### **Section 13.4. Notices.**

Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid or sent by telegram, addressed as follows:

<b>If to the Issuer:</b>	St. Johns County, Florida 4020 Lewis Speedway St. Augustine, Florida 32095 Attention: County Administrator
<b>If to the Trustee:</b>	Delivery Office (for Bond Tenders): SunTrust Bank 919 East Main Street Richmond, Virginia 23219 Attention: Corporate Trust Operations  Principal Office (for all other purposes): SunTrust Bank 225 E. Robinson Street, Suite 250 Orlando, Florida 32801 Attention: Corporate Trust Division
<b>If to the Borrower:</b>	Delivery Address: Flagler College, Inc. 74 King Street St. Augustine, Florida 32084 Attention: Vice President of Business Services  Mailing Address: Flagler College, Inc. P.O. Box 1027 St. Augustine, Florida 32085-1027 Attention: Vice President of Business Services
<b>If to the Credit Provider:</b>	SunTrust Bank P. O. Box 2340 Jacksonville, Florida 32203-2340 Attention: Senior Vice President
<b>If to the Remarketing Agent:</b>	SunTrust Capital Markets, Inc. 303 Peachtree Street, 24th Floor Atlanta, Georgia 30303 Attention: Municipal Desk
<b>If to S&amp;P:</b>	Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

55 Water Street  
New York, New York 10041  
Attention: Corporate Finance Department

A duplicate copy of each notice required to be given hereunder by any person listed above shall also be given to the others. The Issuer, the Borrower, the Trustee, the Remarketing Agent and the Credit Provider (including the issuer of any Substitute Credit Facility), may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Except for those writings requiring original signatures, any written notice, instruction or confirmation required hereunder may be provided by telex, telegraph or facsimile transmission.

**Section 13.5. Payments Due on Saturdays, Sundays and Holidays.**

In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for purchase or redemption of any Bonds shall not be a Business Day, then payment of principal, Purchase Price, premium, if any, or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for purchase or redemption.

**Section 13.6. Counterparts.**

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

**Section 13.7. Applicable Provisions of Law.**

This Indenture shall be governed by and construed in accordance with the laws of the State. It is the intention of the Issuer and the Trustee that the situs of the trust created by this Indenture be, and it be administered, in the state in which is located the principal office of the Trustee from time to time acting under this Indenture.

**Section 13.8. Rules of Interpretation.**

Unless expressly indicated otherwise, references to Sections or Articles are to be construed as references to Sections or Articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Indenture and not solely to the particular portion in which such word is used.

**Section 13.9. Captions.**

The captions and headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Indenture.

**Section 13.10. No Personal Liability.**

Notwithstanding anything to the contrary contained herein or in any of the Bonds or the Agreement, or in any other instrument or document executed by or on behalf of the Issuer in

connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement or obligation of any present or future member, commissioner, director, trustee, officer, employee or agent of the Issuer, or of any incorporator, member, commissioner, director, trustee, officer, attorney, employee or agent of any successor to the Issuer, in any such person's individual capacity, and no such person, in his individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his individual capacity, either directly or through the Issuer or any successor to the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such person, in his individual capacity, is hereby expressly waived and released.

**Section 13.11. Certain References Ineffective Except During a Credit Facility Period.**

Except during a Credit Facility Period and during the period immediately after a Credit Facility Period until receipt by the Trustee of a certificate from the Credit Provider stating that all amounts payable to the Credit Provider under the Credit Agreement have been paid in full, all references to the Credit Provider, the Credit Agreement or the Credit Facility in the Agreement, this Indenture and the Bonds shall be ineffective.

**[The remainder of this page is intentionally blank  
Signature page follows.]**

IN WITNESS WHEREOF, the Issuer has caused these presents to be executed in its name by its duly authorized official; and to evidence its acceptance of the trusts hereby created, the Trustee has caused these presents to be executed in its corporate name and with its corporate seal hereunto affixed and attested by its duly authorized officer, as of the date first above written.

**ST. JOHNS COUNTY, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Chairman, Board of County Commissioners

Attest:

\_\_\_\_\_  
Clerk, Board of County Commissioners

**SUNTRUST BANK**

By: \_\_\_\_\_  
Authorized Officer

**CONSENT OF BORROWER**

The Borrower acknowledges the provisions of the foregoing Indenture and consents to the conditions, terms and provisions thereof.

**FLAGLER COLLEGE, INC.**

By: \_\_\_\_\_

William T. Abare, President

**EXHIBIT "A"**

**FORM OF BOND**

*Unless this Bond is presented by an authorized representative of DTC to the Trustee for registration of transfer, exchange, or payment, with respect to any Bond issued that is registered in the name of CEDE & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to CEDE & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge, or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, CEDE & Co., has an interest herein.*

No. \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
COUNTY OF ST. JOHNS  
EDUCATIONAL FACILITIES REVENUE BOND  
(FLAGLER COLLEGE, INC. PROJECT),  
SERIES 2003

<u>MATURITY DATE</u>	<u>DATED DATE</u>	<u>CUSIP</u>	<u>TYPE OF INTEREST PERIOD</u>
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[FOR COMMERCIAL PAPER PERIOD ONLY]

<u>INTEREST RATE</u> _____(%)____	<u>NUMBER OF DAYS IN CALCULATION PERIOD</u>	<u>MANDATORY TENDER AND INTEREST PAYMENT DATE</u>	<u>AMOUNT OF INTEREST DUE FOR CALCULATION PERIOD</u>
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REGISTERED OWNER:

PRINCIPAL AMOUNT:

St. Johns County, Florida (the "Issuer"), for value received, promises to pay, but solely from the source and as hereinafter provided, to the Registered Owner identified above on the Maturity Date set forth above, upon surrender hereof, the Principal Amount set forth above, and in like manner to pay interest on said sum as provided in this Bond.

1. **Indenture; Loan Agreement.** This Bond is one of an authorized issue of bonds (the "Bonds"), limited to \$5,500,000 in principal amount, issued under the Indenture of Trust dated as of December 1, 2003 (the "Indenture"), between St. Johns County, Florida (the "Issuer") and SunTrust Bank, as trustee (the "Trustee"). The terms of the Bonds include those in the Indenture. Bondholders are referred to the Indenture for a statement of those terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Indenture.

The Issuer will lend the proceeds of the Bonds to Flagler College, Inc. (the "Borrower"), pursuant to a Loan Agreement dated as of December 1, 2003 (the "Agreement"), between the Issuer and the Borrower. The Borrower will use the proceeds of the Bonds for the purpose of financing the cost of the acquisition, construction and installation of certain student housing facilities, including relating parking, to be located on the Borrower's campus in St. Augustine, Florida (the "Project"). The Borrower has agreed in the Agreement to pay the Issuer amounts sufficient to pay all amounts coming due on the Bonds, and the Issuer has assigned its rights to such payments under the Agreement to the Trustee as security for the Bonds.

The Indenture and the Agreement may be amended, and references to them include any amendments.

The Issuer has established a Book Entry system of registration for this Bond. Except as specifically provided otherwise in the indenture, CEDE & Co., as nominee of the depository trust company, a New York corporation ("DTC"), will be the registered owner and will hold this Bond on behalf of each beneficial owner hereof. By acceptance of a confirmation of purchase, delivery or transfer, each beneficial owner of this Bond shall be deemed to have agreed to such arrangement. CEDE & Co., as registered owner of this Bond, may be treated as the owner of it for all purposes.

2. **Source of Payments.** This Bond and the series of Bonds of which it forms a part are issued pursuant to and in full compliance with Chapter 125, Florida Statutes, as amended, and Ordinance No. 03-\_\_\_ of the Issuer enacted on \_\_\_\_\_, 2003 (the "Act"). THIS BOND AND THE ISSUE OF WHICH IT IS A PART AND THE PURCHASE PRICE, THE PREMIUM, IF ANY, AND INTEREST HEREON ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED FROM THE AGREEMENT PURSUANT TO THE AGREEMENT (AS HEREINAFTER DEFINED), INCLUDING PAYMENTS RECEIVED THEREUNDER, WHICH PAYMENTS, REVENUES AND RECEIPTS HAVE BEEN PLEDGED AND ASSIGNED TO THE TRUSTEE TO SECURE PAYMENT OF THE BONDS. THE BONDS, THE PURCHASE PRICE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE ISSUER. NEITHER THE STATE OF FLORIDA NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE ISSUER, SHALL BE OBLIGATED TO PAY THE PURCHASE PRICE, THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES AND RECEIPTS PLEDGED THEREFOR, AND NEITHER THE FAITH AND CREDIT OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,

NOR THE TAXING POWER OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE PURCHASE PRICE, THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO.

The Bonds are initially secured by a letter of credit (the "Credit Facility") issued by SunTrust Bank (the "Credit Provider"), in favor of the Trustee. This Credit Facility entitles the Trustee to draw an amount sufficient to pay the principal of the Bonds and up to 40 days' interest accrued on the Bonds at a maximum rate per annum of 12%. Unless extended by the Credit Provider in accordance with its terms, the Credit Facility expires on December \_\_, 2006, or on the earlier occurrence of events specified in it. On its expiration, unless the Borrower has provided another Credit Facility meeting the requirements of the Indenture, the Bonds will be subject to mandatory tender for purchase as more fully described below.

3. **Interest Rate.** Interest on this Bond will be paid at the lesser of (a) a Daily Rate, a Weekly Rate, a Commercial Paper Rate or a Long Term Rate as selected by the Borrower and as determined in accordance with the Indenture and (b) 12% per annum or, when a Credit Facility supports the Bonds, such lower maximum rate as may be specified in the Credit Facility. Interest will initially be payable at the Weekly Rate, as set forth in the indenture. The Borrower may change the interest rate determination method from time to time. A change in the method, other than a change between the Daily Rate and the Weekly Rate, will result in the Bonds becoming subject to mandatory tender for purchase on the effective date of such change.

When interest is payable at (a) a Daily Rate, Weekly Rate or Commercial Paper Rate, it will be computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, and (b) a Long Term Rate, it will be computed on the basis of a 360-day year of twelve 30-day months.

4. **Interest Payment and Record Dates.** Interest will accrue on the unpaid portion of the principal of this Bond from the last date to which interest was paid or duly provided for or, if no interest has been paid or duly provided for, from the date of initial authentication and delivery of the Bonds, until the entire principal amount of this Bond is paid or duly provided for. When interest is payable at the rate in the first column below, interest accrued during the period (an "Accrual Period") shown in the second column will be paid on the date (an "Interest Payment Date") in the third column to holders of record on the date (a "Record Date") in the fourth column:

**[The remainder of this page is intentionally blank.]**



<u>TYPE OF INTEREST PERIOD</u>	<u>ACCRUAL PERIOD<sup>1</sup></u>	<u>INTEREST PAYMENT DATE</u>	<u>RECORD DATE</u>
Daily	Calendar Month	Fifth Business Day of the next month	Last Business Day of the Accrual Period
Weekly	First Wednesday of each month through the first Tuesday of the next succeeding month	First Wednesday of each month	Last Business Day before Interest Payment Date
Commercial Paper	From 1 to 270 days as determined for each Bond pursuant to the Indenture (“Calculation Period”)	First day following Calculation Period	Last Business Day before Interest Payment Date
Long Term	Six-month period or portion thereof beginning on the Conversion Date and ending on the last day of the sixth calendar month following (and including) the month in which the Conversion Date occurs and each six-month period thereafter	First day of the seventh calendar month following (and including) the month in which the Conversion Date occurs and the first day of every sixth month thereafter	Fifteenth of the month before the Interest Payment Date

5. **Conversion Option.** The Borrower shall have the option (the “Conversion Option”) to direct a change in the type of Interest Period to another type of Interest Period by delivering to the Trustee and the Remarketing Agent written instructions setting forth (i) the Conversion Date, (ii) the new type of Interest Period and (iii) whether such Interest Period will be a Credit Facility Period. If the new Interest Period will not be a Credit Facility Period, such instructions must be accompanied by the prior written consent of the Issuer to such change in the type of the Interest Period. If the new Interest Period is a Commercial Paper Period or a Long

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<sup>1</sup> If the Conversion Date does not coincide with the first day of the Accrual Period for the new Interest Period, then the first day of such Accrual Period shall be the Conversion Date, but all other terms and condition shall be as set forth in the above Table.

Term Period and will be a Credit Facility Period, such instructions will be accompanied by a Substitute Credit Facility, or by an amendment to the existing Credit Facility, providing for the payment of such additional interest and redemption premium (if any) on the Bonds as may be required under the Indenture, and otherwise complying with the terms thereof.

Any change in the type of Interest Period must comply with the following: (i) the Conversion Date must be an Interest Payment Date for the Interest Period then in effect (and, with respect to a Long Term Period, must be the last Interest Payment Date for such Long Term Period) and (ii) no change in Interest Period shall occur after an Event of Default shall have occurred and be continuing.

6. **Method of Payment.** The Trustee will be the registrar and paying agent for the Bonds. Holders must surrender Bonds to the Trustee to collect principal and premium, if any, at maturity or upon redemption and to collect the purchase price for Bonds tendered for purchase as described in paragraphs 7 or 8, below. Interest on Bonds bearing interest at a Commercial Paper Rate is payable only after presentation of such Bonds to the Trustee, unless a Book-Entry System is in effect with respect to such Bonds. Subject to the preceding sentence, interest on the Bonds will be paid to the registered holder hereof as of the Record Date by check mailed by first-class mail on the Interest Payment Date to such holder's registered address or, with respect to Bonds bearing interest at a Daily Rate, Weekly Rate or Commercial Paper Rate, by wire transfer to an account in the continental United States if the holder provides the Registrar with a written request therefor and the account address at least five Business Days before the Record Date. A holder of \$1,000,000 or more in principal amount of Bonds may be paid interest at a Long Term Rate by wire transfer to an account in the continental United States if the holder makes a written request of the Registrar at least five Business Days before the Record Date specifying the account address. Notices requesting wire transfers may provide that they will remain in effect for later interest payments until changed or revoked by another written notice. Principal and interest will be paid in money of the United States that at the time of payment is legal tender for payment of public and private debts or by checks or wire transfers payable in such money. If any payment on the Bonds is due on a non-Business Day, such payment will be made on the next Business Day, and no additional interest will accrue as a result.

7. **Mandatory Tender for Purchase of Bonds on Mandatory Purchase Date.** The Bonds shall be subject to mandatory tender by the Registered Owners thereof for purchase on (a) each Conversion Date other than a conversion between the Daily Period and the Weekly Period, (b) each day immediately following the end of a Calculation Period, (c) the first day of any Long Term Period, (d) the Interest Payment Date immediately before the Credit Facility Termination Date, (e) the Interest Payment Date concurrent with the effective date of a Substitute Credit Facility, and (f) the first Interest Payment Date following the occurrence of a Determination of Taxability for which the Trustee can give notice of mandatory tender in accordance with the Indenture (each a "Mandatory Purchase Date").

Except when the Bonds are subject to mandatory tender on a day immediately following the end of a Calculation Period, the Trustee shall deliver or mail by first class mail a notice in substantially the form required by the Indenture at least fifteen days prior to the Mandatory Purchase Date. When the Bonds are subject to mandatory tender for purchase on the day

immediately following the end of a Calculation Period, the Trustee is not required to deliver or mail any notice to the Registered Owners of the Bonds.

Any notice given by the Trustee as provided above shall be conclusively presumed to have been duly given, whether or not the Registered Owner receives the notice. Failure to mail any such notice, or the mailing of defective notice, to any Registered Owner, shall not affect the proceeding for purchase as to any Registered Owner to whom proper notice is mailed.

On each Mandatory Purchase Date, Registered Owners of Bonds shall be required to tender their Bonds to the Trustee for purchase by 10:30 A.M. New York City time at a purchase price equal to 100% of the principal amount of the Bonds tendered or deemed tendered, and any such Bonds not so tendered on the Mandatory Purchase Date, for which there has been irrevocably deposited in trust with the Trustee an amount of moneys sufficient to pay said purchase price of the untendered bonds, shall be deemed to have been purchased pursuant to the Indenture. In the event of a failure by a Registered Owner of Bonds to tender its Bonds on or prior to the Mandatory Purchase Date by the requisite time, said Registered Owner shall not be entitled to any payment (including any interest to accrue subsequent to the Mandatory Purchase Date) other than said purchase price for such untendered bonds, and any untendered bonds shall no longer be entitled to the benefits of the Indenture, except for the purpose of payment of said purchase price therefor.

**8. Demand Purchase Option.** Any Bond bearing interest at the Daily Rate or the Weekly Rate shall be purchased from the Registered Owners thereof at a purchase price equal to 100% of the principal amount of the Bond tendered or deemed tendered, plus accrued and unpaid interest thereon to the date of purchase, as provided below:

While the Book-Entry System is not in effect, upon: (a) delivery to the Trustee at its Principal Office and to the Remarketing Agent at its Principal Office of a written notice (said notice to be irrevocable and effective upon receipt) which (i) states the aggregate principal amount and Bond numbers of the Bonds to be purchased; and (ii) states the date on which such Bonds are to be purchased (the "Tender Date"); and (b) delivery to the Trustee at its Delivery Office at or prior to 10:30 A.M. New York City time on the date designated for purchase in the notice described in (a) above of such Bonds to be purchased, with an appropriate endorsement for transfer or accompanied by a bond power endorsed in blank. Furthermore, such Tender Date shall not be prior to the seventh day next succeeding the date of delivery of the notice unless the Daily Period is in effect.

While the Book-Entry System is in effect, the ownership interest of a beneficial owner of a Bond or portion thereof in an authorized denomination shall be purchased at the purchase price described above if such beneficial owners causes the participant through whom such beneficial owner holds such Bonds to (a) deliver to the Trustee at its Principal Office and to the Remarketing Agent at its Principal Office a notice which (i) states the aggregate amount of the beneficial ownership interest to be purchased, and (ii) states the date on which such beneficial interest is to be purchased (the "Tender Date"); and (b) on the same date as delivery of the notice referred to in (a) above, deliver a notice to DTC (the "Securities Depository") irrevocably instructing it to transfer on the registration books of the Securities Depository the beneficial ownership interests in such Bond or portion thereof to the account of the Trustee, for settlement

on the purchase date on a “free delivery” basis with a copy of such notice delivered to the Trustee on the same date. Furthermore, such Tender Date shall not be prior to the seventh day next succeeding the date of delivery of the notice unless the Daily Period is in effect.

“Tender Date” means (a) during any Daily Period, any Business Day, (b) during any Weekly Period, the seventh day (unless such day is not a Business Day, in which case the next Business Day) following receipt by the Trustee of notice from the Registered Owner that such Registered Owner has elected to tender Bonds.

9. **Extraordinary Redemption.** During any Long Term Period, the Bonds are subject to redemption in whole by the Issuer, at the option of the Borrower, at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to (but not including) the redemption date, in the event all or substantially all of the Project shall have been damaged or destroyed, or there occurs the condemnation of all or substantially all of the Project or the taking by eminent domain of such use or control of the Project as to render it, in the judgment of the Borrower, unsatisfactory for its intended use for a period of time longer than one year.

10. **Optional Redemption by the Borrower.** During any Daily Period or Weekly Period, the Bonds are subject to redemption by the Issuer, at the option of the Borrower, in whole at any time or in part on any Interest Payment Date, less than all of such Bonds to be selected by lot or in such other manner as the Trustee shall determine, at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to (but not including) the redemption date.

On any Conversion Date or on the day following the end of a Calculation Period if such day is the end of the Calculation Period for all Bonds, the Bonds are subject to redemption by the Issuer, at the option of the Borrower, in whole or in part, less than all such Bonds to be selected by lot or in such other manner as the Trustee shall determine, at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to (but not including) the redemption date.

During any Long Term Period, the Bonds are subject to redemption by the Issuer, at the option of the Borrower, on or after the First Optional Redemption Date, in whole at any time or in part on any Interest Payment Date, less than all of such Bonds to be selected by lot or in such other manner as the Trustee shall determine, at the redemption prices (expressed as percentages of Principal amount) set forth in the following table plus accrued interest to (but not including) the redemption date:

**[The remainder of this page is intentionally blank.]**

<u>Redemption Dates</u>	<u>Redemption Prices</u>
First Optional Redemption Date through the last day of the twelfth calendar month following such First Optional Redemption Date	102%
First anniversary of the First Optional Redemption Date through the last day of the twelfth calendar month following such first anniversary	101%
Second anniversary of the First Optional Redemption Date and thereafter	100%

**“First Optional Redemption Date”** means, with respect to a Long Term Period less than or equal to 5 years, the first day of the 24th calendar month from the beginning of such Long Term Period, with respect to a Long Term Period greater than 5 years but less than or equal to 10 years, the first day of the 60th calendar month from the beginning of such Long Term Period, and with respect to a Long Term Period greater than 10 years, the first day of the 72nd calendar month from the beginning of such Long Term Period.

In the event any of the Bonds or portions thereof are called for redemption as aforesaid, notice of the call for redemption, identifying the Bonds or portions thereof to be redeemed, shall be given by the Trustee by mailing a copy of the redemption notice by first class mail at least 30 days but not more than 60 days prior to the date fixed for redemption to the Registered Owner of each Bond to be redeemed in whole or in part at the address shown on the registration books. Any notice mailed as provided above shall be conclusively presumed to have been duly given, whether or not the Registered Owner receives the notice. Failure to mail any such notice, or the mailing of defective notice, to any Registered Owner, shall not affect the proceeding for redemption as to any Registered Owner to whom proper notice is mailed. No further interest shall accrue on the principal of any Bond called for redemption after the date of redemption if moneys sufficient for such redemption have been deposited with the Trustee. Notwithstanding the foregoing, the notice requirements contained in the first sentence of this paragraph may be deemed satisfied with respect to a transferee of a Bond which has been purchased pursuant to the Demand Purchase Option after such Bond has previously been called for redemption, notwithstanding the failure to satisfy the notice requirements of the first sentence of this paragraph with respect to such transferee, as more fully provided in the Indenture.

11. **Denominations; Transfer; Exchange.** The Bonds are in registered form without coupons in denominations as follows: (1) when interest is payable at a Daily Rate, Weekly Rate or Commercial Paper Rate, \$100,000 minimum denomination, with \$5,000 increments in excess thereof and (2) when interest is payable at a Long Term Rate, \$5,000 minimum denomination and integral multiples of \$5,000. A holder may transfer or exchange Bonds in accordance with the Indenture. The Trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. Except in connection with Bonds tendered for purchase, the Trustee will not be required to transfer or exchange any Bond which has been called for redemption (except the

unredeemed portion of any Bond being redeemed in part) or during the period beginning 15 days before the mailing of notice calling the Bonds or any portion of the Bonds for redemption and ending on the redemption date.

12. **Persons Deemed Owners.** Except as otherwise specifically provided herein and in the Indenture with respect to rights of Participants and Beneficial Owners when a Book-Entry System is in effect, the registered holder of this Bond shall be treated as the owner of it for all purposes.

13. **Non-presentment of Bonds.** 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, if moneys sufficient to pay any such Bond shall have been deposited with the Trustee for the benefit of the Owner thereof, all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such funds, uninvested or invested in Government Obligations maturing overnight, but in any event without liability for interest thereon, for the benefit of the Owner of such Bond, which Owner shall thereafter be restricted exclusively to such funds for any claim of whatever nature on its part under this Indenture with respect to such Bond.

Any moneys so deposited with and held by the Trustee not so applied to the payment of Bonds within two (2) years after the date on which the same shall have become due shall be repaid by the Trustee to the Borrower upon written direction of a Borrower Representative, and thereafter Owners of Bonds shall be entitled to look only to the Borrower for payment, and then to the extent of the amount so repaid, and all liability of the Trustee with respect to such money shall thereupon cease, and the Borrower shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

14. **Discharge Before Redemption or Maturity.** If the Borrower deposits with the Trustee money or securities as described in, and in accordance with the provisions of, the Indenture sufficient to pay at redemption or maturity principal of and interest on the outstanding Bonds, and if the Borrower also pays all other sums then payable by the Borrower under the Indenture, the lien of the Indenture will be discharged. After discharge, Bondholders must look only to the deposited money and securities for payment.

15. **Amendment, Supplement, Waiver.** Subject to certain exceptions, the Indenture, the Loan Agreement or the Bonds may be amended or supplemented, and any past default may be waived, with the consent of the holders of a majority in principal amount of the Bonds then outstanding. Any such consent shall be irrevocable and shall bind any subsequent owner of this Bond or any Bond delivered in substitution for this Bond. Without the consent of any Bondholder, the Issuer may amend or supplement the Indenture, the Loan Agreement or the Bonds as described in the Indenture.

16. **Defaults and Remedies.** The Indenture provides that the occurrences of certain events constitute Events of Default. If an Event of Default occurs and is continuing, the Trustee may declare the principal of all the Bonds to be due and payable immediately; provided that in certain circumstances, the Trustee shall make such declaration upon the written request of the

holders of not less than 50% in principal amount of the Bonds then outstanding and provided further, that in the case of certain Events of Default, the principal of all of the Bonds shall automatically become due and payable. An Event of Default and its consequences may be waived as provided in the Indenture. Bondholders may not enforce the Indenture or the Bonds except as provided in the Indenture. Except as specifically provided in the Indenture, the Trustee may refuse to enforce the Indenture or the Bonds unless it receives indemnity satisfactory to it. Subject to certain limitations, holders of not less than 50% in principal amount of the Bonds then outstanding may direct the Trustee in its exercise of any trust or power.

17. **No Recourse Against Others.** No recourse shall be had for the payment of the principal, purchase price, or redemption price of, or interest on, this Bond, or for any claim based hereon or on the Indenture, against any member, officer, attorney or employee, past, present or future, of the Issuer or of any successor body, as such, either directly or through the Issuer or any such successor body under any constitutional provision, statute or rule of law or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise. Each Bondholder by accepting a Bond waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Bond.

18. **Authentication.** This Bond shall not be valid until the Registrar manually signs the certificate of authentication on the other side of this Bond.

19. **Abbreviations.** Customary abbreviations may be used in the name of a Bondholder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), U/G/M/A (= Uniform Gifts to Minors Act), and U/T/M/A (= Uniform Transfers to Minors Act).

A copy of the Indenture may be inspected at the office of the Trustee located at 225 E. Robinson Street, Suite 250, Orlando, Florida 32801, Attention: Corporate Trust Division.

IN WITNESS WHEREOF, St. Johns County, Florida has caused this Bond to be executed in its name by the manual or facsimile signature of its Chairman of the Board of County Commissioners, and its corporate seal to be impressed or printed hereon and attested by the manual or facsimile signature of its Clerk of the Board of County Commissioners.

**ST. JOHNS COUNTY, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Chairman, Board of County Commissioners

Attest:

\_\_\_\_\_

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Clerk, Board of County Commissioners



**(Form of Certificate of Authentication)**

**CERTIFICATE OF AUTHENTICATION**

Date of Authentication: \_\_\_\_\_

This Bond is one of the Bonds of the issue described in the within-mentioned Indenture of Trust.

SUNTRUST BANK,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

\* \* \* \* \*

**(Form of Assignment and Transfer)**

FOR VALUE RECEIVED, \_\_\_\_\_ the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax Identification or Social Security No. \_\_\_\_\_) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guarantee:

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(Authorized Officer)  
Signature must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

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NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

## **DTC FAST RIDER**

Each such certificate shall remain in the Trustee's custody subject to the provisions of the FAST Balance Certificate Agreement currently in effect between the Trustee and DTC-FAST Agreement.

**FORM OF NOTICE FROM TRUSTEE TO OWNER**  
**REGARDING MANDATORY PURCHASE DATE**

[Name and address of Owner]

Re: \$5,500,000 St. Johns County, Florida Educational Facilities Revenue Bonds  
(Flagler College, Inc. Project), Series 2003

The undersigned officer of SunTrust Bank, as Trustee with respect to the captioned Bonds (the "Bonds"), pursuant to the provisions of Section 4.01 of that certain Indenture of Trust (the "Indenture"), dated as of December 1, 2003, by and between St. Johns County, Florida and the Trustee, does hereby notify you that the Bonds are subject to mandatory tender on \_\_\_\_\_ (the "Mandatory Purchase Date"). All owners of Bonds shall be deemed to have tendered their Bonds for purchase on the Mandatory Purchase Date and shall no longer be entitled to the benefits of the Indenture; interest will cease to accrue on such Bonds for the benefit of the owners of the Bonds on and after the Mandatory Purchase Date. The Bonds should be delivered to the Trustee at 919 East Main Street, Richmond, Virginia 23219, Attention: Corporate Trust Operations, on \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SunTrust Bank, as Trustee

\_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT B**

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ST. JOHNS COUNTY, FLORIDA

AND

FLAGLER COLLEGE, INC.

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LOAN AGREEMENT

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Dated as of December 1, 2003

The interest of the St. Johns County, Florida (the "Issuer") in this Loan Agreement has been assigned (except for "Reserved Rights" defined in this Loan Agreement) pursuant to the Indenture of Trust dated as of the date hereof from the Issuer to SUNTRUST BANK, as trustee (the "Trustee"), and is subject to the security interest of the Trustee thereunder.

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LOAN AGREEMENT  
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## LOAN AGREEMENT

**THIS LOAN AGREEMENT**, dated as of December 1, 2003, between the ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida created and existing under the Constitution and Laws of the State of Florida (the "Issuer"), and FLAGLER COLLEGE, INC., a corporation organized and existing under the laws of the State of Florida (the "Borrower");

### W I T N E S S E T H:

That the parties hereto, intending to be legally bound hereby, and for and in consideration of the premises and the mutual covenants hereinafter contained, do hereby covenant, agree and bind themselves as follows: provided, that any obligation of the Issuer created by or arising out of this Agreement shall never constitute a debt or a pledge of the faith and credit or the taxing power of the Issuer or any political subdivision or taxing district of the State of Florida but shall be payable solely out of the Trust Estate (as defined in the Indenture), anything herein contained to the contrary by implication or otherwise notwithstanding:

## ARTICLE I

### DEFINITIONS

#### Section 1.01 Definitions.

All capitalized, undefined terms used herein shall have the same meanings as used in *Article I* of the hereinafter defined Indenture. In addition, the following words and phrases shall have the following meanings:

**"Cost"** with respect to the Project shall be deemed to include all items for the Project that are permitted to be financed under the provisions of the Code and the Act.

**"Default"** means any Default under this Agreement as specified in and defined by *Section 8.01* hereof.

**"Indenture"** means the Indenture of Trust dated as of this date between the Issuer and SunTrust Bank, a Georgia banking corporation, as the Trustee thereunder, pursuant to which the Bonds are authorized to be issued, and any amendments and supplements thereto.

**"Issuance Costs"** means all costs that are treated as costs of issuing or carrying the Bonds under existing Treasury Department regulations and rulings, including, but not limited to, (a) underwriter's spread (whether realized directly or derived through purchase of the Bonds at a discount below the price at which they are expected to be sold to the public); (b) counsel fees (including bond counsel, disclosure counsel, underwriter's counsel, and Borrower counsel, as well as any other specialized counsel fees incurred in connection with the issuance of the Bonds); (c) financial advisory fees of the Issuer and of the Borrower incurred in connection with the issuance of the Bonds; (d) rating agency fees; (e) Trustee fees incurred in connection with the



issuance of the Bonds; (f) paying agent and certifying and authenticating agent fees related to issuance of the Bonds; (g) accountant fees of the Issuer and of the Borrower related to the issuance of the Bonds; (h) printing costs of the Bonds and of the preliminary and final offering materials; (i) publication costs associated with the financing proceedings; and (j) costs of engineering and feasibility studies necessary to the issuance of the Bonds; provided, that bond insurance premiums and certain credit enhancement fees, to the extent treated as interest expense under applicable regulations, shall not be treated as "Issuance Costs."

**"Net Proceeds"** means the proceeds of the Bonds reduced by amounts in a reasonably required reserve or replacement fund.

**"Project"** means the facilities described in *Exhibit "A"* hereto.

**"Qualified Project Costs"** means Costs and expenses of the Project which constitute land costs or costs for property of a character subject to the allowance for depreciation excluding specifically working capital and inventory costs, provided, however, that (i) costs or expenses paid more than sixty (60) days prior to the adoption by the Borrower of its resolution on February 21, 2003, declaring its intent to reimburse Project expenditures with Bond proceeds, shall not be deemed to be Qualified Project Costs; (ii) Issuance Costs shall not be deemed to be Qualified Project Costs; (iii) interest during the Construction Period shall be allocated between Qualified Project Costs and other Costs and expenses to be paid from the proceeds of the Bonds; (iv) interest following the Construction Period shall not constitute a Qualified Project Cost; (v) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified Project Costs and other costs and expenses to be paid from the proceeds of the Bonds; and (vi) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk shall not constitute Qualified Project Costs.

**"Requisition"** means a written request for a disbursement from the Project Fund, signed by a Borrower Representative, substantially in the form attached hereto as *Exhibit "B"* and satisfactorily completed as contemplated by said form.

**"Reserved Rights"** means amounts payable to the Issuer under *Sections 4.02(b), 4.02(e), 7.02* and *8.04* hereof.

**"State"** means the State of Florida.

**"Term of Agreement"** means the term of this Agreement as specified in *Section 9.01* hereof.

#### **Section 1.02 Uses of Phrases.**

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words "Bond," "Bondholder," "Owner," "registered owner" and "person" shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, including public bodies, as well as persons. Any percentage of

Bonds, specified herein for any purpose, is to be figured on the unpaid principal amount thereof then Outstanding. All references herein to specific Sections of the Code refer to such Sections of the Code and all successor or replacement provisions thereto.

## **ARTICLE II**

### **REPRESENTATIONS, COVENANTS AND WARRANTIES**

#### **Section 2.01 Representations, Covenants and Warranties of the Issuer.**

The Issuer represents, covenants and warrants that:

(a) The Issuer is a political subdivision of the State of Florida. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Agreement and the Indenture and to carry out its obligations hereunder and thereunder. The Issuer has been duly authorized to execute and deliver this Agreement and the Indenture.

(b) The Issuer covenants that it will not pledge the amounts derived from this Agreement other than as contemplated by the Indenture.

#### **Section 2.02 Representations, Covenants and Warranties of the Borrower.**

The Borrower represents, covenants and warrants that:

(a) The Borrower is a not for profit corporation duly organized and validly existing under the laws of the State of Florida and is an organization described in Section 501(c)(3) of the Code, which is exempt from federal income taxation pursuant to Section 501(a) of the Code and is not a private foundation as defined in Section 509(a) of the Code. The Borrower is not in violation of any provision of its Articles of Incorporation, as amended, has the corporate power to enter into this Agreement, and has duly authorized the execution and delivery of this Agreement, and is qualified to do business and is in good standing under the laws of the State.

(b) The Borrower agrees that during the Term of Agreement it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another legal entity or permit one or more other legal entities to consolidate with or merge into it, without the prior written consent of the Credit Provider (during any Credit Facility Period) and the Trustee (during any Interest Period that is not a Credit Facility Period).

(c) Neither the execution and delivery of this Agreement, the consent of the Borrower attached to the Indenture, the Remarketing Agreement or the Credit Agreement, nor the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof conflicts with or results in a breach of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which the Borrower

is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any such instrument or agreement.

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting the Borrower or any of its officers, nor to the best knowledge of the Borrower is there any basis therefor, wherein an unfavorable decision, ruling, or finding would materially adversely affect the transactions contemplated by this Agreement or which would adversely affect, in any way, the validity or enforceability of the Bonds, the Indenture, this Agreement, the Credit Agreement, the Remarketing Agreement, or any agreement or instrument to which the Borrower is a party, used or contemplated for use in the consummation of the transactions contemplated hereby.

(e) The Project is of the type authorized and permitted by the Act, and its estimated Cost is not less than \$5,500,000.

(f) The proceeds from the sale of the Bonds will be used only for payment of Costs of the Project.

(g) The Borrower will use due diligence to cause the Project to be operated in accordance with the laws, rulings, regulations and ordinances of the City of St. Augustine, Florida, of the Issuer and of the State and the departments, agencies and political subdivisions thereof. The Borrower has obtained or caused to be obtained all requisite approvals and permits of the State and of other federal, state, regional and local governmental bodies for the acquisition, construction, improving and equipping of the Project.

(h) The Borrower will fully and faithfully perform all the duties and obligations which the Issuer has covenanted and agreed in the Indenture to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Indenture to perform. The foregoing shall not apply to any duty or undertaking of the Issuer which by its nature cannot be delegated or assigned.

(i) The issuance of the Bonds by the Issuer and the lending of the proceeds thereof to the Borrower to enable the Borrower to acquire, construct and install the Project have induced the Borrower to locate the Project in the County which will directly result in an increase in employment and educational opportunities in the County.

(j) The Borrower does not "control" the Credit Provider, either directly or indirectly through one or more controlled companies, within the meaning of Section 2(a)(9) of the Investment Borrower Act of 1940.

### **Section 2.03 Tax-Exempt Status of the Bonds.**

The Borrower hereby represents, warrants and agrees that the Tax Agreement executed and delivered by the Borrower concurrently with the issuance and delivery of the

Bonds is true, accurate and complete in all material respects as of the date on which executed and delivered.

**Section 2.04 Notice of Determination of Taxability.**

Promptly after the Borrower first becomes aware of any Determination of Taxability, the Borrower shall give written notice thereof to the Issuer and the Trustee.

**ARTICLE III**

**ACQUISITION AND CONSTRUCTION  
OF THE PROJECT;  
ISSUANCE OF THE BONDS**

**Section 3.01 Agreement to Acquire, Construct, Improve and Equip the Project.**

The Borrower agrees to make all contracts and do all things necessary for the acquisition, construction, improving, and equipping of the Project. The Borrower further agrees that it will acquire, construct, improve, and equip the Project, as an independent contractor and not as an agent of the Issuer, with all reasonable dispatch and use its best efforts to cause acquisition, construction, improving, equipping, and occupancy of the Project to be completed by August 31, 2004, or as soon thereafter as may be practicable, delays caused by force majeure as defined in *Section 8.01* hereof only excepted; but if for any reason such acquisition, construction, improving and equipping is not completed by said date there shall be no resulting liability on the part of the Borrower and no diminution in or postponement of the payments required in *Section 4.02* hereof to be paid by the Borrower.

**Section 3.02 Agreement to Issue the Bonds; Application of Bond Proceeds.**

In order to provide funds for the payment of the Cost of the Project, the Issuer, concurrently with the execution of this Agreement, will issue, sell, and deliver the Bonds and deposit the net proceeds thereof with the Trustee in the Project Fund.

**Section 3.03 Disbursements from the Project Fund.**

The Issuer has, in the Indenture, authorized and directed the Trustee to make disbursements from the Project Fund to pay the Costs of the Project, or to reimburse the Borrower for any Cost of the Project paid by the Borrower. The Trustee shall not make any disbursement from the Project Fund until the Borrower shall have provided the Trustee with a Requisition. The Borrower covenants that each Requisition will request disbursements from the Project Fund solely to pay the Costs of the Project or to reimburse the Borrower for any Cost of the Project paid by the Borrower.

**Section 3.04 Furnishing Documents to the Trustee.**

The Borrower agrees to cause such Requisitions to be directed to the Trustee as may be necessary to effect payments out of the Project Fund in accordance with *Section 3.03* hereof.

**Section 3.05 Establishment of Completion Date.**

(a) The Completion Date shall be evidenced to the Issuer and the Trustee by a certificate signed by a Borrower Representative stating that, except for amounts retained by the Trustee at the Borrower's direction to pay any Cost of the Project not then due and payable, (i) construction of the Project has been completed and all costs of labor, services, materials and supplies used in such construction have been paid, (ii) all equipment for the Project has been installed, such equipment so installed is suitable and sufficient for the operation of the Project, and all costs and expenses incurred in the acquisition and installation of such equipment have been paid, and (iii) all other facilities necessary in connection with the Project have been acquired, constructed, improved, and equipped and all costs and expenses, including but not limited to, any Other Costs as defined in Section 3.09 below, incurred in connection with the Project or the Act have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. Forthwith upon completion of the acquisition, construction, improving, and equipping of the Project, the Borrower agrees to cause such certificate to be furnished to the Issuer and the Trustee. Upon receipt of such certificate, the Trustee shall retain in the Project Fund a sum equal to the amounts necessary for payment of the Costs of the Project not then due and payable according to such certificate. If any such amounts so retained are not subsequently used, prior to any transfer of said amounts to the General Account of the Bond Fund as provided below, the Trustee shall give notice to the Borrower of the failure to apply said funds for payment of the Costs of the Project. Any amount not to be retained in the Project Fund for payment of the Costs of the Project, and all amounts so retained but not subsequently used, shall be transferred by the Trustee into the General Account of the Bond Fund.

(b) If at least ninety-five percent (95%) of the Net Proceeds of the Bonds have not been used to pay Qualified Project Costs, any amount (exclusive of amounts retained by the Trustee in the Project Fund for payment of Costs of the Project not then due and payable) remaining in the Project Fund shall be transferred by the Trustee into the General Account of the Bond Fund and used by the Trustee (a) to redeem, or to cause the redemption of, Bonds on the earliest redemption date permitted by the Indenture without a premium, (b) to purchase Bonds on the open market prior to such redemption date at prices not in excess of one hundred percent (100%) of the principal amount of such Bonds, or (c) for any other purpose provided that the Trustee is furnished with an opinion of Bond Counsel to the effect that such use is lawful under the Act and will not require that interest on the Bonds be included in gross income for federal income tax purposes. Until used for one or more of the foregoing purposes, such segregated amount may be invested as permitted by the Indenture provided that prior to any such investment the Trustee is provided with an opinion of Bond Counsel to the effect that such investment will not require that interest on the Bonds be included in gross income for federal income tax purposes.

**Section 3.06 Borrower Required to Pay in Event Project Fund Insufficient.**

In the event the moneys in the Project Fund available for payment of the Costs of the Project should not be sufficient to pay the Costs of the Project in full, the Borrower agrees to complete the Project and to pay that portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund, The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Costs of the Project will be sufficient to pay all of the Costs of the Project. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Costs of the Project pursuant to the provisions of this Section, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Owners of any of the Bonds, nor shall the Borrower be entitled to any diminution of the amounts payable under Section 4.02 hereof.

**Section 3.07 Special Arbitrage Certifications.**

The Borrower and the Issuer covenant not to cause or direct any moneys on deposit in any fund or account to be used in a manner which would cause the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code, and the Borrower certifies and covenants to and for the benefit of the Issuer and the Owners of the Bonds that so long as there are any Bonds Outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner which will cause the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code.

**Section 3.08 Borrower Required to Perform Issuer’s Obligations.**

The Borrower covenants for the benefit of the Issuer, the Trustee and the Owners of Bonds to perform any and all covenants, agreements and conditions of, and on the part of, the Issuer that are contained in the Indenture and/or in the Bonds at the written request of the Issuer.

**Section 3.09 Other Costs.**

The Borrower covenants to pay or reimburse the Issuer for any costs and expenses that are incurred by the Issuer in relation to or because of the Project under the authority of Sections 4, 5, 6 and/or 11 of St. Johns County Ordinance No. 2003-\_\_\_ as amended from time to time (the “Other Costs”).

**ARTICLE IV**

**LOAN PROVISIONS; SUBSTITUTE  
CREDIT FACILITY**

**Section 4.01 Loan of Proceeds.**

The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds from the sale of the Bonds (including

underwriter discount). Such proceeds shall be disbursed to or on behalf of the Borrower as provided in **Section 3.03** hereof.

#### **Section 4.02 Amounts Payable.**

(a) The Borrower hereby covenants and agrees to repay the loan, as follows: on or before any Interest Payment Date for the Bonds or any other date that any payment of interest, premium, if any, or principal or Purchase Price is required to be made in respect of the Bonds pursuant to the Indenture, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Borrower shall pay to the Trustee, as assignee of the Issuer, in immediately available funds, a sum which, together with any other moneys available for such payment in any account of the Bond Fund, will enable the Trustee to pay the amount payable on such date as Purchase Price or principal of (whether at maturity or upon redemption or acceleration or otherwise), premium, if any, and interest on the Bonds as provided in the Indenture; provided, however, that the obligation of the Borrower to make any payment hereunder shall be deemed satisfied and discharged to the extent of the corresponding payment made by the Credit Provider to the Trustee under the Credit Facility.

It is understood and agreed that all payments payable by the Borrower under subsection (a) of this **Section 4.02** are assigned by the Issuer to the Trustee for the benefit of the Owners of the Bonds. The Borrower assents to such assignment. The Issuer hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee at the Principal Office of the Trustee all payments payable by the Borrower pursuant to this subsection.

(b) The Borrower will also pay the reasonable expenses of the Issuer related to the issuance of the Bonds.

(c) The Borrower will also pay the reasonable fees and expenses of the Trustee under the Indenture and all other amounts which may be payable to the Trustee under **Section 10.02** of the Indenture, such amounts to be paid directly to the Trustee for the Trustee's own account as and when such amounts become due and payable.

(d) The Borrower covenants, for the benefit of the Owners of the Bonds, to pay or cause to be paid, to the Trustee, such amounts as shall be necessary to enable the Trustee to pay the Purchase Price of Bonds delivered to it for purchase, all as more particularly described in **Sections 4.1 and 4.2** of the Indenture; provided, however, that the obligation of the Borrower to make any such payment under this **Section 4.02(d)** shall be reduced by the amount of moneys available for such payment described in **Section 4.3(a)** of the Indenture; and provided, further, that the obligation of the Borrower to make any payment under this subsection (d) shall be deemed to be satisfied and discharged to the extent of the corresponding payment made by the Credit Provider under the Credit Facility.

(e) The Borrower covenants to pay the Issuer the Other Costs described in Section 3.09 in a timely manner upon notification of any such Other Costs by the County.

(f) The Borrower covenants that it shall cause the Trustee to redeem the principal amounts of the Bonds at the times and in the amounts set forth in the Credit Agreement pursuant to and in accordance with the optional redemption provisions of the Indenture.

(g) In the event the Borrower should fail to make any of the payments required in this **Section 4.02**, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent permitted by law, from the date when such payment was due, at the rate of interest borne by the Bonds.

#### **Section 4.03 Obligations of Borrower Unconditional.**

The obligations of the Borrower to make the payments required in Section 4.02 and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach by the Issuer or the Trustee of any obligation to the Borrower, whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to the Borrower by the Issuer or the Trustee, and, until such time as the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Borrower (i) will not suspend or discontinue any payments provided for in **Section 4.02** hereof, (ii) will perform and observe all other agreements contained in this Agreement and (iii) except as otherwise provided herein, will not terminate the Term of Agreement for any cause, including, without limiting the generality of the foregoing, failure of the Borrower to complete the acquisition, construction, improving and equipping of the Project, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, the taking by eminent domain of title to or temporary use of any or all of the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof or any failure of the Issuer or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement. Nothing contained in this Section shall be construed to release the Issuer from the performance of any of the agreements on its part herein contained, and in the event the Issuer or the Trustee should fail to perform any such agreement on its part, the Borrower may institute such action against the Issuer or the Trustee as the Borrower may deem necessary to compel performance so long as such action does not abrogate the obligations of the Borrower contained in the first sentence of this Section. The Borrower shall have no right to seek damages against the Issuer for any breach by the Issuer of this Agreement or the Indenture.

#### **Section 4.04 Substitute Credit Facility.**

Subject to the conditions set forth in this **Section 4.04**, the Borrower may provide for the delivery to the Trustee of a Substitute Credit Facility. The Borrower shall furnish written notice to the Trustee, not less than twenty days prior to the Mandatory Purchase Date, (a) notifying the Trustee that the Borrower is exercising its option to provide for the delivery of a Substitute Credit Facility to the Trustee, (b) setting forth the Mandatory Purchase Date in



connection with the delivery of such Substitute Credit Facility, which shall in any event be an Interest Payment Date that is not less than two Business Days prior to the expiration date of the Credit Facility then in effect with respect to the Bonds, and (c) instructing the Trustee to furnish notice to the Bondholders regarding the Mandatory Purchase Date at least fifteen days prior to the Mandatory Purchase Date, as more fully described in *Section 4.1(b)* of the Indenture and Exhibit "B" thereto. Any Substitute Credit Facility shall be delivered to the Trustee prior to such Mandatory Purchase Date and shall be effective on and after such Mandatory Purchase Date. On or before the date of such delivery of a Substitute Credit Facility to the Trustee, the Borrower shall furnish to the Trustee (a) a written opinion of Bond Counsel stating that the delivery of such Substitute Credit Facility will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes; and (b) a written opinion of counsel to the Substitute Credit Provider to the effect that the Substitute Credit Facility is a legal, valid, binding and enforceable obligation of the Substitute Credit Provider in accordance with its terms.

## ARTICLE V

### PREPAYMENT AND REDEMPTION

#### Section 5.01 Prepayment and Redemption.

The Borrower shall have the option to prepay its obligations hereunder at the times and in the amounts as necessary to exercise its option to cause the Bonds to be redeemed as set forth in the Indenture and in the Bonds. The Borrower hereby agrees that it shall prepay its obligations hereunder at the times and in the amounts as necessary to accomplish the mandatory redemption of the Bonds as set forth in the Indenture and in the Bonds. The Issuer, at the request of the Borrower, shall forthwith take all steps (other than the payment of the money required for such redemption) necessary under the applicable redemption provisions of the Indenture to effect redemption of all or part of the Outstanding Bonds, as may be specified by the Borrower, on the date established for such redemption.

## ARTICLE VI

### SPECIAL COVENANTS

#### Section 6.01 No Warranty of Condition or Suitability by Issuer.

THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE PROJECT OR THE CONDITION THEREOF, OR THAT THE PROJECT WILL BE SUITABLE FOR THE PURPOSES OR NEEDS OF THE BORROWER. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE BORROWER WILL HAVE QUIET AND PEACEFUL POSSESSION OF THE PROJECT. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE BORROWER'S PURPOSES.

**Section 6.02 Access to the Project.**

The Borrower agrees that the Issuer, the Credit Provider, the Trustee and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Project at all reasonable times and on reasonable notice. The Issuer, the Credit Provider, the Trustee and their duly authorized agents shall also be permitted, at all reasonable times, to examine the books and records of the Borrower with respect to the Project.

**Section 6.03 Further Assurances and Corrective Instruments.**

The Issuer and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

**Section 6.04 Issuer and Borrower Representatives.**

Whenever under the provisions of this Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given for the Issuer by an Issuer Representative and for the Borrower by a Borrower Representative. The Trustee shall be authorized to act on any such approval or request.

**Section 6.05 Financing Statements.**

The Borrower agrees to execute and file or cause to be executed and filed any and all financing statements or amendments thereof or continuation statements necessary to perfect and continue the perfection of the security interests granted in the Indenture. The Borrower shall pay all costs of filing such instruments.

**Section 6.06 Covenant to Provide Ongoing Disclosure.**

The Borrower hereby covenants and agrees that, upon the exercise by the Borrower of the Conversion Option to elect a Long Term Period or a Commercial Paper Period, the Borrower shall enter into a written undertaking for the benefit of the holders of the Bonds, as required by Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (17 CFR Part 240, §240.15c2-12) (the "Rule"); provided, however, that the Borrower shall not be obligated to enter into such written undertaking if the Borrower shall furnish to the Trustee, prior to the exercise of the Conversion Option, an opinion of Bond Counsel that, notwithstanding such election by the Borrower, the Rule is not applicable to the Bonds.

**Section 6.07 Notice of Control.**

The Borrower shall provide written notice to the Trustee and the Remarketing Agent thirty days prior to the consummation of any transaction that would result in the Borrower

controlling the Credit Provider or being controlled by the Credit Provider within the meaning of Section 2(a)(9) of the Investment Borrower Act of 1940.

The Borrower hereby covenants that no deposit made under the Indenture will knowingly be made or accepted and no use knowingly made of any such deposit which would cause the Bonds to be treated as arbitrage bonds within the meaning of Section 148 of the Code.

## ARTICLE VII

### ASSIGNMENT, SELLING, LEASING; INDEMNIFICATION; REDEMPTION

#### Section 7.01 Assignment, Selling and Leasing.

This Agreement may be assigned and the Project may be sold or leased, as a whole or in part, with the prior written consent of the Credit Provider, but without the necessity of obtaining the consent of either the Issuer or the Trustee; provided, however, that no such assignment, sale or lease shall, in the opinion of Bond Counsel, result in interest on any of the Bonds becoming includable in gross income for federal income tax purposes, or shall otherwise violate any provisions of the Act; provided further, however, that no such assignment, sale or lease shall relieve the Borrower of any of its obligations under this Agreement or under the Indenture.

#### Section 7.02 Indemnity.

(a) The Borrower agrees to pay, and agrees to protect, indemnify and save the Issuer and the Trustee harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action, settlements, judgments or other obligations of any nature arising through any suits, claims, demands, actions or proceedings of any nature arising from, in connection with or as a result of:

(i) any injury to or death of any person or damage to property in or upon the Project or resulting from or connected with the use, non-use, condition or occupancy of the Project or any part thereof;

(ii) the violation of any agreement or condition of this Agreement or the Tax Agreement, except by the Issuer or the Trustee;

(iii) the violation of any contract, agreement or restriction by the Borrower relating to the Project;

(iv) the violation of any law, ordinance or regulation arising out of the ownership, occupancy or use of the Project;

(v) the construction, acquisition, equipping and installation of the Project or the failure to construct, acquire, equip or install the Project;

(vi) the issuance and sale of the Bonds or the execution, delivery and performance of this Agreement, the Indenture or any related document;

(vii) any act of the Borrower, or any of its agents, contractors or licensees; and

(viii) any statement or information concerning the Borrower, its officers and members or the Project contained in the official statement for the Bonds or any other final official statement or prospectus furnished to purchasers of any securities that is untrue or incorrect in any material respect and any omission from any official statement or prospectus of any statement or information which should be contained in it for the purpose for which it is to be used or which is necessary to make the statements in it concerning the Borrower, its officers and members or the Project not misleading in any material respect, if such other final official statement or prospectus is approved in writing by the Borrower.

(b) If any suit, claim, demand, action or proceeding is brought against the Issuer or the Trustee with respect to which indemnity may be sought under this Section, the Issuer and the Trustee, as the case may be, agree to promptly notify the Borrower in writing, and the Borrower agrees to assume the defense of the suit, claim, demand, action or proceeding including the employment of counsel and the payment of all expenses. Each of the Issuer and the Trustee may, however, retain its own counsel and still be indemnified against the cost of employing counsel and all other expenses despite an assumption of the defense by the Borrower if the Issuer or the Trustee believes in good faith that there are defenses available to it which are not available to the Borrower or which are adverse to or in conflict with those available to the Borrower and which the Issuer or the Trustee believes in good faith cannot be effectively asserted by common counsel. The Issuer and the Trustee always have the right to employ separate counsel but, subject to the preceding sentence, the fees and expenses of its separate counsel must be paid by the Issuer or the Trustee unless the Borrower and the Issuer or the Trustee have mutually agreed to the employment of the Issuer's or the Trustee's separate counsel. The Borrower is not liable for any settlement of a suit, claim, demand, action or proceeding effected without its written consent. If the suit, claim, demand, action or proceeding is settled with the consent of the Borrower or results in a final judgment for the plaintiff, the Borrower agrees to indemnify and hold harmless the Issuer and the Trustee from and against any loss or liability by reason of the settlement or judgment

#### **Section 7.03 Issuer to Grant Security Interest to Trustee.**

The parties hereto agree that pursuant to the Indenture, the Issuer shall assign to the Trustee, in order to secure payment of the Bonds, all of the Issuer's right, title and interest in and to this Agreement, except for Reserved Rights.

#### **Section 7.04 Indemnification of Trustee.**

The Borrower shall and hereby agrees to indemnify the Trustee for, and hold the Trustee harmless against, any loss, liability or expense (including the costs and expenses of

defending against any claim of liability) incurred without gross negligence or willful misconduct by the Trustee and arising out of or in connection with its acting as Trustee under the Indenture.

## ARTICLE VIII

### DEFAULTS AND REMEDIES

#### Section 8.01 Defaults Defined.

The following shall be “Defaults” under this Agreement and the term “Default” shall mean, whenever it is used in this Agreement, any one or more of the following events:

(a) Failure by the Borrower to pay any amount required to be paid under *Section 4.02(a) or (d)* hereof.

(b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in *Section 8.01(a)* hereof, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by the Issuer or the Trustee, unless the Issuer and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Issuer and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until such failure is corrected.

(c) The dissolution or liquidation of the Borrower, except as authorized by *Section 2.02* hereof, or the voluntary initiation by the Borrower of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower of any such proceeding which shall remain undismissed for sixty (60) days, or failure by the Borrower to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower to carry on its operations at the Project, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower into an agreement of composition with its creditors or the failure generally by the Borrower to pay its debts as they become due.

(d) The occurrence of a Default under the Indenture.

The provisions of subsection (b) of this Section are subject to the following limitation: if by reason of force majeure the Borrower is unable in whole or in part to carry out any of its agreements contained herein (other than its obligations contained in *Article IV* hereof), the Borrower shall not be deemed in Default during the continuance of such inability. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; strikes or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; landslides;

earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; and any other cause or event not reasonably within the control of the Borrower. The Borrower agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement, provided that the settlement of strikes and other industrial disturbances shall be entirely within the discretion of the Borrower and the Borrower shall not be required to settle strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Borrower unfavorable to the Borrower.

### **Section 8.02 Remedies on Default.**

Whenever any Default referred to in *Section 8.01* hereof shall have happened and be continuing, the Trustee, or the Issuer with the written consent of the Trustee, may take one or any combination of the following remedial steps:

(a) If the Trustee has declared the Bonds immediately due and payable pursuant to *Section 9.2* of the Indenture, by written notice to the Borrower, declare an amount equal to all amounts then due and payable on the Bonds, whether by acceleration of maturity (as provided in the Indenture) or otherwise, to be immediately due and payable as liquidated damages under this Agreement and not as a penalty, whereupon the same shall become immediately due and payable;

(b) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower during regular business hours of the Borrower if reasonably necessary in the opinion of the Trustee;

(c) Make a draw under the Credit Facility pursuant to the Indenture; or

(d) Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement.

Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

### **Section 8.03 No Remedy Exclusive.**

Subject to *Section 9.2* of the Indenture, no remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary

to give any notice, other than such notice as may be required in this Article. Such rights and remedies as are given the Issuer hereunder shall also extend to the Trustee, and the Trustee and the Owners of the Bonds, subject to the provisions of the Indenture, shall be entitled to the benefit of all covenants and agreements herein contained.

**Section 8.04 Agreement to Pay Attorneys' Fees and Expenses.**

In the event the Borrower should default under any of the provisions of this Agreement and the Issuer or Trustee should employ attorneys or incur other expenses for the collection of payments required hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein contained, the Borrower agrees that it will on demand therefor pay to the Issuer or the Trustee, as the case may be, the reasonable fee of such attorneys and such other expenses so incurred by the Issuer or the Trustee.

**Section 8.05 No Additional Waiver Implied by One Waiver.**

In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE IX**

**MISCELLANEOUS**

**Section 9.01 Term of Agreement.**

This Agreement shall remain in full force and effect from the date hereof to and including December 1, 2033 or until such time as all of the Bonds and the fees, costs and expenses, including but not limited to, the Other Costs, of the Issuer and the Trustee and all amounts payable to the Credit Provider under the Credit Agreement shall have been fully paid or provision made for such payments, whichever is later; provided, however, that this Agreement may be terminated prior to such date pursuant to *Article V* of this Agreement, but in no event before all of the obligations and duties of the Borrower hereunder have been fully performed, including, without limitation, the payments of all costs, expenses and fees mandated hereunder.

**Section 9.02 Notices.**

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed as follows:

If to the Issuer:

St. Johns County, Florida  
4020 Lewis Speedway  
St. Augustine, Florida 32095  
Attention: County Administrator

If to the Trustee:

Delivery Office (for Bond Tenders):  
SunTrust Bank  
919 East Main Street  
Richmond, Virginia 23219  
Attention: Corporate Trust Operations

Principal Office (for all other purposes):  
SunTrust Bank  
225 E. Robinson Street, Suite 250  
Orlando, Florida 32801  
Attention: Corporate Trust Division

If to the Borrower:

Delivery Address:  
Flagler College, Inc.  
74 King Street  
St. Augustine, Florida 32084  
Attention: Vice President of Business Services

Mailing Address:  
Flagler College, Inc.  
P.O. Box 1027  
St. Augustine, Florida 32085-1027  
Attention: Vice President of Business Services

If to the Credit Provider:

SunTrust Bank  
P. O. Box 2340  
Jacksonville, Florida 32203-2340  
Attention: Senior Vice President

If to the Remarketing Agent:

SunTrust Capital Markets, Inc.  
303 Peachtree Street, 24th Floor  
Atlanta, Georgia 30303  
Attention: Municipal Desk

If to S&P:

Standard & Poor's Ratings Services, a division of  
The McGraw-Hill Companies, Inc.  
55 Water Street  
New York, New York 10041  
Attention: Corporate Finance Department

A duplicate copy of each notice, certificate or other communication given hereunder by the Issuer or the Borrower shall also be given to the Trustee and the Credit Provider. The Issuer, the Borrower, the Trustee, and the Credit Provider may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.



### **Section 9.03 Binding Effect.**

This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Credit Provider, the Trustee, the Owners of Bonds and their respective successors and assigns, subject, however, to the limitations contained in *Section 2.02(b)* hereof.

### **Section 9.04 Severability.**

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

### **Section 9.05 Amounts Remaining in Funds.**

Subject to the provisions of *Section 6.11* of the Indenture, it is agreed by the parties hereto that any amounts remaining in any account of the Bond Fund, the Project Fund, or any other fund (other than the Rebate Fund) created under the Indenture upon expiration or earlier termination of this Agreement, as provided in this Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture), the Other Costs, if any, and the fees and expenses of the Trustee in accordance with the Indenture, shall belong to and be paid to the Borrower by the Trustee.

### **Section 9.06 Amendments, Changes and Modifications.**

Subsequent to the issuance of Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise herein expressly provided, this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee and, prior to the Credit Facility Termination Date and payment of all amounts payable to the Credit Provider under the Credit Agreement, the consent of the Credit Provider, in accordance with the provisions of the Indenture. No amendment shall adversely affect the Issuer's Reserved Rights.

### **Section 9.07 Execution in Counterparts.**

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

### **Section 9.08 No Personal Liability.**

Notwithstanding anything to the contrary contained herein or in any of the Bonds or the Indenture, or in any other instrument or document executed by or on behalf of the Issuer in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement or obligation of any present or future member, commissioner, director, trustee, officer, attorney, employee or agent of the Issuer, or any incorporator, member, commissioner, director, trustee, officer, employee or agent of any successor to the Issuer, in any such person's individual capacity, and

no such person, in his individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his individual capacity, either directly or through the Issuer or any successor to the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such person, in his individual capacity, is hereby expressly waived and released.

**Section 9.09 Applicable Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 9.10 Captions.**

The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

ST. JOHNS COUNTY, FLORIDA

(SEAL)

By: \_\_\_\_\_  
Chairman, Board of County  
Commissioners

Attest:

\_\_\_\_\_  
Clerk, Board of County Commissioners

FLAGLER COLLEGE, INC.

By: \_\_\_\_\_  
William T. Abare, President

## EXHIBIT A

### PROJECT DESCRIPTION

The Project consists of (i) the acquisition, construction and installation of new student housing facilities to be located on the northeast corner of the intersection of Cedar Street and Martin Luther King Avenue on a site containing approximately one acre, in St. Augustine, Florida, consisting of the construction of a new three-story building containing approximately 33,000 square feet and the acquisition and installation of related fixtures, furnishings and equipment, (ii) and the construction of related parking spaces, consisting of the construction of approximately 48 new parking spaces on the site of the new building between the new building and the adjacent property, and the improvement of an existing parking lot located on the southeast corner of the intersection of Cedar Street and Martin Luther King Avenue, to provide approximately 52 parking spaces, all to be located on the Borrower's campus, the main address of which is 74 King Street in St. Augustine, and to be owned and operated by the Borrower.

EXHIBIT B

REQUISITION NO. \_\_\_\_

Amount Requested:

Total Disbursements to Date:

1. Each obligation for which a disbursement is hereby requested is described in reasonable detail in Exhibit A hereto together with the name and address of the person, firm or corporation to whom payment is due.

2. The bills, invoices or statements of account for each obligation referenced in Exhibit A are on file with the Borrower.

3. The Borrower hereby certifies that:

(a) each obligation mentioned in Exhibit A has been properly incurred for the Project, is a proper charge against the Project Fund and has not been the basis of any previous disbursement;

(b) no part of the disbursement requested hereby will be used to pay for materials not yet incorporated into the Project or for services not yet performed in connection therewith;

(c) the expenditure of the amount requested under this Requisition, when added to all disbursements under previous Requisitions, will result in at least ninety-five percent (95%) of the total of such disbursements, other than disbursements for reasonable expenses incurred in connection with the issuance of the Bonds, having been used to pay Qualified Project Costs; and

(d) the expenditures of the amount requested under this Requisition, when added to all disbursements under previous Requisitions, will result in no more than two percent (2%) of the aggregate face amount of the Bonds being used for payment of Issuance Costs.

4. All capitalized terms herein shall have the meanings assigned to them in the Loan Agreement dated as of December 1, 2003 between St. Johns County, Florida and Flagler College, Inc..

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

FLAGLER COLLEGE, INC.

By: \_\_\_\_\_  
Borrower Representative

**St. Johns County, Florida  
Educational Facilities Revenue Bonds  
(Flagler College, Inc. Project),  
2003**

December 15, 2003

**BOND PURCHASE AGREEMENT**

St. Johns County, Florida  
St. Augustine, Florida

Flagler College, Inc.  
St. Augustine, Florida

To the Addressees:

The undersigned, SunTrust Capital Markets, Inc. (the "Purchaser"), being duly authorized, hereby offers to enter into this Bond Purchase Agreement (this "Purchase Agreement") with the St. Johns County, Florida (the "Issuer") and the Flagler College, Inc. (the "Company") for the purchase by the Purchaser and the sale by the Issuer of the Bonds referred to in Section 1 hereof. This offer is made subject to acceptance by the Issuer and the Company of this Purchase Agreement, which acceptance shall be evidenced by the execution of this Purchase Agreement by a duly authorized officer of the Issuer prior to 5:00 p.m., Eastern Time on December 15, 2003. Upon such acceptance, execution and delivery, this Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the Issuer, the Company and the Purchaser. Capitalized terms used herein not otherwise defined herein have the meanings assigned to them in the Indenture referred to in Section 2 hereof. In Attachment 1 hereto there is included certain disclosure information.

1. Upon the terms and conditions and based on the representations, warranties and covenants hereinafter set forth, the Purchaser hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Purchaser, all (but not less than all) of \$5,500,000 in aggregate principal amount of St. Johns County, Florida Educational Facilities Revenue Bonds (Flagler College, Inc. Project), 2003 (the "Bonds"), at the purchase price of \$ \_\_\_\_\_ (which represents the par amount of the Bonds less underwriter's discount of \$ \_\_\_\_\_).

2. The Bonds shall be as described in, and shall be authorized by a resolution adopted by the Issuer on December 9, 2003 (the "Resolution"). The Bonds shall be issued and secured under and pursuant to an Indenture of Trust, dated as of December 1, 2003 (the "Indenture"), between the Issuer and SunTrust Bank, as trustee (in such capacity, the "Trustee"),



and shall be payable from the Trust Estate (as defined in the Indenture), including the revenues derived by the Issuer under a Loan Agreement, dated as of December 1, 2003 (the "Agreement"), between the Issuer and the Company. The Bonds will also be payable from an irrevocable direct-pay Letter of Credit (the "Credit Facility") to be issued by SunTrust Bank (in such capacity, the "Credit Provider"). The Credit Facility will be issued pursuant to a Letter of Credit Agreement, dated as of December 1, 2003 (the "Credit Agreement"), between the Company and the Credit Provider. The Credit Facility will expire on December 15, 2006 unless terminated earlier in accordance with its terms or unless renewed or extended. The Bonds shall bear interest initially at a Weekly Rate (as defined in the Indenture), determined on the date of issuance and thereafter on a weekly basis as provided in the Indenture and shall mature on December 1, 2034. The Bonds shall be subject to purchase and to redemption as described in the Indenture. The Company will enter into a Remarketing Agreement with SunTrust Capital Markets, Inc. as Remarketing Agent, to perform the duties of Remarketing Agent as described in the Indenture.

3. The net proceeds to be received by the Issuer from the sale of the Bonds will be loaned to the Company pursuant to the Agreement for the purpose of (i) financing or refinancing the cost of the construction of an additional student housing facility, including related parking and related fixtures, furnishings and equipment (the "Project") and (ii) paying all or a portion of the costs of issuing the Bonds.

4. The Purchaser intends to offer the Bonds at the price of par. The Purchaser agrees to deliver to the Issuer and the Company a certificate, dated the Closing Date, to the effect that the price for the Bonds as shown on the cover page of the Official Statement represents 100% of the principal amount thereof.

5. The Issuer and the Company have caused to be prepared a Preliminary Official Statement, dated December 9, 2003 (such Preliminary Official Statement, including the cover page and all appendices thereto, and any amendments and supplements thereto that may be authorized by the Issuer and the Company for use with respect to the Bonds being herein called the "Preliminary Official Statement"), which the Issuer and the Company have authorized to be circulated, and the Issuer and the Company consent to the use of the Preliminary Official Statement by the Purchaser prior to the date hereof in connection with the offering of the Bonds. Within one business day after the acceptance and execution of this Purchase Agreement by the Issuer and the Company, the Issuer shall deliver to the Purchaser sufficient copies as the Purchaser may reasonably request of an Official Statement, dated the date hereof and substantially in the form of the Preliminary Official Statement, with only such changes therein or modifications thereof (including without limitation any changes in or modifications of any of the appendices thereto) as shall have been accepted and approved by the Purchaser in its discretion, which Official Statement shall have been approved by the Company by a resolution duly passed, and by the Issuer by the Resolution duly passed (such Official Statement, including the cover page and all appendices thereto and any amendments and supplements thereto that may be authorized by the Issuer for use with respect to the Bonds being herein called the "Official Statement"). The Issuer hereby consents to the use of copies of the Official Statement, the

Indenture and the Agreement; the Company hereby consents to the use of copies of the Official Statement, the Agreement, the Credit Agreement and other pertinent documents in connection with the offering and sale of the Bonds. The Purchaser hereby agrees not to distribute or make use of any official statement relating to the Bonds unless such official statement has been approved by and contains a cover page that sets forth the name of the Purchaser.

6. The Issuer hereby represents, warrants and covenants to the Purchaser as follows:

(a) The Issuer is a political subdivision of the State of Florida.

(b) The Issuer is authorized under the laws of the State of Florida (i) to issue the Bonds for the purposes described in Section 3 hereof; (ii) to pledge the Trust Estate to the Trustee under and pursuant to the Indenture, for the benefit of the owners of the Bonds; (iii) to execute and deliver this Purchase Agreement, the Bonds, the Indenture and the Agreement; and (iv) to carry out and consummate all of the transactions contemplated on its part by this Purchase Agreement, the Resolution, the Bonds, the Indenture, the Agreement and the Official Statement.

(c) The information contained in the Preliminary Official Statement directly related to the Issuer was, and such information contained in the Official Statement will be, at all times subsequent hereto to and including the date of the Closing true and correct in all material respects and does not contain and, at all such times, will not contain any untrue statement of a material fact and does not omit, and at all such times, will not omit, to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(d) The Issuer has duly adopted the Resolution and has duly authorized all actions required to be taken by it for (i) the issuance and sale of the Bonds upon the terms set forth herein and in the Indenture; (ii) the execution, delivery and due performance of this Purchase Agreement, the Bonds, the Indenture and the Agreement; and (iii) the delivery of the Official Statement, and any and all such other agreements and documents as may be required to be executed, delivered, or performed by the Issuer in order to carry out, give effect to and consummate the transactions contemplated on its part hereby and by each of the aforesaid documents.

(e) Except as described in the Preliminary Official Statement or the Official Statement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer (or, to the knowledge of the Issuer, any meritorious basis therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent the Issuer from functioning or contesting or questioning the existence of the Issuer or the titles of the present officers of the Issuer to their offices or (ii) wherein an unfavorable

decision, ruling or finding would (A) adversely affect the existence or powers of the Issuer or the validity or enforceability of the Bonds, the Indenture, the Agreement, this Purchase Agreement or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby including, without limitation, the documents described in (B) below or by the aforesaid documents; or (B) materially adversely affect (1) the transactions contemplated by this Purchase Agreement, the Resolution, the Bonds, the Indenture, the Agreement or the Official Statement; or (2) the exemption of the interest on the Bonds from federal income taxation.

(f) The adoption by the Issuer of the Resolution and the execution and delivery by the Issuer of this Purchase Agreement, the Bonds, the Indenture, the Agreement and the other documents contemplated hereby and by the Official Statement, and the compliance with the provisions thereof, will not conflict with or constitute on the part of the Issuer a violation of, breach of or default under (i) any governing instruments; (ii) any constitutional provision, statute, indenture, mortgage, lease, resolution, note agreement or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound; or (iii) any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its properties.

(g) The Issuer is not in breach of or in default under the Resolution, the Indenture, the Agreement, any applicable law or administrative regulation of the State of Florida or the United States of America, or any applicable judgment or decree, or any loan agreement, note, resolution or other agreement or instrument to which the Issuer is a party or is otherwise subject, which breach or default would in any way materially adversely affect the authorization or issuance of the Bonds and the transactions contemplated hereby, and no event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute such a breach or default.

(h) All consents, approvals, authorizations and orders of governmental or regulatory authorities, if any, that are required to be obtained by the Issuer in connection with the issuance and sale of the Bonds, the execution and delivery of this Purchase Agreement, and the consummation of the transactions contemplated by this Purchase Agreement, the Resolution, the Indenture, the Agreement and the Official Statement and the construction of the Project have been duly obtained and remain in full force and effect, except that no representation is made as to compliance with any applicable state securities or "Blue Sky" laws or as to any approvals or consents relating to the Project that are not required as of the date hereof.

(i) Neither the Issuer nor anyone acting on its behalf has, directly or indirectly, offered the Bonds or any similar securities of the Issuer relating in any way to the Project or any related project or facility or to the Company for sale to, or solicited any offer to buy the same from, anyone other than the Purchaser.

(j) The Preliminary Official Statement and the Official Statement have been duly authorized by the Issuer; and the Issuer has consented to the use of the Preliminary Official Statement and the Official Statement by the Purchaser in connection with the offering of the Bonds.

(k) Neither the Securities and Exchange Commission nor any state securities commission has issued or, to the best of the Issuer's knowledge, threatened to issue, any order preventing or suspending the use of the Preliminary Official Statement or the Official Statement.

(l) Any certificate signed by an authorized officer of the Issuer delivered to the Purchaser shall be deemed a representation and warranty by the Issuer to the Purchaser as to the statements made therein.

(m) The Issuer is not in default and has not been in default at any time, as to principal or interest, with respect to any bonds, notes, securities or other obligations issued by the Issuer or any successor of the Issuer (other than conduit financings on which the Issuer is not liable).

(n) Upon the issuance and delivery of the Bonds, there will be no other obligations which have a lien on, or are secured by a pledge of, the Trust Estate.

(o) This Purchase Agreement, the Indenture and the Agreement are in the form approved by the Issuer and upon the execution and delivery thereof, each will constitute the legal, valid and binding obligation of the Issuer, enforceable in accordance with its terms (subject in each case to principles of equity, regardless of whether proceedings for enforcement be of a legal or equitable nature, and to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally from time to time in effect).

(p) The Bonds will be duly authorized, executed, authenticated, issued and delivered and will constitute legal, valid and binding obligations of the Issuer and entitled to the benefits and security of the Indenture (subject to principles of equity, regardless of whether proceedings for enforcement be of a legal or equitable nature, and any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally from time to time in effect).

(q) The Bonds will be limited obligations of the Issuer, payable from and secured by the Trust Estate, including the moneys derived by the Issuer from the Company pursuant to the Agreement, and will not constitute an obligation or debt of St. Johns County or the State of Florida, or any political subdivision thereof, and neither the faith nor credit of St. Johns County or the State of Florida, or any political subdivision thereof, is pledged to the payment of the Bonds.

(r) The Issuer will apply the proceeds from the sale of the Bonds as specified in the Indenture, the Agreement, the Official Statement and this Purchase Agreement.

(s) The Issuer has and will cooperate with the Purchaser and its counsel (at the expense of the Purchaser) in any endeavor to qualify the Bonds for offering and sale under the securities or "Blue Sky" laws of such jurisdictions of the United States of America as the Purchaser may request.

7. In order to induce the Purchaser to enter into this Purchase Agreement and in order to induce the Issuer to enter into the Agreement and this Purchase Agreement, the Company represents, warrants and covenants to the Purchaser and the Issuer as follows:

(a) The Company is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is qualified to transact business as a corporation in good standing under the laws of the State of Florida.

(b) The Company is authorized under the laws of the State of Florida to carry out and consummate all of the transactions and duties contemplated on its part by this Purchase Agreement, the Remarketing Agreement, the Agreement and the Credit Agreement.

(c) The Company is an organization (i) organized and operated exclusively for educational, benevolent or charitable purposes and not for pecuniary profit; and (ii) no part of the net earnings of any of which inures to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended (the "1933 Act"), and the Securities Exchange Act of 1934, as amended (the "1934 Act").

(d) The Company (i) has received from the Internal Revenue Service (the "IRS") a letter to the effect that it is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and is exempt from federal income taxation under Section 501(a) of the Code, with no essential changes in purposes, powers or methods of operation from those represented to the IRS as a basis of the aforesaid letter and knows of no reason why it would not be in compliance with any of the terms, conditions and limitations which could be imposed by such letter; (ii) agrees to file annual returns of an exempt organization on Form 990 for each fiscal year as required by law; (iii) is not currently and does not expect to be the subject of any claim by the IRS that its operations or activities constitute a trade or business that, within the meaning of Section 513 of the Code, is unrelated to educational purposes for which it is organized and operated; (iv) has never filed a return with the IRS on Form 990-T; and (v) is not a private foundation as defined in Section 509(a) of the Code.

(e) The Company has all necessary corporate power and authority (i) to conduct its business and operate all of its properties and facilities, including the Project;

(ii) to execute, deliver and perform its obligations under this Purchase Agreement, the Agreement, the Remarketing Agreement, the Credit Agreement and the Indenture; and (iii) to carry out and consummate all the transactions and duties contemplated on its part by this Purchase Agreement, the Agreement, the Remarketing Agreement, the Official Statement, the Credit Agreement and the Indenture.

(f) The information contained in the Preliminary Official Statement and the Official Statement related to the Company and the Project was, and such information contained in the Official Statement is, and at all times subsequent hereto and including the date of the Closing will be, true and correct in all material respects and does not contain and, at all such times, will not contain any untrue statement of a material fact and does not omit and, at all such times, will not omit, to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(g) The Company has duly authorized all actions required to be taken by it for (i) the execution, delivery and due performance of this Purchase Agreement, the Agreement, the Remarketing Agreement and the Credit Agreement, (ii) the delivery of the Official Statement, and any and all such other agreements and documents as may be required to be executed, delivered, or performed by the Company in order to carry out, give effect to and consummate the transactions contemplated on its part hereby and by each of the aforesaid documents and by the Credit Facility.

(h) The Agreement and the Credit Agreement are in the form approved by the Company and upon the execution and delivery thereof, each will constitute the valid and legally binding obligation of the Company, enforceable in accordance with its terms (subject in each case to usual principles of equity and to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally from time to time in effect).

(i) The Company will apply (or has caused the application of) the moneys loaned to or by the Issuer from the proceeds of the sale of the Bonds as specified in the Indenture, the Agreement, the Official Statement and this Purchase Agreement.

(j) Except as described in the Preliminary Official Statement and the Official Statement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Company, threatened against or affecting the Company (or, to the knowledge of the Company, any meritorious basis therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent the Company from functioning, or contesting or questioning the existence of the Company or the titles of the present officers of any member of the Company to their offices or (ii) wherein an unfavorable decision, ruling or finding would adversely affect (A) the existence or powers of the Company; (B) the financial position of the Company; (C) the tax-exempt status of the Company under Sections 501(a) and

501(c)(3) of the Code; (D) the transactions contemplated hereby or by the documents referred to in (E) immediately below; (E) the validity or enforceability of the Bonds, the Indenture, the Agreement, the Remarketing Agreement, the Credit Agreement, the Credit Facility, this Purchase Agreement or any agreement or instrument to which the Company is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the aforesaid documents; or (F) the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation.

(k) The execution and delivery by the Company of this Purchase Agreement, the Agreement, the Credit Agreement and the other documents contemplated hereby and by the Official Statement, and the compliance by the Company with the provisions thereof, do not conflict with or constitute on the part of the Company a violation of, breach of or default under (i) its Charter, By-Laws or any other governing instruments; (ii) any constitutional provision, statute, indenture, mortgage, lease, resolution, note agreement or other agreement or instrument to which it is a party or by which it is bound; or (iii) any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its properties. All consents, approvals, authorizations and orders of governmental or regulatory authorities, if any, that are required to be obtained by the Company in connection with the issuance and sale of the Bonds, the execution and delivery of this Purchase Agreement, and the consummation of the transactions contemplated by this Purchase Agreement, the Indenture, the Agreement, the Remarketing Agreement, the Credit Agreement, the Credit Facility and the Official Statement have been duly obtained and remain in full force and effect, except that no representation is made as to compliance with any applicable state securities or "Blue Sky" laws.

(l) Neither the Company nor anyone acting on its behalf has, directly or indirectly, offered the Bonds for sale to, or solicited any offer to buy the same from, anyone other than the Purchaser.

(m) The Preliminary Official Statement and the Official Statement have been duly authorized by the Company, and the Company has consented to the use of the Preliminary Official Statement and the Official Statement by the Purchaser in connection with the offering of the Bonds.

(n) Neither the Securities and Exchange Commission nor any state securities commission has issued or, to the best of the knowledge of the Company, threatened to issue, any order preventing or suspending the use of the Preliminary Official Statement or the Official Statement or otherwise seeking to enjoin the offer or sale of the Bonds.

(o) Any certificate signed by an authorized officer of the Company and delivered to the Issuer or the Purchaser shall be deemed a representation and warranty by the Company to the Issuer or the Purchaser as to the statements made therein.

(p) The Company has never defaulted in the payment of principal of or interest on any of its bonds, notes or other securities.

(q) The Company has and will cooperate with the Purchaser and its counsel in any endeavor to qualify the Bonds for offering and sale under the securities or "Blue Sky" laws of such jurisdictions of the United States of America as the Purchaser may request.

8. By no later than 1:00 p.m., Eastern Time, on December 16, 2003 (the "Closing Date"), the Issuer will deliver, or cause to be delivered, to or upon the order of the Purchaser, the Bonds, in definitive form, duly executed and authenticated, together with the other documents required in Section 9 hereof, and the Purchaser will accept such delivery and pay the purchase price of the Bonds. Payment for the Bonds shall be made in immediately available funds by check or by bank wire transfer payable to the order of the Trustee on behalf of the Issuer.

The closing of the sale of the Bonds as aforesaid (the "Closing") shall be held at the offices of Upchurch, Bailey & Upchurch, P.A., St. Augustine, Florida, except that physical delivery of the Bonds shall be made to the Depository Trust Company for the account of the Purchaser. Unless otherwise requested by the Purchaser at or prior to the Closing, the Bonds will be delivered at the Closing in fully registered form, registered to Cede & Co., and in the form of one certificate for each maturity of the Bonds.

9. The obligations of the Purchaser hereunder shall be subject (i) to the performance by the Issuer and the Company of their respective obligations to be performed hereunder at and prior to the Closing or such earlier time as may be specified herein; (ii) to the accuracy of each of the representations and warranties of the Issuer and the Company contained herein as of the date hereof and as of the time of the Closing, as if made at and as of the time of the Closing; and (iii) to the following conditions, including the delivery by the Issuer and the Company of such documents as are contemplated hereby in form and substance satisfactory to the Purchaser and its counsel:

(a) At the time of the Closing (i) the Official Statement, the Indenture, the Agreement, the Credit Agreement and the Credit Facility shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to by the Purchaser, such agreement to be conclusively evidenced by the closing of the sale of the Bonds; and (ii) the Issuer shall have duly adopted and there shall be in full force and effect such resolutions, including the Resolution as, in the opinion of Bond Counsel, shall be necessary in connection with the transactions contemplated hereby;

(b) At or prior to the Closing, the Purchaser shall have received the following documents:



(i) The approving opinion of Bond Counsel, dated the date of the Closing and in a form acceptable to the Purchaser and its counsel.

(ii) An opinion of counsel to the Company, dated the date of the Closing and in a form acceptable to the Purchaser and its counsel.

(iii) An opinion of Counsel to the Issuer, dated the date of the Closing, and in a form acceptable to the Purchaser and its counsel.

(iv) A certificate of the Issuer, dated the date of Closing, signed by an authorized officer of the Issuer in form and substance satisfactory to the Purchaser and its counsel, to the effect that the representations and warranties of the Issuer contained herein are true and correct and all material respects as of the Closing and that the Issuer has performed its obligations under this Purchase Agreement.

(v) A certificate of the Company, dated the Closing Date, signed by an authorized officer of the Company, to the effect that the representations and warranties of the Company contained herein are true and correct and all material respects as of the Closing and that the Company has performed its obligations under this Purchase Agreement.

(vi) Certified copies of resolutions of the Issuer, including the Resolution, authorizing the issuance, sale, execution and delivery of the Bonds and the execution, delivery and performance of the Indenture, the Agreement and this Purchase Agreement, and authorizing the use of the Preliminary Official Statement and the Official Statement by the Purchaser in connection with the offering of the Bonds.

(vii) Certified copies of resolutions of the Company authorizing the execution, delivery and performance of the Agreement, the Credit Agreement and this Purchase Agreement, and authorizing the use of the Preliminary Official Statement and the Official Statement by the Purchaser in connection with the offering of the Bonds.

(viii) Written evidence that Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P") has issued a rating of AA/A-1+ for the Bonds.

(ix) A specimen of the Bonds.

(x) The Credit Facility.

(xi) An opinion of counsel for the Credit Provider, in a form acceptable to the Purchaser and its counsel.

(xii) An incumbency certificate of the Credit Provider in a form acceptable to the Purchaser and its counsel.

(xiii) A certificate of an authorized officer of the Credit Provider as to the information regarding the Credit Provider in the Official Statement in form and substance acceptable to the Purchaser and its counsel.

(xiv) Copies of the (A) Articles of Incorporation of the Company, certified as of a recent date by the Secretary of State of Florida, and (B) By-laws of the Company, together with a certificate of an officer of the Company that such Articles of Incorporation and By-laws have not been amended, modified, revoked or rescinded and are in full force and effect as of the Closing Date.

(xv) A Certificate of the Secretary of State of the State of Florida with respect to the Company.

(xvi) Such additional legal opinions, certificates, proceedings, instruments and other documents as counsel for the Purchaser may reasonably request to evidence compliance by the Credit Provider, the Issuer and the Company with the legal requirements, the truth and accuracy, as of the time of Closing, of the representations of the Issuer and the Company herein contained and the due performance or satisfaction by the Credit Provider, the Issuer and the Company, at or prior to the Closing, of all agreements then required to be performed and all conditions then required to be satisfied by the Credit Provider, the Issuer and the Company at the Closing.

10. The Purchaser shall have the right to cancel its obligations to purchase and accept delivery of the Bonds hereunder by notifying the Issuer and the Company, in writing or by telegram, of its election to do so between the date hereof and the Closing if, on or after the date hereof and prior to the Closing:

(a) legislation shall be enacted or be actively considered for enactment by the Congress, or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either House of the Congress by a committee of such House to which such legislation has been referred for consideration, a decision by a court of the United States or the United States Tax Court shall be rendered, or a ruling, regulation or official statement by or on behalf of the Treasury Department of the United States, the IRS or other governmental agency shall be made or proposed to be made with respect to federal taxation upon revenues or other income of the general character to be derived by the Company or the Issuer or by any similar body, or upon interest on obligations of the general character of the Bonds, or other action or events shall have transpired that have the purpose or effect, directly or indirectly, of changing the federal income tax consequences of any of the transactions contemplated in connection herewith, including but not limited to any challenge of the Company as to its status as an

organization described in Sections 501(a) and 501(c)(3) of the Code, that, in the opinion of the Purchaser, materially and adversely affects the market price of the Bonds or the market price generally of obligations of the general character of the Bonds; or

(b) any legislation, ordinance or regulation shall be enacted or be actively considered for enactment by the Issuer, any governmental body, department or agency of the State of Florida or St. Johns County or a decision by any court of competent jurisdiction within the State of Florida shall be rendered that, in the opinion of the Purchaser, materially and adversely affects the market price of the Bonds; or

(c) any action shall have been taken by the Securities and Exchange Commission that would require the registration of the Bonds or the Credit Facility under the 1933 Act, or the qualification of the Resolution or the Indenture under the Trust Indenture Act of 1939, as amended (the "TIA"); or

(d) any event shall have occurred or shall exist that, in the opinion of the Purchaser, either (i) makes untrue or incorrect in any material respect any statement or information contained in the Official Statement, or (ii) is not reflected in the Official Statement and should be reflected therein in order to make the statements and information contained therein not misleading in any material respect; or

(e) there shall have occurred any outbreak of, or escalation in, hostilities or other national or international calamity or crisis or a financial crisis, including, but not limited to, (i) the United States engaging in hostilities or (ii) a Declaration of War or a national emergency by the United States on or after the date hereof which, in the sole opinion of the Purchaser, would affect materially and adversely the ability of the Purchaser to market the Bonds; or

(f) trading shall be suspended, or new or additional trading or loan restrictions shall be imposed, by the New York Stock Exchange or other national securities exchange or governmental authority with respect to obligations of the general character of the Bonds or a general banking moratorium shall be declared by federal, Georgia or New York authorities; or

(g) there shall have occurred any change in the financial condition or affairs of the Company or the Credit Provider the effect of which, in the sole judgment of the Purchaser, is so material and adverse as to make it impracticable or inadvisable to proceed with the offering or delivery of the Bonds on the terms and in the manner contemplated by the Official Statement; or

(h) there shall have occurred a default with respect to the debt obligations of, or the institution of proceedings under any federal bankruptcy laws by or against, any state of the United States or any city located in the United States having a population of

over 500,000, the effect of which, in the sole opinion of the Purchaser, would materially and adversely affect the ability of the Purchaser to market the Bonds; or

(i) S&P shall have taken any action to lower, suspend or withdraw its rating of AA/A-1+ for the Bonds; or

(j) Any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance, sale or delivery of the Bonds or in any way contesting or questioning any authority for or the validity of the Bonds or the money or revenues pledged to the payment thereof or the Credit Facility or any of the proceedings of the Issuer or the Company taken with respect to the issuance and sale thereof.

11. If the Issuer or the Company is unable to satisfy the conditions to the obligations of the Purchaser contained in this Purchase Agreement, or if the obligations of the Purchaser to purchase and accept delivery of the Bonds shall be terminated for any reason permitted by this Purchase Agreement, this Purchase Agreement shall terminate at the option of the Purchaser and neither the Purchaser nor the Issuer nor the Company shall be under further obligation hereunder; except that the respective obligations to indemnify and pay expenses, as provided in Sections 12 and 15 hereof, shall continue in full force and effect.

12.

(a) To the fullest extent permitted by applicable law, the Company agrees to indemnify and hold harmless the Purchaser, the Issuer or the other persons described in subsection (b) below against any and all losses, damages, expenses (including reasonable legal and other fees and expenses), obligations, liabilities or claims (or actions in respect thereof), (i) to which the Purchaser, the Issuer or the other persons described in subsection (b) below may become subject under any federal or state securities laws or other statutory law or at common law or otherwise, caused by or arising out of or based upon any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact related to the Company or the Project contained in the Preliminary Official Statement or the Official Statement or in the information furnished by the Company, directly or indirectly, to the Credit Provider in connection with the issuance of the Credit Facility or caused by any omission or alleged omission from the Preliminary Official Statement or the Official Statement or in the information furnished by the Company, directly or indirectly, to the Credit Provider in connection with the issuance of the Credit Facility of any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, and (ii) to which the parties indemnified hereunder or any of them may become subject under the 1933 Act, the 1934 Act, the TIA, the rules or regulations under said Acts, insofar as such losses, claims, damages, expenses, actions or liabilities arise out of or are based upon the failure to register the Bonds or any security therefor, including the Credit Facility, under the 1933 Act or to qualify the Indenture under the TIA.

(b) The indemnity provided under this Section 12 shall extend upon the same terms and conditions to each officer, director, employee, agent or attorney of the Purchaser or the Issuer, and each person, if any, who controls the Purchaser or the Issuer within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act. Such indemnity shall also extend, without limitation, to any and all expenses whatsoever reasonably incurred by any indemnified party in connection with investigating, preparing for or defending against, or providing evidence, producing documents or taking any other reasonable action in respect of any such loss, damage, expense, liability or claim (or action in respect thereof), whether or not resulting in any liability, and shall include any loss to the extent of the aggregate amount paid in settlement of any litigation, commenced or threatened, or of any claim whatsoever as set forth herein if such settlement is effected with the written consent of the Company.

(c) Within a reasonable time after an indemnified party under paragraphs (a) and (b) of this Section 12 shall have been served with the summons or other first legal process or shall have received written notice of the threat of a claim in respect of which an indemnity may be claimed, such indemnified party shall, if a claim for indemnity in respect thereof is to be made against the Company under this Section 12, notify the Company in writing of the commencement thereof; but the omission to so notify the Company shall not relieve the Company from any liability that it may have to any indemnified party other than pursuant to paragraphs (a) and (b) of this Section 12. The Company shall be entitled to participate at its own expense in the defense, and if the Company so elects within a reasonable time after receipt of such notice, or all indemnified parties seeking indemnification in such notice so direct, the Company shall assume the defense of any suit brought to enforce any such claim, and in either such case, such defense shall be conducted by counsel chosen promptly by the Company and reasonably satisfactory to the indemnified party; provided however, that, if the defendants in any such action include such an indemnified party and the Company, or include more than one indemnified party and any such indemnified party shall have been advised by its counsel that there may be legal defenses available to such indemnified party that are different from or additional to those available to the Company or another defendant indemnified party, and that in the reasonable opinion of such counsel are sufficient to make it undesirable for the same counsel to represent such indemnified party and the Company, or another defendant indemnified party, such indemnified party shall have the right to employ separate counsel in such action, and in such event the reasonable fees and expenses of such counsel shall be borne by the Company. Nothing contained in this paragraph (c) shall preclude any indemnified party, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Company hereunder.

(d) If the indemnification provided for in paragraphs (a) and (b) of this Section 12 is unavailable or insufficient to hold harmless and indemnify any indemnified party in respect of any losses, damages, expenses, liabilities, or claims (or actions in

respect thereof) referred to therein, then the Company, on the one hand, jointly and severally, and the Purchaser, on the other hand, shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, expenses, actions or liabilities in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Purchaser on the other hand from the offering of the Bonds. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, or if the indemnified party failed to give the notice required under subsection (c) above, the Company on the one hand and the Purchaser on the other hand shall contribute to such amount paid or payable by the indemnified party in such proportion as is appropriate to effect not only such relative benefits but also the relative fault of the Company on the one hand and the Purchaser on the other in connection with the statements or omissions that resulted in such losses, claims, damages, expenses, actions or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Purchaser on the other hand shall be deemed to be in such proportion so that the Purchaser is responsible for that portion represented by the percentage that the underwriting discount payable to the Purchaser hereunder (*i.e.*, the excess of the aggregate public offering price for the Bonds as set forth on the cover page of the Official Statement over the price to be paid by the Purchaser to the Issuer upon delivery of the Bonds as specified in Section 1 hereof) bears to the aggregate public offering price as described above, and the Company is responsible for the balance. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Purchaser on the other hand and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Purchaser agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, damages, expenses, liabilities, claims or actions referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim.

13. The indemnity and contribution provided by Section 12 hereof shall be in addition to any other liability that any member of the Company may otherwise have hereunder, at common law or otherwise, and is provided solely for the benefit of the Purchaser, the Issuer and each director, officer, employee, agent, attorney and controlling person referred to therein, and their respective successors, assigns and legal representatives, and no other person acquire or have any right under or by virtue of such provisions of this Purchase Agreement. The indemnity

and contribution provided by Section 12 hereof shall survive the termination or performance of this Purchase Agreement.

14. All representations, warranties and agreements of the Company set forth in or made pursuant to this Purchase Agreement shall remain operative and in full force and effect, regardless of any investigations made by or on behalf of the Purchaser and shall survive the delivery of and payment for the Bonds.

15. If the Bonds are sold to the Purchaser by the Issuer, the Company shall pay, out of the proceeds of the Bonds or from its own funds, any expenses incident to the performance of its and the Issuer's obligations hereunder, including but not limited to: (i) the cost of the preparation, reproduction, printing, distribution, mailing, execution, delivery, filing and recording, as the case may be, of this Purchase Agreement, the Indenture, the Agreement, the Credit Agreement, the Preliminary Official Statement, the Official Statement, Blue Sky Memoranda and all other agreements and documents required in connection with the consummation of the transactions contemplated hereby; (ii) the cost of the preparation, engraving, printing, execution and delivery of the definitive Bonds; (iii) the fees and disbursements of Bond Counsel, disclosure counsel for the Issuer, counsel for the Credit Provider, counsel for the Company, counsel for the Trustee, counsel for the Purchaser and any other experts retained by the Company; (iv) the initial or acceptance fee of the Trustee; (v) any fees charged by the rating agencies for the rating of the Bonds; (vi) the cost of qualifying the Bonds under the laws of such jurisdictions as the Purchaser may designate, including filing fees and fees and disbursements of counsel for the Purchaser in connection with such qualification and the preparation of Blue Sky Memoranda, and (vii) the cost of obtaining the Credit Facility.

The Company shall also pay any expenses incident to the performance of its obligations hereunder and, if the Bonds are not sold by the Issuer to the Purchaser, the Company shall pay all expenses incident to the performance of the Issuer's obligations hereunder as provided above and/or as reasonably incurred by the Issuer in its preparation and efforts relative to the Bonds and other documents related thereto.

The Purchaser shall pay (i) the cost of preparing and publishing all advertisements approved by them relating to the Bonds upon commencement of the offering of the Bonds; (ii) the cost of the transportation and lodging for officials and representatives of the Purchaser to attend meetings and the Closing; (iii) any fees of the Municipal Securities Rulemaking Board in connection with the issuance of the Bonds; and (iv) the cost of obtaining a CUSIP number assignment for the Bonds.

The provisions of this Section 15 shall survive the termination or performance of this Purchase Agreement.

16. This Purchase Agreement shall inure to the benefit of and be binding upon the Issuer, the Company and the Purchaser and their respective successors and assigns. Nothing

in this Purchase Agreement is intended or shall be construed to give any person, firm or corporation, other than the parties hereto and their respective successors and assigns, and the persons entitled to indemnity and contribution under Section 12 hereof, and their respective successors, assigns and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Purchase Agreement or any provision herein contained. This Purchase Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns, and the persons entitled to indemnity and contribution under Section 12 hereof, and their respective successors, assigns and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser who purchases the Bonds from the Purchaser or other person or entity shall be deemed to be a successor merely by reason of such purchase.

17. Any notice or other communication to be given to the Issuer or the Company under this Purchase Agreement may be given by delivering the same in writing or by telex or telecopy to the address shown below, and any notice under this Purchase Agreement to the Purchaser may be given by delivering the same in writing to the Purchaser as follows:

St. Johns County, Florida  
4020 Lewis Speedway  
St. Augustine, Florida 32085  
Attention: County Administrator

Flagler College, Inc.  
74 King Street  
St. Augustine, Florida 32084  
Attention: Kenneth Russom, Vice President for Business Services

SunTrust Capital Markets, Inc.  
SunTrust Plaza  
303 Peachtree Street, 24th Floor  
Mail Code 3945  
Atlanta, Georgia 30302  
Attention: Public Finance

together with a copy to:

Rogers Towers, P.A.  
1301 Riverplace Boulevard - Suite 1500  
Jacksonville, Florida 32207  
Attention: Irvin M. Weinstein

18. No recourse under or upon any obligation, indemnity, covenant or agreement contained in this Purchase Agreement or under any judgment obtained against the



Issuer, or by the enforcement of any assessment or by legal or equitable proceedings by virtue of any constitution or statute or otherwise or any under circumstances, under or independent of this Purchase Agreement, shall be had against any commissioner, officer, attorney, employee or agent, as such, past, present or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or to the Purchaser, the Company or otherwise of any amount that may become owed by the hereunder. Any and all personal liability of every nature, whether at common law or in equity, or by statute or constitution or otherwise, of any commissioner, officer, attorney, employee or agent, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for or to the Issuer or any receiver thereof, the Purchaser, the Company or otherwise, of any amount that may become owed by the Issuer hereunder is hereby expressly waived and released as a condition of and in consideration for the execution of this Purchase Agreement.

19. This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

20. This Purchase Agreement shall become effective upon the acceptance hereof by the Issuer and the Company.

21. This Purchase Agreement may be signed in any number of counterparts, each of which shall which shall be an original, but all of which shall constitute but one and the same instrument.

22. For purposes of subsections (2) and (3) of Section 218.385, Florida Statutes, as amended, the following Truth in Bonding Statement is made with respect to the Bonds:

The Issuer is proposing to issue \$5,500,000.00 of conduit debt for the purpose described in paragraph 3 above. This debt is expected to be repaid by the Company over a period of 30 years. The rate of interest is variable, so the total interest paid over the life of the Bonds is indeterminate.

The source of repayment or security for the Bonds is as described in Official Statement. Authorizing this debt will not affect funds of the Issuer, other than amounts received by it under the Agreement during the term thereof.

23. The Issuer shall not be subject to liability for monetary damages for any breach by the Issuer of this Purchase Agreement, the Indenture, the Bonds, the Agreement or any document related to the Bonds. The sole remedies against the Issuer for such breach shall be by writ of mandamus.

Very truly yours,

SUNTRUST CAPITAL MARKETS, INC.,  
as purchaser

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

Accepted and agreed to as  
of the date first above written:

ST. JOHNS COUNTY, FLORIDA

By: \_\_\_\_\_  
Chairman

FLAGLER COLLEGE, INC.

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

ATTACHMENT 1

**SUNTRUST CAPITAL MARKETS, INC.  
303 PEACHTREE STREET, 24TH FLOOR  
ATLANTA, GEORGIA 30302**

December 15, 2003

Board of County Commissioners  
of St. Johns County, Florida  
St. Augustine, Florida

**Re: St. Johns County, Florida Educational Facilities Revenue Bonds  
(Flagler College, Inc. Project), 2003**

Ladies and Gentlemen:

Pursuant to Florida Statutes, Section 218.385(6), the following information is provided in connection with the sale of the captioned obligations (the "Bonds").

1. The estimated amount of expenses per \$1,000 which the managing underwriter expects to incur with respect to the Bonds is as follows

Federal Funds	\$
CUSIP, MSRB, Munifacts	
DTC, Dalnet, Dalcomp	
Clearance	
Underwriter's Counsel	
Miscellaneous Expenses	

2. There are no finders, as defined in Section 218.386, Florida Statutes, who have been employed by the managing underwriter in connection with the issuance of the Bonds.

3. The amount of underwriting spread expected to be realized with respect to the Bonds is \$\_\_\_ per \$1,000 which includes \$\_\_\_\_\_ per \$1,000 for risk and \$\_\_\_ per \$1,000 for takedown.

4. The management fee to be charged by the managing underwriter is \$\_\_\_ per \$1,000.

5. No fee, bonus or other compensation is to be paid by the managing underwriter in connection with the Bonds to any person not regularly employed or retained by it, other than underwriter's counsel as described above.

St. Johns County, Florida  
Flagler College, Inc.  
December 15, 2003  
Page 21

6. The managing underwriter is SunTrust Capital Markets, Inc., 303 Peachtree Street, 24<sup>th</sup> Floor, Atlanta, Georgia 30302.

Very truly yours,

SUNTRUST CAPITAL MARKETS, INC.

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

**EXHIBIT D**

**ANNEX I**

**IRREVOCABLE LETTER OF CREDIT**

SUNTRUST BANK  
225 Park Place  
Atlanta, Georgia 30303

December \_\_, 2003

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

SunTrust Bank, as Trustee  
225 East Robinson - Suite 250  
Orlando, Florida 32801

Attention: Corporate Trust Department

At the request and on the instructions of our customer, Flagler College, Inc., a Florida not-for-profit corporation (the "Company") we hereby establish in your favor, as Trustee under the Indenture of Trust, dated as of December 1, 2003 (the "Indenture") between St. Johns County, Florida (the "Issuer") and you pursuant to which \$5,500,000 in aggregate principal amount of the Issuer's Educational Facilities Revenue Bonds (Flagler College, Inc. Project), Series 2003 (the "Bonds") are being issued, this Irrevocable Letter of Credit in the initial amount of \$5,573,333.33 (hereinafter, as reduced from time to time in accordance with the provisions hereof, the "Stated Amount") of which (i) an amount not exceeding \$5,500,000 (as reduced from time to time in accordance with the terms hereof (the "Principal Component"), may be drawn upon with respect to payment of the unpaid principal amount or the portion of Purchase Price corresponding to principal of the Bonds, and (ii) an amount not exceeding \$73,333.33 (as reduced from time to time in accordance with the terms hereof, the "Interest Component") may be drawn upon with respect to payment of interest accrued or the portion of Purchase Price corresponding to interest accrued on the Bonds on or prior to their stated maturity date, effective immediately and expiring on December 15, 2006 unless terminated earlier in accordance with the provisions hereof or unless otherwise renewed or extended. All drawings under this Letter of Credit will be paid with our own funds.

Funds under this Letter of Credit will be made available to you against receipt by us of the following items at the time required below: (a) if the drawing is being made with respect to the payment of the portion of the Purchase Price of Bonds delivered to the Trustee (as defined in the Indenture) pursuant to Section 4.01 or 4.02 of the Indenture corresponding to the principal thereof (an "A Drawing"), receipt by us of your written certificate in the form of Exhibit A attached hereto appropriately completed and signed by an Authorized Officer; (b) if the drawing is being made with respect to the payment of principal of the Bonds (a

“B Drawing”), receipt by us of your written certificate in the form of Exhibit B attached hereto appropriately completed and signed by an Authorized Officer; and (c) if the drawing is being made with respect to the payment of interest, or the portion of Purchase Price corresponding to interest, on the Bonds (a “C Drawing”), receipt by us of your written certificate in the form of Exhibit C attached hereto appropriately completed and signed by an Authorized Officer. Presentation of such certificate(s) shall be made at our office located at SunTrust Bank, 25 Park Place, 16<sup>th</sup> Floor, Atlanta, Georgia 30303, Attention: Standby Letters of Credit Department, or at any other office which may be designated by us by written notice delivered to you.

If a drawing is made by you hereunder at or prior to 12:30 p.m., New York City time, on a Business Day, and provided that the requirements set forth above have been strictly satisfied and that such drawing and the documents presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you, or to your designee, of the amount specified in immediately available funds, not later than 2:30 p.m., New York City time, on the same Business Day or not later than 2:30 p.m., New York City time, on such later Business Day as you may specify. If requested by you, payment under this Letter of Credit will be made by deposit of immediately available funds into a designated account that you maintain with us. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so.

Demands for payment hereunder honored by us shall not, in the aggregate, exceed the Stated Amount, as the Stated Amount may have been reinstated by us as provided in the next paragraph. Subject to the preceding sentence, each “A Drawing” and each “B Drawing” honored by the Bank hereunder shall *pro tanto* reduce the Principal Component, and each “C Drawing” honored by the Bank hereunder shall *pro tanto* reduce the Interest Component; any such reduction shall result in a corresponding reduction in the Stated Amount, it being understood that after the effectiveness of any such reduction you shall no longer have any right to make a drawing hereunder in respect of the amount of such principal and/or interest on the Bonds or the payment of Purchase Price corresponding to such reduction.

Upon release by us or on our behalf of any “Pledged Bonds” (as defined in the Indenture), the Principal Component shall be reinstated automatically and immediately by the principal amount of such Pledged Bonds. In addition, (a) the Interest Component shall be reinstated automatically and immediately by the amount of such “C Drawing” and (b) upon the release by us or on our behalf of any Pledged Bonds, the Interest Component shall be reinstated automatically by the amount of the “C Drawing” made to pay the portion of the Purchase Price corresponding to interest on such Pledged Bonds (unless the Interest Component previously has been reinstated with respect to such “C Drawing”); *provided, however*, that in no event shall the Interest Component be reinstated to an amount in excess of 40 days’ interest (such amount computed as set forth in the second succeeding paragraph) on the sum of the then applicable Principal Component plus the aggregate principal amount of any Pledged Bonds.

Only you or your successor as Trustee may make a drawing under this Letter of Credit. Upon the payment to you, to your designee or to your account of the amount demanded hereunder, we shall be fully discharged on our obligation under this Letter of Credit with respect to such demand for payment and we shall not thereafter be obligated to make any further payments under this Letter of Credit in respect of such demand for payment to you or any other person who may have made to you or makes to you a demand for payment of principal of, Purchase Price of, or interest on, any Bond. By paying to you an amount demanded in accordance herewith, we make no representation as to the correctness of the amount demanded.

This Letter of Credit applies only to the payment of principal or the portion of Purchase Price of the Bonds corresponding to principal, and up to 40 days' interest accruing on the Bonds (computed at a rate of 12% per annum), from the Date of Issuance through the Termination Date (computed on the basis of (a) actual days elapsed in a 365- or 366-day year, as the case may be, during any Daily Period, Weekly Period, or Commercial Paper Period and (b) a 360-day year comprised of twelve 30-day months during any Long Term Period and does not apply to any interest that may accrue thereon or any principal, premium or other amounts which may be payable with respect to the Bonds subsequent to the expiration of this Letter of Credit.

Upon the earliest of (a) the honoring by us of the final drawing available to be made hereunder, (b) receipt of a certificate signed by an Authorized Officer and a duly authorized officer of the Company stating that the conditions precedent to the acceptance of a Substitute Credit Facility (as defined in the Indenture) have been satisfied and that the Trustee has accepted the Substitute Credit Facility, and setting forth the effective date of said Substitute Credit Facility, (c) receipt of a certificate signed by an Authorized Officer stating that no Bonds remain Outstanding (as defined in the Indenture), and (d) the stated expiration date hereof, this Letter of Credit shall automatically terminate and be delivered to us for cancellation; *provided, however,* that in connection with the termination event described in clause (b), above, this Letter of Credit shall automatically terminate, and shall be delivered to us for cancellation, on the second Business Day following the effective date of the Substitute Credit Facility and the honoring by us of the related drawing hereunder pertaining to the payment of the Purchase Price of the Bonds tendered for purchase on the Mandatory Purchase Date corresponding to the delivery of the Substitute Credit Facility.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at SunTrust Bank, 225 East Robinson, Suite 250, Orlando, Florida 32801, Attention: Standby Letters of Credit Department, specifically referring thereon to this Letter of Credit by number.

We agree to issue a substitute letter of credit to any successor trustee (and to successively replace any such substitute letter of credit) upon the return to us for cancellation of the original of the letter of credit to be replaced, accompanied by a request relating to such letter of credit, which (a) shall be substantially in the form of Exhibit D attached hereto with the blanks appropriately completed, (b) shall be signed by an Authorized Officer, (c) shall specify where indicated therein the same letter of credit number as the number of the letter of credit to be replaced and (d) shall state the name and address of the successor trustee. Each substitute letter of credit will be in substantially the form of this Letter of Credit except for the date and letter of credit number.

As used herein (a) "Authorized Officer" shall mean any person signing as one of your Vice Presidents, Assistant Vice Presidents, Trust Officers or Assistant Trust Officers; and (b) all other capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to such terms in the above-mentioned Indenture.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Bonds), except only the certificate(s) referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificate(s).

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce, Publication No. 500 (the "Uniform Customs"). This Letter of Credit shall be deemed to be a contract made under the laws of the State of Georgia and shall, as to matters not governed by the Uniform Customs, be governed by and construed in accordance with the laws of such State.

Very truly yours,

SUNTRUST BANK

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



CERTIFICATE FOR "A DRAWING"

[Date]

SunTrust Bank  
225 East Robinson - Suite 250  
Orlando, Florida 32801

Attention: Standby Letters of Credit Department

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized officer of SunTrust Bank, as trustee (the "Trustee"), hereby certifies to SunTrust Bank (the "Bank") that:

(a) The undersigned is the Trustee under the Indenture for the holders of the Bonds.

(b) The undersigned, in its capacity as Trustee, is making a drawing under the above-referenced Letter of Credit in the amount of \$ \_\_\_\_\_ with respect to payment of the portion of the purchase price of Bonds corresponding to the principal amount thereof, which Bonds are to be purchased pursuant to Section [4.01] or [4.02] of the Indenture.

(c) The amount demanded hereby does not exceed the amount available on the date hereof to be drawn under the above-referenced Letter of Credit in respect of the portion of the Purchase Price of Bonds corresponding to the principal amount thereof.

(d) The amount demanded hereby does not include any amount in respect of the purchase of any Pledged Bonds.

(e) Upon receipt by the undersigned of the amount demanded hereby, (i) the undersigned will apply the same directly to the payment when due of the principal amount owing on account of the purchase of Bonds pursuant to the Indenture and, upon receipt of written request by the Bank, will cause the Trustee to deliver promptly to the Bank Pledged Bonds in an aggregate principal amount equal to the amount demanded hereby (together with any and all due bills for interest due on the next succeeding interest payment date delivered pursuant to Section 4.04 of the Indenture in respect of such Pledged Bonds), (ii) no portion of said amount shall be applied by the undersigned for any other purpose and (iii) no portion of said amount shall be commingled with other funds held by the undersigned.

Any capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to such terms in the Indenture of Trust, dated as of December 1, 2003 between the Issuer and the undersigned, as Trustee.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate  
as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

SUNTRUST BANK,  
as Trustee

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

CERTIFICATE FOR "B DRAWING"

[Date]

SunTrust Bank  
225 East Robinson - Suite 250  
Orlando, Florida 32801

Attention: Standby Letters of Credit Department

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized officer of SunTrust Bank, as trustee (the "Trustee"), hereby certifies to SunTrust Bank (the "Bank") that:

(a) The undersigned is the Trustee under the Indenture for the holders of the Bonds.

(b) The undersigned, in its capacity as Trustee, is making a drawing under the above-referenced Letter of Credit in the amount of \$ \_\_\_\_\_ with respect to the payment of principal of the Bonds, which amount has, or will, on the Business Day immediately following the date hereof, become due and payable pursuant to the Indenture, upon maturity or as a result of acceleration or redemption of the Bonds.

(c) The amount demanded hereby does not include any amount in respect of the principal amount of any Pledged Bonds.

(d) The amount demanded hereby, together with the aggregate of all prior payments made pursuant to "B Drawings" under the above-referenced Letter of Credit, does not exceed \$5,500,000.

(e) The amount demanded hereby does not exceed the amount available on the date hereof to be drawn under the above-referenced Letter of Credit in respect of the principal of the Bonds.

(f) Upon receipt by the undersigned of the amount demanded hereby, (i) the undersigned will apply the same directly to the payment when due of the principal amount owing on account of the Bonds pursuant to the Indenture, (ii) no portion of said amount shall be applied by the undersigned for any other purpose and (iii) no portion of said amount shall be commingled with other funds held by the undersigned.

Any capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to such terms in the Indenture of Trust, dated as of December 1, 2003 between the Issuer and the undersigned, as Trustee.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate  
as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SUNTRUST BANK,  
as Trustee

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

CERTIFICATE FOR "C DRAWING"

[Date]

SunTrust Bank  
225 East Robinson - Suite 250  
Orlando, Florida 32801

Attention: Standby Letters of Credit Department

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized officer of SunTrust Bank, as trustee (the "Trustee"), hereby certifies to SunTrust Bank (the "Bank") that:

(a) The undersigned is the Trustee under the Indenture for the holders of the Bonds.

(b) The undersigned, in its capacity as Trustee, is making a drawing under the above-referenced Letter of Credit in the amount of \$ \_\_\_\_\_ with respect to payment of [the portion of the purchase price of \$ \_\_\_\_\_ in principal amount of the Bonds corresponding to the accrued interest thereon, which Bonds are to be purchased pursuant to Section 4.02 of the Indenture] [interest on the Bonds, which amount has accrued and become due and payable pursuant to the Indenture, upon a stated interest payment date or as a result of acceleration or redemption of the Bonds].

(c) The amount demanded hereby does not exceed the amount available on the date hereof to be drawn under the above-referenced Letter of Credit in respect of interest on the Bonds.

(d) The amount demanded hereby does not include any amount in respect of the interest on any Pledged Bonds.

(e) Upon receipt by the undersigned of the amount demanded hereby, (i) the undersigned will apply the same directly to the payment when due of the [interest owing on account of the Bonds pursuant to the Indenture] [portion of the Purchase Price of Bonds pursuant to Section 4.02 of the Indenture corresponding to accrued interest thereon], (ii) no portion of said amount shall be applied by the undersigned for any other purpose and (iii) no portion of said amount shall be commingled with other funds held by the undersigned.

Any capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to such terms in the Indenture of Trust, dated as of December 1, 2003 between the Issuer and the undersigned, as Trustee.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate  
as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

SUNTRUST BANK,  
as Trustee

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

INSTRUCTION TO ISSUE SUBSTITUTE LETTER OF CREDIT

[Date]

SunTrust Bank  
225 East Robinson - Suite 250  
Orlando, Florida 32801

Attention: Standby Letters of Credit Department

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

Gentlemen:

Reference is made to (a) the above-referenced letter of credit (the "Old Letter of Credit") and (b) the Indenture of Trust dated as of December 1, 2003 (the "Indenture") between St. Johns County, Florida and us.

[Name and address of successor trustee] (the "Successor Trustee") has been appointed successor trustee under the Indenture. The Successor Trustee has been properly appointed and qualified pursuant to Article X of the Indenture. You are hereby requested to issue, in accordance with the terms of the Old Letter of Credit, a new letter of credit to the Successor Trustee having the same terms and providing for the same Stated Amount as the Old Letter of Credit.

We submit herewith for cancellation the original of the Old Letter of Credit.

The individual signing below on our behalf hereby represents that he or she is duly authorized to so sign on our behalf.

Very truly yours,

SUNTRUST BANK,  
as Trustee

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

## PRELIMINARY OFFICIAL STATEMENT DATED DECEMBER 9, 2003

NEW ISSUE--BOOK-ENTRY ONLY  
CUSIP NO. \_\_\_\_\_Rating: S&P: \_\_\_\_\_  
(See "RATING" herein)

*In the opinion of Bond Counsel, under existing law, and assuming compliance with certain requirements of the Internal Revenue Code of 1986, as amended, interest on the Bonds is excluded from gross income and is not an item of tax preference for federal income tax purposes. Bond Counsel is further of the opinion that the Bonds and the interest thereon are exempt from taxation under the laws of the State of Florida, except as to estate taxes and taxes on interest, income or profits on debt obligations owned by corporation, as defined in Chapter 220, Florida Statutes, as amended. See however, "TAX MATTERS" herein for a description of certain federal minimum and other special taxes that may affect the tax treatment of interest on the Bonds.*

**\$5,500,000**  
**St. Johns County, Florida**  
**Educational Facilities Revenue Bonds**  
**(Flagler College, Inc. Project),**  
**Series 2003**

Dated: Date of Delivery

Price: 100%

Due: December 1, 2033

The Bonds will be payable (except to the extent payable from certain Bond proceeds and other moneys pledged therefor) from, and are secured by, a pledge of payments to be made to St. Johns County, Florida (the "Issuer") under a Loan Agreement (the "Agreement") between the Issuer and Flagler College, Inc., a Florida not-for-profit corporation (the "College"). The Bonds also will be payable from an irrevocable direct-pay Letter of Credit (the "Credit Facility") issued by

**SunTrust Bank**

(the "Credit Provider"). The Credit Facility will expire, unless earlier terminated or unless renewed or extended, on December 15, 2006. The Credit Facility may be replaced by a substitute irrevocable Credit Facility (the "Substitute Credit Facility") under the terms and conditions set forth in the Agreement and the Indenture, as described herein.

The Bonds initially will bear interest at the Weekly Rate, as more fully described herein, determined each Wednesday and payable on the first Wednesday of each month, or on the next succeeding Business Day, if such Wednesday is not a Business Day. The Weekly Rate will be determined by SunTrust Capital Markets, Inc., as Remarketing Agent, on the basis of prevailing financial market conditions, as described in the Indenture of Trust (the "Indenture") between the Issuer and SunTrust Bank, as trustee (the "Trustee"). Subject to the satisfaction of certain conditions in the Indenture, the College may from time to time change the method of determining the interest rate on the Bonds to a Daily, Weekly, Commercial Paper or Long Term Interest Rate, as more fully described herein under "THE BONDS -- Interest on the Bonds -- Conversion Option."

Bonds bearing interest at the Weekly Rate will be issuable as fully registered Bonds in denominations of \$100,000 each and integral multiples of \$5,000 in excess thereof. The Bonds, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the Bonds. Purchases will be made in book-entry only form and no physical delivery of the Bonds will be made to Beneficial Owners (as herein defined). Payment of principal of and premium, if any, and interest on the Bonds will be made to Beneficial Owners by DTC through its Participants (as herein defined). As long as Cede & Co. is the registered owner of the Bonds, as nominee of DTC, references herein to the holders of the Bonds or registered owners shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Bonds. See "THE BONDS -- Book-Entry Only System" herein.

The Bonds are subject to redemption, purchase, and tender as provided in the Indenture and as described herein.

\* Preliminary; subject to change.

This Preliminary Official Statement and the information contained herein are subject to change, completion or amendment without notice. The Bonds may not be sold nor may offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of the Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.



THE ISSUER SHALL NOT BE OBLIGATED TO PAY THE BONDS OR THE INTEREST THEREON EXCEPT FROM THE REVENUES AND THE PROCEEDS PLEDGED THEREFOR, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER OR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS.

The Bonds are offered subject to prior sale, when, as and if issued by the Issuer, subject to the approving opinion of Foley & Lardner, P.A., Jacksonville, Florida, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the College by its Counsel, Upchurch, Bailey & Upchurch, P.A., St. Augustine, Florida; for the Issuer by the Assistant County Attorney, James G. Sisco; for the Underwriter by its Counsel, Rogers Towers, P.A., Jacksonville, Florida; and for the Credit Provider, as issuer of the Credit Facility, by its Counsel, Rogers Towers, P.A., Jacksonville, Florida.

### **SunTrust Capital Markets**

December \_\_, 2003

This Official Statement does not constitute an offering of any security other than the original offering of the Bonds identified on the cover hereof. No dealer, broker, salesman or other person has been authorized by the Issuer, the College, the Credit Provider or the Underwriter to give any information or to make any representation with respect to the Bonds other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by any 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 any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

The Underwriter, SunTrust Capital Markets, Inc., 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 a 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 guarantee the accuracy or completeness of such information. The information herein is subject to change without notice and neither the delivery hereof nor any sale hereunder at any time implies that information herein is correct as of any time subsequent to its date. Any statements in this Official Statement involving estimates, assumptions and matters of opinion, whether or not so expressly stated, are intended as such and not representations of fact.

***In making an investment decision, investors must rely on their own examination of the Issuer, the College and the Credit Provider and the terms of the offering, including the merits and risks involved. The Bonds are payable only from certain revenues and proceeds that have been pledged therefor. The Bonds have not been recommended by any federal or state securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this Official Statement. Any representation to the contrary is a criminal offense.***

OFFICIAL STATEMENT

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*The Table of Contents for this Official Statement is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provisions of this Official Statement.*

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**\$5,500,000\***  
**St. Johns County, Florida**  
**Educational Facilities Revenue Bonds**  
**(Flagler College, Inc. Project),**  
**Series 2003**

**INTRODUCTORY STATEMENT**

This Official Statement is provided to furnish certain information in connection with the original issuance and sale by St. Johns County, Florida (the "Issuer") of \$5,500,000\* in aggregate principal amount of its Educational Facilities Revenue Bonds (Flagler College, Inc. Project), Series 2003 (the "Bonds").

The Bonds will be issued under an Indenture of Trust, dated as of December 1, 2003 (the "Indenture"), between the Issuer and SunTrust Bank, as trustee (the "Trustee"). The Bonds will be limited obligations as described under the caption "THE BONDS -- Special Obligations." The Issuer will loan the net proceeds of the sale of the Bonds to Flagler College, Inc., a Florida not-for-profit corporation (the "College"), pursuant to a Loan Agreement, dated as of December 1, 2003 (the "Agreement") between the Issuer and the College in order to enable the College to finance the acquisition, construction and improvement and installation of additional student housing facilities, including related parking, and related fixtures, furnishings and equipment, all to be located on the campus of the College in the City St. Augustine, Florida (the "Project") as described under the caption "THE PROJECT." All of the Issuer's rights under the Agreement will be assigned to the Trustee as security for the payment of the principal of, premium, if any, and interest on the Bonds, except for certain rights to fees and indemnification payments.

Concurrently with, and as a condition to, the issuance of the Bonds, the College will cause SunTrust Bank, Atlanta, Georgia (the "Credit Provider"), to deliver an irrevocable direct-pay Letter of Credit (the "Credit Facility") to the Trustee. The Trustee will be entitled under the Credit Facility to draw amounts up to (a) the principal amount of the Bonds or the portion of the Purchase Price of the Bonds corresponding to the principal of the Bonds and (b) up to 40 days' accrued interest on the Bonds (at a maximum rate of 12% per annum) or that portion of the Purchase Price of the Bonds corresponding to the accrued interest thereon. The Credit Facility will be issued pursuant to a Letter of Credit Agreement, dated as of December 1, 2003, between the College and the Credit Provider (the "Credit Agreement"), as described under the caption "THE CREDIT FACILITY." The College will agree in the Credit Agreement to reimburse the Credit Provider for drawings made under the Credit Facility and to make certain other payments. The Credit Facility will expire, unless earlier terminated or unless renewed or extended, on December 15, 2006.

**NO REPRESENTATION IS MADE CONCERNING THE FINANCIAL STATUS OR PROSPECTS OF THE COLLEGE OR THE VALUE OR FINANCIAL VIABILITY OF THE PROJECT. PROSPECTIVE PURCHASERS OF THE BONDS ARE ADVISED TO RELY SOLELY UPON THE CREDIT FACILITY FOR PAYMENT OF PRINCIPAL AND PURCHASE PRICE OF AND INTEREST ON THE BONDS. AN EVENT OF DEFAULT UNDER THE CREDIT AGREEMENT, INCLUDING, AMONG OTHER THINGS, THE COLLEGE'S FAILURE TO PAY ITS REIMBURSEMENT OBLIGATIONS OR COMPLY WITH ITS COVENANTS THEREUNDER, WILL PERMIT THE CREDIT PROVIDER TO CAUSE AN EVENT OF DEFAULT UNDER THE INDENTURE, WHICH WOULD REQUIRE THE TRUSTEE TO DECLARE THE BONDS TO BE IMMEDIATELY DUE AND PAYABLE.**

In order to provide for the remarketing of the Bonds under certain circumstances, the College and SunTrust Capital Markets, Inc. (in such capacity, the "Remarketing Agent") will enter into a Remarketing Agreement, dated as of December 1, 2003 (the "Remarketing Agreement").

Brief descriptions of the Issuer, the College, the Project and the Bonds, follow. A brief description of the Credit Provider is included as Appendix A hereto. The descriptions herein do not purport to be comprehensive or

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\* Preliminary; subject to change.

definitive and are qualified in their entirety by reference to each specific document being described, copies of all of which are available for inspection at the designated corporate trust office of the Trustee at 225 East Robinson Street, Suite 250, Orlando, Florida 32801, Attention: Corporate Trust Department. Terms not defined herein have the meanings set forth in the respective documents. See "MISCELLANEOUS" for obtaining more information and for obtaining copies of the documents.

Although the Issuer has consented to the use of this Official Statement in connection with the offer and the sale of the Bonds, it has not participated in the preparation hereof (other than the information contained under the sections "THE ISSUER" and "DISCLOSURE REQUIRED BY FLORIDA BLUE SKY LAW" herein); and it makes no representation as to its accuracy or completeness. See "MISCELLANEOUS" herein.

### **THE ISSUER**

The Issuer is a political subdivision organized and existing under the laws of the State of Florida. The Issuer is authorized to issue the Bonds, to finance the costs of the Project and to secure the Bonds by an assignment of the payments to be received under the Agreement. In order to accomplish the foregoing, the Issuer is authorized to enter into and/or accept delivery of the Indenture and the Agreement.

The Bonds will be limited obligations of the Issuer as described under the caption "THE BONDS -- General."

### **THE COLLEGE**

The College is an independent, four-year, co-educational, residential institution located in St. Augustine, Florida on 19 acres, the centerpiece of which is the Ponce de León Hall, a former luxury resort now listed on the national register of historic places. The College was founded in 1968; it held its first commencement in 1972. The College offers 20 majors, 26 minors and two pre-professional programs in selected studies emphasizing liberal arts, education and business. Its enrollment at the campus in St. Augustine is approximately 1,986; enrollment at a Tallahassee campus is approximately 330.

The Credit Provider does not control the College, either directly or indirectly through one or more controlled companies, within the meaning of Section 2(a)(9) of the Investment Company Act of 1940. Likewise, the College does not control the Credit Provider, either directly or indirectly through one or more controlled companies, within the meaning of Section 2(a)(9) of the Investment Company Act of 1940.

### **THE PROJECT AND USE OF BOND PROCEEDS**

The proceeds of the Bonds will be loaned to the College for the purpose of financing all or part of the costs of the construction of an additional student housing facility, including related parking and related fixtures, furnishings and equipment, all to be located on the campus of the College in St. Augustine, Florida. Proceeds of the Bonds will also be used to pay costs of issuance of the Bonds.

### **THE BONDS**

#### **General**

The Bonds will be dated the date of their original issuance and will mature on December 1, 2033, subject to optional redemption, purchase and tender as more fully described herein. The principal of, premium, if any, and interest on, and the Purchase Price of, the Bonds are payable at the place and in the manner specified in this Official Statement. During any Daily Period, Weekly Period or Commercial Paper Period, the Bonds will be issued as fully registered bonds in denominations of \$100,000 and integral multiples of \$5,000 in excess thereof. During any Long Term Period, the Bonds will be issued in denominations of \$5,000 or any integral multiple thereof. Subject to certain limitations, the Bonds may be transferred or exchanged for other Bonds of authorized denominations at the principal corporate trust office of the Trustee, without charge other than any tax or other governmental charge.

No owner of any Bond has the right to compel any exercise of the taxing power of the State of Florida or of any political subdivision or instrumentality thereof, including the Issuer, to pay the Bonds, the interest thereon or any other amount due with respect thereto. The Bonds are not general obligations of the State of Florida or of any political subdivision or instrumentality thereof, including the Issuer, but are special obligations payable solely from certain amounts payable by the College under the Agreement and other moneys pledged therefor under the Indenture. Neither the Issuer, the State of Florida nor any political subdivision or instrumentality thereof has any obligations with respect to the purchase of the Bonds.

**Interest on the Bonds**

**Interest Rate.** Interest on the Bonds will be paid at the lesser of (a) a Daily Rate, a Weekly Rate, a Commercial Paper Rate or a Long Term Rate as selected by the College and as determined in the manner hereinafter described and (b) 12% per annum. Interest will initially be payable at the Weekly Rate, as set forth in the Indenture. The College may change the interest rate determination method from time to time. A change in the method, other than a change between the Daily Rate and the Weekly Rate, will result in the Bonds becoming subject to mandatory tender for purchase on the effective date of such change. When interest is payable at (a) a Daily Rate, Weekly Rate or Commercial Paper Rate, it will be computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, and (b) a Long Term Rate, it will be computed on the basis of a 360-day year of twelve 30-day months.

**Interest Payment and Record Dates.** Interest will accrue on the unpaid portion of the principal of the Bonds from the last date to which interest was paid or duly provided for or, if no interest has been paid or duly provided for, from the date of initial authentication and delivery of the Bonds, until the entire principal amount of the Bonds are paid or duly provided for. When interest is payable at the rate in the first column below, interest accrued during the period (an "Accrual Period") shown in the second column will be paid on the date (an "Interest Payment Date") in the third column to holders of record on the date (a "Record Date") in the fourth column:

<u>TYPE OF INTEREST PERIOD</u>	<u>ACCRUAL PERIOD<sup>1</sup></u>	<u>INTEREST PAYMENT DATE</u>	<u>RECORD DATE</u>
Daily	Calendar Month	Fifth Business Day of the next month	Last Business Day of the Accrual Period
Weekly	First Wednesday of each month through the first Tuesday of the next succeeding month	First Wednesday of each month	Last Business Day before Interest Payment Date
Commercial Paper	From 1 to 270 days as determined for each Bond pursuant to the Indenture ("Calculation Period")	First day following Calculation Period	Last Business Day before Interest Payment Date
Long Term	Six-month period or portion thereof beginning on the Conversion Date and ending on the last day of the sixth calendar month following (and including) the month in which the Conversion Date occurs and each six-month period thereafter	First day of the seventh calendar month following (and including) the month in which the Conversion Date occurs and the first day of every sixth month thereafter	Fifteenth of the month before the Interest Payment Date

<sup>1</sup> If the Conversion Date does not coincide with the first day of the Accrual Period for the new Interest Period, then the first day of such Accrual Period shall be the Conversion Date, but all other terms and conditions shall be as set forth in the above Table.

**Daily Period.** From any Conversion Date after which the Bonds will bear interest at the Daily Rate until the next following Conversion Date (the "Daily Period"), the Bonds shall bear interest at the Daily Rate, as hereinafter described.

The Daily Rate will be determined by the Remarketing Agent as follows: the interest rate for each day shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds at a price of Par on such date. Upon determining the Daily Rate for each date, the Remarketing Agent shall notify the Trustee and the College of such rate by telephone or such other manner as may be appropriate on the date of such determination, which notice shall be promptly confirmed in writing. Such notice shall be provided by not later than 9:30 a.m. New York City time on each Business Day for that Business Day. The Daily Rate for any non-Business Day will be the rate for the last day on which a rate was set.

The determination of the Daily Rate (absent manifest error) shall be conclusive and binding upon the Issuer, the College, the Trustee, the Credit Provider (if any), and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Daily Rate, the Bonds shall bear interest at the Daily Rate in effect on the last day for which a rate was set.

**Weekly Period.** From the date of issuance of the Bonds until the next following Conversion Date, and from any subsequent Conversion Date after which the Bonds will bear interest at the Weekly Rate until the next following Conversion Date (the "Weekly Period"), the Bonds shall bear interest at the Weekly Rate, as hereinafter described.

The Weekly Rate will be determined by the Remarketing Agent on each Wednesday for the period beginning on such Wednesday and ending on the following Tuesday, as follows: the interest rate shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds at a price of Par on such date. Upon determining the Weekly Rate, the Remarketing Agent shall notify the Trustee and the College of such rate by telephone or such other manner as may be appropriate on the date of such determination, which notice shall be promptly confirmed in writing. Such notice shall be provided by not later than 2:00 p.m. New York City time. If any Wednesday is not a Business Day, then the Weekly Rate shall be established on the next preceding Business Day.

The determination of the Weekly Rate (absent manifest error) shall be conclusive and binding upon the Issuer, the College, the Trustee, the Credit Provider (if any), and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Weekly Rate, the Bonds shall bear interest at the Weekly Rate last in effect.

**Commercial Paper Period.** From any Conversion Date after which the Bonds will bear interest at a Commercial Paper Rate (the "Commercial Paper Period") until the next following Conversion Date, the Bonds will bear interest at the various Commercial Paper Rates for periods of not less than one (1) day and not more than 270 days (each, a "Calculation Period"), as hereinafter described. During any Commercial Paper Period, any Bond may have a different Calculation Period and a different Commercial Paper Rate from any other Bond.

At or prior to 12:00 noon New York City time on any Conversion Date after which the Bonds will bear interest at the Commercial Paper Rate and the day immediately after the end of such Calculation Period, the Remarketing Agent shall establish Calculation Periods with respect to Bonds for which no Calculation Period is currently in effect. The Remarketing Agent shall select the Calculation Periods and the applicable Commercial Paper Rates that, together with all other Calculation Periods and related Commercial Paper Rates, in the sole judgment of the Remarketing Agent, will result in the lowest overall borrowing cost on the Bonds or are otherwise in the best financial interests of the College, as determined in consultation with the College. Any Calculation Period established for any Bond may not extend beyond (i) any Conversion Date, (ii) during any Credit Facility Period, the Business Day next preceding the scheduled Credit Facility Termination Date, or (iii) the day prior to the maturity date of the Bonds.

On the first day of each Calculation Period, the Remarketing Agent shall set rates by 12:00 Noon New York City time for the Bonds for such Calculation Period. With respect to each Calculation Period, the interest rate



shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds at a price of Par on the date of such determination. Upon determining the rate for each Calculation Period, the Remarketing Agent shall notify the Trustee and the College of such rates and the related Calculation Periods by telephone or such other manner as may be appropriate by not later than 2:00 p.m. New York City time on the date of such determination, which notice shall be promptly confirmed in writing.

The determination of the Commercial Paper Rates and Calculation Periods (absent manifest error) shall be conclusive and binding upon the Issuer, the College, the Trustee, the Credit Provider (if any), and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Commercial Paper Rates or the Calculation Periods for any Bonds during the Commercial Paper Period, or in the event no Calculation Period may be established pursuant to the terms of the Indenture, then the Calculation Period for any such Bond shall be a period of 30 days and the Commercial Paper Rate for such Calculation Period shall be 70 percent of the interest rate applicable to 91-day United States Treasury bills determined on the basis of the average per annum discount rate at which 91-day United States Treasury bills shall have been sold at the most recent Treasury auction conducted during the preceding 30 days.

**Long Term Period.** From any Conversion Date after which the Bonds will bear interest at a Long Term Rate (the "Long Term Period") until the next following Conversion Date or the maturity date of the Bonds, the Bonds will bear interest at a Long Term Rate, as hereinafter described.

The Long Term Rate will be determined by the Remarketing Agent as follows: the interest rate for each Long Term Period shall be established at a rate equal to the interest rate per annum that, in the sole judgment of the Remarketing Agent, taking into account prevailing financial market conditions, would be the minimum interest rate required to sell the Bonds at a price of Par on the date on which the Long Term Period begins. The Long Term Rate shall be determined by the Remarketing Agent not later than the fifth day preceding the commencement of such Long Term Period, and the Remarketing Agent shall notify the Trustee and the College thereof by telephone or such other manner as may be appropriate by not later than 2:00 p.m. New York City time on such date, which notice shall be promptly confirmed in writing.

The College shall instruct the Remarketing Agent, not later than the 20th day prior to the commencement of such Long Term Period, to determine the Long Term Rate on the basis of a Long Term Period ending on a specified date that is the last day of any calendar month that is an integral multiple of six calendar months from the beginning of such Long Term Period or the maturity of the Bonds. In the event the College elects at the end of a Long Term Period to have another Long Term Period applicable to the Bonds, the College shall notify the Trustee and the Remarketing Agent in writing, not later than the 20th day prior to the commencement of such new Long Term Period, of such an election with respect to the Long Term Period and of the date on which such new Long Term Period shall begin. If the duration of the Long Term Period will change from an interval of 365 days or less to an interval of more than 365 days, or vice versa, then the College shall furnish to the Trustee, with such notification, an opinion of Bond Counsel to the effect that such election of such Long Term Period will not adversely affect the exclusion from gross income for Federal income tax purposes of interest on the Bonds. The delivery by the College to the Trustee of a letter from Bond Counsel confirming the opinion accompanying the College notification described above on the first day of such Long Term Period is a condition precedent to the beginning of such Long Term Period. In the event that the College fails to deliver to the Trustee the letter of Bond Counsel referred to in the preceding sentence, the Bonds shall be deemed to bear interest at the Weekly Rate, which Weekly Rate shall be 70 percent of the interest rate for 30-day taxable commercial paper (prime paper placed through dealers) announced by the Federal Reserve Bank of New York on the day on which the Long Term Rate on the Bonds was to be set.

The determination of the Long Term Rate (absent manifest error) shall be conclusive and binding upon the Issuer, the College, the Trustee, the Credit Provider (if any), and the Owners of the Bonds. If for any reason the Remarketing Agent shall fail to establish the Long Term Rate for any Long Term Period, the Bonds shall be deemed to bear interest at the Weekly Rate, which Weekly Rate shall be 70 percent of the interest rate for 30-day taxable commercial paper (prime paper placed through dealers) announced by the Federal Reserve Bank of New York on the day on which the Long Term Rate on the Bonds was to be set.

**Conversion Option.** The College shall have the option (the "Conversion Option") to direct a change in the

type of Interest Period to another type of Interest Period by delivering to the Trustee and the Remarketing Agent written instructions setting forth (i) the Conversion Date, (ii) the new type of Interest Period and (iii) whether such Interest Period will be a Credit Facility Period. If the new Interest Period will not be a Credit Facility Period, such instructions must be accompanied by the prior written consent of the Issuer to such change in the type of Interest Period. If the new Interest Period is a Commercial Paper Period or a Long Term Period and will be a Credit Facility Period, such instructions will be accompanied by a Substitute Credit Facility, or by an amendment to the existing Credit Facility, providing for the payment of such additional interest and redemption premium (if any) on the Bonds as may be required. The sufficiency of any such Substitute Credit Facility, or of any amendment to an existing Credit Facility, shall be conclusively established by receipt of written confirmation, in form and substance satisfactory to the Trustee, from any rating agency providing a rating on the Bonds, or if the Bonds are not then rated, then from the Remarketing Agent. Such instructions shall be delivered at least 20 days prior to the first day of such Interest Period. If the duration of the Interest Period will change from an interval of 365 days or less to an interval of more than 365 days, or vice versa, then with such instructions the College shall furnish to the Trustee an opinion of Bond Counsel to the effect that such change in Interest Period will not adversely affect the exclusion from gross income for Federal income tax purposes of interest on the Bonds. The delivery by the College to the Trustee of a letter from Bond Counsel confirming the opinion accompanying the College notification described above on the Conversion Date is a condition precedent to the change in the type of Interest Period. In the event that the College fails to deliver to the Trustee the letter of Bond Counsel referred to in the preceding sentence, the Bonds shall continue in the Interest Period in place at the time of exercise of the Conversion Option.

Any change in the type of Interest Period must comply with the following: (i) the Conversion Date must be an Interest Payment Date for the Interest Period then in effect (and, with respect to a Long Term Period, must be the last Interest Payment Date for such Long Term Period) and (ii) no change in Interest Period shall occur after an Event of Default shall have occurred and be continuing.

#### **Mandatory Tender for Purchase of Bonds on Mandatory Purchase Date**

The Bonds shall be subject to mandatory tender by the Registered Owners thereof for purchase on (a) each Conversion Date other than a conversion between the Daily Period and the Weekly Period, (b) each day immediately following the end of a Calculation Period, (c) the first day of any Long Term Period, (d) the Interest Payment Date immediately before the Credit Facility Termination Date, (e) the Interest Payment Date concurrent with the effective date of a Substitute Credit Facility, and (f) the first Interest Payment Date following the occurrence of a Determination of Taxability for which the Trustee can give notice of mandatory tender in accordance with the Indenture (each a "Mandatory Purchase Date").

Except when the Bonds are subject to mandatory tender on a day immediately following the end of a Calculation Period, the Trustee shall deliver or mail by first class mail a notice in substantially the form required by the Indenture at least 15 days prior to the Mandatory Purchase Date. When the Bonds are subject to mandatory tender for purchase on the day immediately following the end of a Calculation Period, the Trustee is not required to deliver or mail any notice to the Registered Owners of the Bonds.

Any notice given by the Trustee as provided above shall be conclusively presumed to have been duly given, whether or not the Registered Owner receives the notice. Failure to mail any such notice, or the mailing of defective notice, to any Registered Owner, shall not affect the proceeding for purchase as to any Registered Owner to whom proper notice is mailed.

On each Mandatory Purchase Date, Registered Owners of Bonds shall be required to tender their Bonds to the Trustee for purchase by 10:30 a.m. New York City time at a purchase price equal to 100 percent of the principal amount of the Bonds tendered or deemed tendered, and any such Bonds not so tendered on the Mandatory Purchase Date, for which there has been irrevocably deposited in trust with the Trustee an amount of moneys sufficient to pay said purchase price of the untendered bonds, shall be deemed to have been purchased pursuant to the Indenture. In the event of a failure by a Registered Owner of Bonds to tender its Bonds on or prior to the Mandatory Purchase Date by the requisite time, said Registered Owner shall not be entitled to any payment (including any interest to accrue subsequent to the Mandatory Purchase Date) other than said purchase price for such untendered bonds, and any untendered bonds shall no longer be entitled to the benefits of the Indenture, except for the purpose of payment of said purchase price therefor.

## **Demand Purchase Option**

Any Bond bearing interest at the Daily Rate or the Weekly Rate shall be purchased from the Registered Owners thereof at a purchase price equal to 100 percent of the principal amount of the Bond tendered or deemed tendered, plus accrued and unpaid interest thereon to the date of purchase, upon:

While the Book-Entry System is not in effect:

(a) delivery to the Trustee at its Principal Office and to the Remarketing Agent at its Principal Office of a written notice (said notice to be irrevocable and effective upon receipt) which (i) states the aggregate principal amount and Bond numbers of the Bonds to be purchased; and (ii) states the date on which such Bonds are to be purchased (the "Tender Date"); and (b) delivery to the Trustee at its Delivery Office at or prior to 10:30 a.m. New York City time on the date designated for purchase in the notice described in (a) above of such Bonds to be purchased, with an appropriate endorsement for transfer or accompanied by a bond power endorsed in blank. Furthermore, such Tender Date shall not be prior to the seventh day next succeeding the date of delivery of the notice unless the Daily Period is in effect.

While the Book-Entry System is in effect:

(a) delivery to the Trustee at its Principal Office and to the Remarketing Agent at its Principal Office of a written notice (said notice to be irrevocable and effective upon receipt) which (i) states the aggregate amount of the beneficial ownership interest of the Bond to be purchased; and (ii) states the date on which such beneficial interest is to be purchased (the "Tender Date"); and (b) delivery to the Securities Depository, at or prior to 10:30 a.m. New York City time on the same date as delivery of the notice referred to in (a) above, of a written notice irrevocably instructing it to transfer on the registration books of the Securities Depository the beneficial ownership interests in such Bond or portion thereof, to the account of the Trustee, for settlement on the purchase date on a "fee delivery" basis with a copy of such notice delivered to the Trustee on the same date. Furthermore, such Tender Date shall not be prior to the seventh day next succeeding the date of delivery of the notice unless the Daily Period is in effect.

"Tender Date" means (a) during any Daily Period, any Business Day, (b) during any Weekly Period, the seventh day (unless such day is not a Business Day, in which case the next Business Day) following receipt by the Trustee of notice from the Registered Owner that such Registered Owner has elected to tender Bonds.

## **Funds for Purchase of Bonds**

On the date Bonds are to be purchased pursuant to either the Mandatory Purchase provisions or the Demand Purchase Option provisions set forth above, such Bonds shall be purchased at the Purchase Price only from the funds listed below. Subject to the provisions of the Indenture, funds for the payment of the Purchase Price shall be derived from the following sources in the order of priority indicated:

(a) the proceeds of the sale of such Bonds which have been remarketed by the Remarketing Agent and which proceeds are on deposit with the Trustee prior to 12:00 Noon New York City time on the Business Day preceding the date such Bonds are to be purchased but, during any Credit Facility Period, only if such Bonds were purchased by an entity other than the College or the Issuer, or any affiliate of the foregoing;

(b) moneys drawn by the Trustee under the Credit Facility, during any Credit Facility Period, pursuant to the heading "THE CREDIT FACILITY - General" below;

(c) any other moneys furnished to the Trustee and available for such purpose.

## **Use of Money in the Bond Fund**

Except as otherwise provided in the Indenture, moneys in the various accounts of the Bond Fund created under the Indenture shall be used solely for the payment of the principal of, premium, if any, and interest on

the Bonds and for the redemption of the Bonds prior to maturity. Subject to the provisions under the heading "THE CREDIT FACILITY - General" below, funds for such payments of the principal of and premium, if any, and interest on the Bonds shall be derived from the following sources in the order of priority indicated:

- (a) moneys drawn by the Trustee under the Credit Facility during any Credit Facility Period;
- (b) moneys deposited into the Remarketing Account of the Bond Fund pursuant to Indenture, representing the accrued interest paid by the purchaser of Pledged Bonds (as defined in the Indenture); and
- (c) any other moneys furnished to the Trustee and available for such purpose.

**Redemption**

**Extraordinary Redemption.** During any Long Term Period, the Bonds are subject to redemption in whole by the Issuer, at the option of the College, at a redemption price of 100% of the Outstanding principal amount thereof plus accrued interest to (but not including) the redemption date, in the event all or substantially all of the Project shall have been damaged or destroyed, or there occurs the condemnation of all or substantially all of the Project or the taking by eminent domain of such use or control of the Project as to render it, in the judgment of the College, unsatisfactory for its intended use for a period of time longer than one year.

**Optional Redemption.** During any Daily Period or Weekly Period, the Bonds are subject to redemption by the Issuer, at the option of the College, in whole at any time or in part on any Interest Payment Date, less than all of such Bonds to be selected by lot or in such other manner as the Trustee shall determine, at a redemption price of 100 percent of the Outstanding principal amount thereof plus accrued interest to (but not including) the redemption date.

On any Conversion Date or on the day following the end of a Calculation Period if such day is the end of the Calculation Period for all Bonds, the Bonds are subject to redemption by the Issuer, at the option of the College, in whole or in part, less than all such Bonds to be selected by lot or in such other manner as the Trustee shall determine, at a redemption price of 100 percent of the Outstanding principal amount thereof plus accrued interest to (but not including) the redemption date.

The Credit Agreement requires the College to cause the Trustee to redeem principal amounts of the Bonds in accordance with the schedule set out below, but this schedule is subject to modification as agreed to by the College and the Bank. Any modification of the schedule will not be the subject of any notice to owners of the Bonds.

<u>December 1,</u>	<u>Principal Amount</u>	<u>December 1,</u>	<u>Principal Amount</u>
2004	\$100,000	2019	\$180,000
2005	110,000	2020	185,000
2006	115,000	2021	190,000
2007	120,000	2022	200,000
2008	125,000	2023	205,000
2009	125,000	2024	210,000
2010	130,000	2025	220,000
2011	135,000	2026	230,000

<u>December 1,</u>	<u>Principal Amount</u>	<u>December 1,</u>	<u>Principal Amount</u>
2012	140,000	2027	235,000
2013	145,000	2028	245,000
2014	150,000	2029	250,000
2015	155,000	2030	260,000
2016	160,000	2031	270,000
2017	165,000	2032	280,000
2018	175,000	2033	290,000

During any Long Term Period, the Bonds are subject to redemption by the Issuer, at the option of the College, on or after the First Optional Redemption Date, in whole at any time or in part on any Interest Payment Date, less than all of such Bonds to be selected by lot or in such other manner as the Trustee shall determine, at the redemption prices (expressed as percentages of Principal amount) set forth in the following table plus accrued interest to (but not including) the redemption date:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
First Optional Redemption Date through the last day of the twelfth calendar month following such First Optional Redemption Date	102%
First anniversary of the First Optional Redemption Date through the last day of the twelfth calendar month following such first anniversary	101
Second anniversary of the First Optional Redemption Date and thereafter	100

"First Optional Redemption Date" means, with respect to a Long Term Period less than or equal to five years, the first day of the 24th calendar month from the beginning of such Long Term Period, with respect to a Long Term Period greater than five years but less than or equal to 10 years, the first day of the 60th calendar month from the beginning of such Long Term Period, and with respect to a Long Term Period greater than 10 years, the first day of the 72nd calendar month from the beginning of such Long Term Period.

**Notice.** In the event any of the Bonds or portions thereof are called for redemption as aforesaid, notice of the call for redemption, identifying the Bonds or portions thereof to be redeemed, shall be given by the Trustee by mailing a copy of the redemption notice by first class mail at least 30 days but not more than 60 days prior to the date fixed for redemption to the Registered Owner of each Bond to be redeemed in whole or in part at the address shown on the registration books. Any notice mailed as provided above shall be conclusively presumed to have been duly given, whether or not the Registered Owner receives the notice. Failure to mail any such notice, or the mailing of defective notice, to any Registered Owner, shall not affect the proceeding for redemption as to any Registered Owner to whom proper notice is mailed. No further interest shall accrue on the principal of any Bond called for redemption after the date of redemption if moneys sufficient for such redemption have been deposited with the Trustee. Notwithstanding the foregoing, the notice requirements contained in the first sentence of this paragraph may be deemed satisfied with respect to a transferee of a Bond which has been purchased pursuant to the Demand

Purchase Option after such Bond has previously been called for redemption, notwithstanding the failure to satisfy the notice requirements of the first sentence of this paragraph with respect to such transferee, as more fully provided in the Indenture.

### **Defaults and Remedies**

**Defaults.** Any of the following events will constitute a "Default" under the Indenture:

- (a) default in the due and punctual payment of interest on any Bond;
- (b) default in the due and punctual payment of the principal of or premium, if any, on any Bond, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;
- (c) default in the due and punctual payment of the Purchase Price of any Bond at the time required;
- (d) at any time during the Credit Facility Period, receipt by the Trustee of written notice from the Credit Provider that an Event of Default has occurred and is continuing under the Credit Agreement and instructing the Trustee to accelerate the Bonds;
- (e) at any time other than during a Credit Facility Period, the occurrence of a Default under the Agreement; and
- (f) at any time other than during a Credit Facility Period, default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in the Indenture or in the Bonds contained and failure to remedy the same after notice thereof.

**Acceleration.** Upon the occurrence of (i) any Default other than under (d) above, the Trustee may, and at the written request of the Owners of at least a majority in aggregate principal amount of Outstanding Bonds shall, or (ii) any Default under (d) above, the Trustee shall, by notice in writing delivered to the Issuer and the College (or, if the Book-Entry System is in effect, the Securities Depository), declare the principal of all Bonds and the interest accrued thereon to the date of such acceleration immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately declare all payments required to be made by the College under the Agreement to be immediately due and payable and, during the Credit Facility Period, shall draw moneys under the Credit Facility to pay the principal of all Outstanding Bonds and the accrued interest thereon to the date of acceleration to the extent required by the Indenture. Interest shall cease to accrue on the Bonds on the date of declaration of acceleration.

**Waivers of Default.** The Trustee shall waive any Default under the Indenture and its consequences and rescind any declaration of acceleration of principal upon the written request of the Owners of (1) at least a majority in aggregate principal amount of all Outstanding Bonds in respect of which default in the payment of principal or interest, or both, exists or (2) at least a majority in aggregate principal amount of Outstanding Bonds in the case of any other Default; *provided, however*, that there shall not be waived any Default hereunder unless and until the Trustee shall have received written notice from the Credit Provider that the Credit Facility has been reinstated in full; and *provided further* that any Default under subsection (d) above under "Defaults" may only be waived upon the written request of the Credit Provider (and in such case the consent of the Owners of the Bonds shall not be required); and *provided further* that there shall not be waived any Default specified in (a) or (b) above under "Defaults" unless prior to such waiver or rescission, the College shall have caused to be paid to the Trustee (i) all arrears of principal and interest (other than principal of or interest on the Bonds which became due and payable by declaration of acceleration), with interest at the rate then borne by the Bonds on overdue installments, to the extent permitted by law, and (ii) all fees and expenses of the Trustee in connection with such Default. In case of any waiver or rescission described above, or in case any proceeding taken by the Trustee on account of any such Default shall have been discontinued or concluded or determined adversely, then and in every such case the Issuer, the Trustee and the Owners of Bonds shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Default, or impair any right consequent thereon.

Notwithstanding the foregoing, no waiver, rescission or annulment of a Default hereunder shall be made if the Credit Provider shall theretofore have honored in full a drawing under the Credit Facility in respect of such Default.

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

The Depository Trust Company ("DTC"), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered Bond will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.

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

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

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

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

Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices will be sent to Cede & Co. If less than all of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the Bonds. 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 Bonds are credited on the record date (identified by a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer to the Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Trustee, or the Issuer, 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 Agent or Issuer, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursements of such payments to Beneficial Owners will be the responsibility of Direct and Indirect Participants.

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

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the Issuer or the Trustee. Under such circumstances, in the event that no substitute securities depository is obtained, certificates will 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.

THE ABOVE INFORMATION CONCERNING DTC AND DTC'S BOOK-ENTRY SYSTEM HAS BEEN OBTAINED FROM SOURCES THAT THE ISSUER AND THE UNDERWRITER BELIEVE TO BE RELIABLE, BUT THE ISSUER AND THE UNDERWRITER TAKE NO RESPONSIBILITY FOR THE ACCURACY THEREOF. NEITHER THE ISSUER, THE TRUSTEE, NOR THE REMARKETING AGENT WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DTC PARTICIPANTS, BENEFICIAL OWNERS OR OTHER NOMINEES OF SUCH BENEFICIAL OWNERS FOR (i) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY PARTICIPANT; (ii) THE PAYMENT BY DTC OR BY ANY PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT OR REDEMPTION OR PURCHASE PRICE OF, INTEREST ON, ANY BONDS; (iii) THE DELIVERY OF ANY NOTICE BY DTC OR ANY PARTICIPANT; (iv) THE SELECTION OF THE PARTICIPANTS OR THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE BONDS; OR (v) ANY CONSENT GIVEN OR ANY OTHER ACTION TAKEN BY DTC OR ANY PARTICIPANT.



So long as Cede & Co. is the registered owner of the Bonds, as nominee for DTC, reference herein to the registered owners of the Bonds (other than under the heading "TAX EXEMPTION" herein) shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Bonds.

## **THE CREDIT FACILITY**

### **General**

The Credit Facility will be an irrevocable direct-pay obligation of SunTrust Bank which will expire at the close of the Credit Provider's business on December 15, 2006, unless terminated earlier in accordance with its terms or unless renewed or extended, to pay to the Trustee, upon request and in accordance with the terms thereof, an amount sufficient to pay (i) the principal of the Bonds or the portion of the Purchase Price corresponding to the principal of the Bonds (at maturity or upon acceleration or redemption prior to maturity) and (ii) 40-days' accrued interest (at a maximum rate of 12% per annum) on such Bonds or that portion of the Purchase Price corresponding to the interest accrued thereon. A form of the Credit Facility is attached hereto as APPENDIX B.

During the term of the Credit Facility, the Trustee shall timely draw moneys under the Credit Facility in accordance with the terms thereof to pay when due (whether by reason of maturity, the occurrence of an Interest Payment Date, redemption, acceleration or otherwise) the principal of and interest on the Bonds; and to the extent moneys representing the proceeds of the remarketing of the Bonds are not available therefor, to pay when due the Purchase Price of Bonds.

In the event of a drawing under the Credit Facility to pay the Purchase Price of Bonds upon a Mandatory Purchase Date relating to the issuance and delivery of a Substitute Credit Facility, the Trustee shall draw moneys under the Credit Facility in effect on and prior to such Mandatory Purchase Date and shall not draw upon the Substitute Credit Facility that will become effective on or after such Mandatory Purchase Date.

Notwithstanding any provision to the contrary which may be contained in the Indenture, (i) in computing the amount to be drawn under the Credit Facility on account of the payment of the principal or Purchase Price of, or interest on the Bonds, the Trustee shall exclude any such amounts in respect of any Bonds which are Pledged Bonds on the date such payment is due, and (ii) amounts drawn by the Trustee under the Credit Facility shall not be applied to the payment of the principal or Purchase Price of, or premium, if any, or interest on, any Bonds which are Pledged Bonds on the date such payment is due.

Any drawing under the Credit Facility which is not reimbursed by the Company as required by the Credit Facility will reduce the Stated Amount (as defined in the Credit Facility), and the beneficiary thereof will no longer have any right to make a drawing under the Credit Facility in respect of the amount of any principal and/or interest on the Bonds or the payment of Purchase Price corresponding to such reduction.

After any "C Drawing," the obligation of the Credit Provider to honor demands for payment under the Credit Facility with respect to payment of interest, or the portion of Purchase Price of Bonds corresponding to interest, on the Bonds will automatically and immediately be reinstated up to the total amount specified therein, upon the terms and conditions set forth in the Credit Facility. Upon release by or on behalf of the Credit Provider pursuant to the Credit Agreement of any Pledged Bonds, the obligation of the Credit Provider to honor demands for payment under the Credit Facility with respect to payment of the principal, or the portion of Purchase Price of Bonds corresponding to principal, of the Bonds will be automatically and immediately reinstated up to the total amount specified therein upon the terms and conditions set forth in the Credit Facility.

### **Substitute Credit Facility**

Pursuant to the Agreement, the College may provide for the delivery to the Trustee of a Substitute Credit Facility. The College shall furnish written notice to the Trustee, not less than 20 days prior to the Mandatory Purchase Date, (a) notifying the Trustee that the College is exercising its option to provide for the delivery of a Substitute Credit Facility to the Trustee, (b) setting forth the Mandatory Purchase Date in connection with the delivery of such Substitute Credit Facility, which shall in any event be an Interest Payment Date that is not less than

two Business Days prior to the expiration date of the Credit Facility then in effect with respect to the Bonds, and (c) instructing the Trustee to furnish notice to the Bondholders regarding the Mandatory Purchase Date at least 15 days prior to the Mandatory Purchase Date, as more fully described in the Indenture. Any Substitute Credit Facility shall be delivered to the Trustee prior to the Mandatory Purchase Date and shall be effective on and after such Mandatory Purchase Date. On or before the date of such delivery of a Substitute Credit Facility to the Trustee, the College shall furnish to the Trustee (a) a written opinion of Bond Counsel stating that the delivery of such Substitute Credit Facility will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes; and (b) a written opinion of counsel to the Substitute Credit Provider to the effect that the Substitute Credit Facility is a legal, valid, binding and enforceable obligation of the Substitute Credit Provider in accordance with its terms.

#### **THE TRUSTEE**

SunTrust Bank, Atlanta, Georgia, is the Trustee under the Indenture. A successor trustee may be appointed in accordance with the terms of the Indenture. The designated corporate trust office of the Trustee is located at 225 East Robinson Street, Suite 250, Orlando, Florida 32801, Attention: Corporate Trust Department.

#### **THE UNDERWRITER**

SunTrust Capital Markets, Inc. (the "Underwriter"), has agreed to purchase the Bonds pursuant to a Bond Purchase Agreement entered into among the Issuer, the College and the Underwriter. The Underwriter has agreed to purchase the Bonds at a purchase price of \$ \_\_\_\_\_ representing the par amount of the Bonds less an underwriting discount of \$ \_\_\_\_\_. The Bond Purchase Agreement provides that the Underwriter will purchase all of the Bonds if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Bond Purchase Agreement. The Underwriter intends to offer the Bonds to the public initially at the offering price shown on the cover page hereof, which price may subsequently change without any requirement of prior notice. The Underwriter reserves the right to join with other dealers and underwriters in offering the Bonds to the public. The Underwriter may offer and sell the Bonds to certain dealers at prices lower than the public offering.

#### **THE REMARKETING AGENT**

SunTrust Capital Markets, Inc. is the Remarketing Agent under the Remarketing Agreement. A successor Remarketing Agent may be appointed in accordance with the terms of the Remarketing Agreement. The principal office of the Remarketing Agent is located at 303 Peachtree Street, 23<sup>rd</sup> Floor, Atlanta, Georgia 30308, Attention: Municipal Desk.

#### **MISCELLANEOUS**

The Bonds are intended to be exempt securities under the Securities Act of 1933, as amended (the "Securities Act"), and the offer, sale and delivery of the Bonds do not require registration under the Securities Act or qualification of the Indenture under the Trust Indenture Act of 1939, as amended. During the course of the transaction and prior to the sale of the Bonds, you may ask questions of and receive answers from the Underwriter concerning the terms and conditions of the offering and any additional information necessary to verify the accuracy of the information furnished, in each case to the extent the Underwriter possesses such information or can acquire it without unreasonable efforts or expense. Any request for information or for copies of documents may be directed to SunTrust Capital Markets, Inc., 303 Peachtree Street, 24<sup>th</sup> Floor, Atlanta, Georgia 30308, Attention: Municipal Desk. Copies of documents will also be available for inspection during normal business hours at the principal corporate trust office of the Trustee.

The Issuer assumes no responsibility for the accuracy or completeness of the information in this Official Statement except for the sections "THE ISSUER" and "DISCLOSURE REQUIRED BY FLORIDA BLUE SKY LAW" herein.

Insofar as any statements made in this Official Statement that involve matters of opinion, projections or

estimates, whether or not expressly stated, they are set forth as such and not as representations of fact. No representation is made that any projections will be realized. Neither this Official Statement or any statement which may have been made verbally or in writing is to be construed as a contract with the owners of the Bonds.

Management of the College has reviewed the information herein and has approved this Official Statement. The Issuer has authorized and approved the distribution of this Official Statement.

### **RATING**

Based on the support for payment of principal, Purchase Price and interest provided by the Credit Facility issued by SunTrust Bank, the Bonds have been rated “\_”/“\_” by Standard & Poor’s a division of The McGraw-Hill Companies, Inc. (“S&P”). Such rating reflects only the view of S&P’s and any explanation of the significance of such rating must be obtained from S&P’s. There is no assurance that any such rating will continue for any given period of time or that it will not be revised or withdrawn entirely if, in the judgment of S&P’s, circumstances so warrant.

### **TAX EXEMPTION**

The opinion of Bond Counsel and the descriptions of the tax law contained in this Official Statement are based on statutes, judicial decision, regulations, rulings and other official interpretations of the law in existence on the date the Bonds are issued. There can be no assurance that such law or the interpretation thereof will not be changed or that new provisions of law will not be enacted or promulgated at any time while the Bonds are outstanding in a manner that would adversely affect the value or the tax treatment of ownership of the Bonds.

Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”) provides as a general rule that gross income does not include interest on obligations of a state or a political subdivision of a state. Section 103(b) of the Code states that the general rule does not apply to interest on obligations that are “private activity bonds” within the meaning of Section 141(a) of the Code unless such private activity bonds are “qualified bonds” under Section 141(a) of the Code and meet certain additional requirements.

One category of qualified bonds is “qualified 501(c)(3) bonds.” Under Section 145(a) of the Code, qualified 501(c)(3) bonds include private activity bonds in respect to which (a) all property to be acquired by the net proceeds thereof is to be owned by Section 501(c)(3) organization and (b)(i) no more than 5% of the net proceeds thereof are to be used in an “unrelated trade or business” (within the meaning of Section 513 of the Code or (ii) the payment of principal of, or interest on, no more than 5% of the net proceeds thereof is either (A) secured by any interest in property used in, or payments in respect of an unrelated trade or business or (B) derived from payments in respect of property, or borrowed money, to be used in an unrelated trade or business and (C) no more than the lesser of \$5,000,000, or 5% of the proceeds thereof are to be used to make or finance loans for activities constituting an unrelated trade or business.

Qualified 501(c)(3) bonds must meet certain additional requirements including the following: (i) they must not be arbitrage bonds within the meaning of Section 148(a) of the Code, and certain arbitrage profits derived from the investment of their proceeds must be rebated to the United States of America in accordance with Section 148(f) of the Code; (ii) none of their proceeds may be used to provide certain identified types of facilities as provided in Section 147(e) of the Code; (iii) not more than 2% of their sale proceeds may be used to pay their issuance costs within the meaning of Section 147(g) of the Code; (iv) their average maturity must not exceed 120% of the average reasonably expected economic life of the facilities financed thereby; (v) they must have received public approval in accordance with Section 147(f) of the Code; (vi) they must be in registered form in accordance with Section 149(a) of the Code; (vii) they may not be federally guaranteed within the meaning of Section 149(b) of the Code; and (viii) certain information reports with respect to them must be filed with the Secretary of the Treasury in accordance with Section 149(e) of the Code.

### **Federal Tax Opinion of Bond Counsel**

The law firm of Foley & Lardner, Bond Counsel, will render an opinion with respect to the Bonds

substantially in the form of Appendix C.

### **Bond Document Provisions Regarding Tax Status of the Bonds: Bondholder Risk**

The opinion of Bond counsel set forth in Appendix C speaks to the exclusion of interest on the Bonds from gross income for federal income tax purposes as of the date of the original issuance of the Bonds. Although the College has agreed in the Loan Agreement to take such action as may be necessary to maintain the tax-exempt status of the Bonds, it is nevertheless possible that future action or inaction by the College could cause interest on the Bonds to lose the exclusion from gross income (in some cases retroactively to the date of their original issuance).

### **Summary of Federal Income Tax Consequences Applicable to Certain Holders of the Bonds**

The Code contains numerous provisions which could affect the economic value of the Bonds to Bondholders. The following is a brief summary of some of the significant provisions which may be applicable to particular Bondholders. PROSPECTIVE BONDHOLDERS, HOWEVER, SHOULD CONSULT THEIR OWN FINANCIAL ADVISORS WITH RESPECT TO THE IMPACT OF SUCH PROVISIONS ON THEIR OWN PARTICULAR SITUATIONS.

Section 55 of the Code imposes an "alternative minimum tax" on a taxpayer's "alternative minimum taxable income." Alternative minimum taxable income is taxable income with certain adjustments. Interest on the Bonds is not an item of tax preference includable in alternative minimum taxable income. Therefore, in the case of individuals, interest on the Bonds will have no effect on the computation of alternative minimum tax. In the case of most corporations, however, interest on the Bonds is taken into account in determining such corporation's "adjusted current earnings" for purposes of computing alternative minimum taxable income and therefore could have an effect on the computation of alternative minimum tax.

Section 265 of the Code denies a deduction for interest on indebtedness incurred or continued to purchase or carry tax-exempt obligations, including the Bonds, or in the case of financial institutions, that portion of a holder's interest expense allotted to certain tax-exempt obligations, including the Bonds. The Bonds will not be "qualified tax-exempt obligations" within the meaning of Section 265(b) of the Code and therefore, interest expense incurred or continued by banks and certain other financial institutions and allocable to their purchase or carrying of the Bonds will not be deductible for federal income tax purposes.

Life insurance companies must include tax-exempt interest, including interest on the Bonds, in computing the amount of income or deductible expense for federal income tax purposes with respect to certain insurance reserves. Property and casualty insurance companies will be required to reduce the amount of their deductible losses by 15% of the amount of tax-exempt interest received or accrued during such taxable year on certain obligations, including the Bonds.

Under the provisions of Section 884 of the Code, a branch profits tax may be levied on the "effectively connected earnings and profits" of certain foreign corporations, which term includes tax-exempt interest such as interest on the Bonds.

Interest on the Bonds may be taken into account under Section 86 of the Code so as to cause a Bondholder to be subject to federal income tax on a portion of his or her social security or railroad retirement benefits, if any.

### **Florida Tax Matters**

In the opinion of Bond Counsel, the Bonds and the interest thereon are exempt from taxation under the laws of the State of Florida, except estate taxes and taxes on interest, income or profits on debt obligations owned by corporations, as defined in Chapter 220, Florida Statutes, as amended.

### **APPROVAL OF LEGAL PROCEEDINGS**

Certain legal matters incidental to the authorization, issuance and sale by the Issuer of the Bonds and with

regard to the tax-exempt status thereof will be passed upon by Foley & Lardner, Jacksonville, Florida, Bond Counsel. The form of Bond Counsel's approving opinion is set out in *Appendix C*. Certain legal matters will be passed upon for the College by its Counsel, Upchurch, Bailey & Upchurch, St. Augustine, Florida; for the Issuer by its Assitant County Attorney, James G. Sisco, St. Augustine, Florida; for the Underwriter by its Counsel, Rogers Towers, P.A., Jacksonville, Florida; and for the Credit Provider, as issuer of the Credit Facility, by its Counsel, Rogers Towers, P.A., Jacksonville, Florida. Rogers Towers, P.A., Jacksonville, Florida also represents the Trustee and represented the Issuer as disclosure counsel.

#### DISCLOSURE REQUIRED BY FLORIDA BLUE SKY LAW

Section 517.01(1), Florida Statutes requires that the Issuer make full and fair disclosure of any of its bonds or other debt obligations that have been in default as to payment of principal or interest at any time after December 31, 1975. The Issuer has not been, since December 31, 1975, in default as to payment of principal or interest on any of its bonds or other debt obligations, other than conduit obligations as described below.

Rule 3E-400.003 promulgated by the Florida Department of Banking and Finance, Division of Securities and Finance ("Rule 3E-400.003"), requires the Issuer to disclose each and every default as to the payment of principal and interest with respect to obligations issued or guaranteed by the Issuer after December 31, 1975. Rule 3E-400.003 further provides, however, that if the Issuer in good faith believes that such disclosure would not be considered material by a reasonable investor, such disclosure may be omitted. The Issuer, in good faith, believes that disclosure of any such default on bonds with respect to which the Issuer was merely a conduit issuer and which are secured solely by payments of a borrower under a mortgage loan or other agreement would not be considered material by a reasonable investor in the Bonds. Accordingly, the Issuer has not taken affirmative steps to contact the various trustees of conduit bond issues of the Issuer to determine the existence of prior defaults. Because the Issuer is not obligated to pay debt service on defaulted bonds with respect to which it acted as a conduit issuer (except from payments made by borrowers under their respective mortgage loan or other agreements), and because such defaults, if any, would not affect the Bonds, certain specific disclosures relating to such defaults have been omitted.

#### CERTAIN RELATIONSHIPS

We call to your attention that SunTrust Bank, Atlanta, Georgia will serve as (a) issuer of the Credit Facility, and (b) in its capacity as Trustee, will be the beneficiary of the Credit Facility. In addition, we call to your attention that SunTrust Capital Markets, Inc., an affiliate of SunTrust Bank, will serve as Underwriter in connection with the initial purchase of the Bonds and will serve as Remarketing Agent in connection with any subsequent remarketing of the Bonds.

ST. JOHNS COUNTY, FLORIDA

By: \_\_\_\_\_  
Chairman

FLAGLER COLLEGE, INC.

By: \_\_\_\_\_  
President

**APPENDIX "A"**

**SUNTRUST BANK**

**Information Relating to SunTrust Bank**

The information contained in this Appendix "A" to the Official Statement has been obtained from SunTrust Bank and is not to be construed as a representation by the Issuer or the College.

SunTrust Bank offers a full line of financial services for consumers and businesses. SunTrust serves more than 3.7 million customer households through a regional organizational structure that encompasses more than 1,100 branches and 1,800 ATMs in six states - Alabama, Florida, Georgia, Maryland, Tennessee and Virginia - plus the District of Columbia. SunTrust also offers 24-hour delivery channels including internet and telephone banking. In addition to traditional deposit, credit and trust and investment services offered by SunTrust Bank, other SunTrust subsidiaries provide mortgage banking, commercial and auto leasing, credit-related insurance, asset management, discount brokerage and capital market services. Displayed below is financial information for SunTrust Bank for the year-end December 31, 2002 and comparative historical financial information for the quarters ended September 30, 2002 and 2003.

**FINANCIAL SUMMARY**  
(Dollars in thousands)

	<b>SunTrust Bank</b> Year Ended <u>12/31/2002</u>	<b>SunTrust Bank</b> Quarter Ended September 30, <u>2003</u> <u>2002</u>	
Net Income	\$1,374,021	\$332,488	\$332,418
Tier I risk-based capital ratio	7.75%	7.80%	7.88%
Tier I and II risk-based capital ratio	10.91%	10.71%	10.77%
Leverage capital ratio	7.52%	7.26%	7.80%
<b>Balance Sheet Data (period end):</b>			
Loans	\$71,742,911	\$77,751,790	\$71,297,565
Assets	115,148,694	125,027,074	109,616,497
Deposits	80,097,296	80,792,822	74,042,874
Realized shareholder's equity	8,131,245	8,742,950	7,943,906
Net unrealized gains on securities	893,863	798,338	953,785
Total shareholder's equity	<u>\$9,025,108</u>	<u>\$9,541,288</u>	<u>\$8,897,691</u>
<b>Loan Performance Data:</b>			
Allowance for loan losses at period end	\$912,350	\$933,551	\$911,991
As a percentage of period end loans	1.27%	1.20%	1.28%
Net loans charged off	\$415,805	\$78,472	\$96,968
Non-performing loans at period end	\$507,977	\$421,828	\$551,708
As a percentage of period end loans	0.71%	0.54%	0.77%

SunTrust Banks, Inc. is subject to the informational requirements of the Securities Exchange Act of 1934 and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the "Commission"). The file number of SunTrust Banks, Inc. with the Commission is No. 1-8918.

Such reports, proxy statements and other information can be inspected and copied at the Public Reference Room of the Commission, Room 2120, 450 Fifth Street, N.W., Judiciary Plaza, Washington, D. C. 20549, and at the Commission's Regional Offices in Chicago (Room 1204, Everett McKinley Dirksen Building, at 219 South Dearborn Street, Chicago, Illinois 60604), and New York (Room 1100, 26 Federal Plaza, New York, New York 10278). Copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D. C. 20549 at prescribed rates.

The following documents of SunTrust Banks, Inc. filed with the Commission by SunTrust Banks, Inc. are incorporated herein by reference as of their respective dates:

- (a) The Annual Report on Form 10-K for the year ended December 31, 2002; and
- (b) The Quarterly Report on Form 10-Q for the quarter ended September 30, 2003;

All documents filed by SunTrust Banks, Inc. pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 subsequent to the date of the most recent Quarterly Report on Form 10-Q and prior to the termination of the offering hereunder shall be deemed to be incorporated by reference into this Appendix A and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be modified or superseded for purposes of this Official Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Official Statement.

SunTrust Banks, Inc. has agreed, upon request, to provide without charge to each person to whom a copy of this Official Statement has been delivered, upon written or oral request of such person, a copy of any or all of the documents which have been or may be incorporated in this Appendix A by reference. Any such request should be directed to:

SunTrust Banks, Inc.  
Post Office Box 4418  
Atlanta, Georgia 30302  
Attention: Raymond D. Fortin, Secretary  
Telephone: (404) 588-7165

**APPENDIX "B"**

**FORM OF LETTER OF CREDIT**

**IRREVOCABLE LETTER OF CREDIT**

**SUNTRUST BANK**  
225 Park Place  
Atlanta, Georgia 30303

December \_\_, 2003

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

SunTrust Bank, as Trustee  
225 East Robinson - Suite 250  
Orlando, Florida 32801

Attention: Corporate Trust Department

At the request and on the instructions of our customer, Flagler College, Inc., a Florida not-for-profit corporation (the "Company") we hereby establish in your favor, as Trustee under the Indenture of Trust, dated as of December 1, 2003 (the "Indenture") between St. Johns County, Florida (the "Issuer") and you pursuant to which \$5,500,000 in aggregate principal amount of the Issuer's Educational Facilities Revenue Bonds (Flagler College, Inc. Project), Series 2003 (the "Bonds") are being issued, this Irrevocable Letter of Credit in the initial amount of \$5,573,333.33 (hereinafter, as reduced from time to time in accordance with the provisions hereof, the "Stated Amount") of which (i) an amount not exceeding \$5,500,000 (as reduced from time to time in accordance with the terms hereof (the "Principal Component"), may be drawn upon with respect to payment of the unpaid principal amount or the portion of Purchase Price corresponding to principal of the Bonds, and (ii) an amount not exceeding \$73,333.33 (as reduced from time to time in accordance with the terms hereof, the "Interest Component") may be drawn upon with respect to payment of interest accrued or the portion of Purchase Price corresponding to interest accrued on the Bonds on or prior to their stated maturity date, effective immediately and expiring on December \_\_, 2006 unless terminated earlier in accordance with the provisions hereof or unless otherwise renewed or extended. All drawings under this Letter of Credit will be paid with our own funds.

Funds under this Letter of Credit will be made available to you against receipt by us of the following items at the time required below: (a) if the drawing is being made with respect to the payment of the portion of the Purchase Price of Bonds delivered to the Trustee (as defined in the Indenture) pursuant to Section 4.01 or 4.02 of the Indenture corresponding to the principal thereof (an "A Drawing"), receipt by us of your written certificate in the form of Exhibit A attached hereto appropriately completed and signed by an Authorized Officer; (b) if the drawing is being made with respect to the payment of principal of the Bonds (a "B Drawing"), receipt by us of your written certificate in the form of Exhibit B attached hereto appropriately completed and signed by an Authorized Officer; and (c) if the drawing is being made with respect to the payment of interest, or the portion of Purchase Price corresponding to interest, on the Bonds (a "C Drawing"), receipt by us of your written certificate in the form of Exhibit C attached hereto appropriately completed and signed by an Authorized Officer. Presentation of such certificate(s) shall be made at our office located at SunTrust Bank, 25 Park Place, 16<sup>th</sup> Floor, Atlanta, Georgia 30303, Attention: Standby Letters of Credit Department, or at any other office which may be designated by us by written notice delivered to you.

If a drawing is made by you hereunder at or prior to 12:30 p.m., New York City time, on a Business Day, and provided that the requirements set forth above have been strictly satisfied and that such drawing



and the documents presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you, or to your designee, of the amount specified in immediately available funds, not later than 2:30 p.m., New York City time, on the same Business Day or not later than 2:30 p.m., New York City time, on such later Business Day as you may specify. If requested by you, payment under this Letter of Credit will be made by deposit of immediately available funds into a designated account that you maintain with us. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so.

Demands for payment hereunder honored by us shall not, in the aggregate, exceed the Stated Amount, as the Stated Amount may have been reinstated by us as provided in the next paragraph. Subject to the preceding sentence, each "A Drawing" and each "B Drawing" honored by the Bank hereunder shall *pro tanto* reduce the Principal Component, and each "C Drawing" honored by the Bank hereunder shall *pro tanto* reduce the Interest Component; any such reduction shall result in a corresponding reduction in the Stated Amount, it being understood that after the effectiveness of any such reduction you shall no longer have any right to make a drawing hereunder in respect of the amount of such principal and/or interest on the Bonds or the payment of Purchase Price corresponding thereto.

Upon release by us or on our behalf of any "Pledged Bonds" (as defined in the Indenture), the Principal Component shall be reinstated automatically and immediately by the principal amount of such Pledged Bonds. In addition, (a) the Interest Component shall be reinstated automatically and immediately by the amount of such "C Drawing" and (b) upon the release by us or on our behalf of any Pledged Bonds, the Interest Component shall be reinstated automatically by the amount of the "C Drawing" made to pay the portion of the Purchase Price corresponding to interest on such Pledged Bonds (unless the Interest Component previously has been reinstated with respect to such "C Drawing"); *provided, however*, that in no event shall the Interest Component be reinstated to an amount in excess of 40 days' interest (such amount computed as set forth in the second succeeding paragraph) on the sum of the then applicable Principal Component plus the aggregate principal amount of any Pledged Bonds.

Only you or your successor as Trustee may make a drawing under this Letter of Credit. Upon the payment to you, to your designee or to your account of the amount demanded hereunder, we shall be fully discharged on our obligation under this Letter of Credit with respect to such demand for payment and we shall not thereafter be obligated to make any further payments under this Letter of Credit in respect of such demand for payment to you or any other person who may have made to you or makes to you a demand for payment of principal of, Purchase Price of, or interest on, any Bond. By paying to you an amount demanded in accordance herewith, we make no representation as to the correctness of the amount demanded.

This Letter of Credit applies only to the payment of principal or the portion of Purchase Price of the Bonds corresponding to principal, and up to 40 days' interest accruing on the Bonds (computed at a rate of 12% per annum), from the Date of Issuance through the Termination Date (computed on the basis of (a) actual days elapsed in a 365- or 366-day year, as the case may be, during any Daily Period, Weekly Period, or Commercial Paper Period and (b) a 360-day year comprised of twelve 30-day months during any Long Term Period and does not apply to any interest that may accrue thereon or any principal, premium or other amounts which may be payable with respect to the Bonds subsequent to the expiration of this Letter of Credit.

Upon the earliest of (a) the honoring by us of the final drawing available to be made hereunder, (b) receipt of a certificate signed by an Authorized Officer and a duly authorized officer of the Company stating that the conditions precedent to the acceptance of a Substitute Credit Facility (as defined in the Indenture) have been satisfied and that the Trustee has accepted the Substitute Credit Facility, and setting forth the effective date of said Substitute Credit Facility, (c) receipt of a certificate signed by an Authorized Officer stating that no Bonds remain Outstanding (as defined in the Indenture), and (d) the stated expiration date hereof, this Letter of Credit shall automatically terminate and be delivered to us for cancellation; *provided, however*, that in connection with the termination event described in clause (b), above, this Letter of Credit shall automatically terminate, and shall be delivered to us for cancellation, on the second Business Day following the effective date of the Substitute Credit

Facility and the honoring by us of the related drawing hereunder pertaining to the payment of the Purchase Price of the Bonds tendered for purchase on the Mandatory Purchase Date corresponding to the delivery of the Substitute Credit Facility.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at SunTrust Bank, 225 East Robinson, Suite 250, Orlando, Florida 32801, Attention: Standby Letters of Credit Department, specifically referring thereon to this Letter of Credit by number.

We agree to issue a substitute letter of credit to any successor trustee (and to successively replace any such substitute letter of credit) upon the return to us for cancellation of the original of the letter of credit to be replaced, accompanied by a request relating to such letter of credit, which (a) shall be substantially in the form of Exhibit D attached hereto with the blanks appropriately completed, (b) shall be signed by an Authorized Officer, (c) shall specify where indicated therein the same letter of credit number as the number of the letter of credit to be replaced and (d) shall state the name and address of the successor trustee. Each substitute letter of credit will be in substantially the form of this Letter of Credit except for the date and letter of credit number.

As used herein (a) "Authorized Officer" shall mean any person signing as one of your Vice Presidents, Assistant Vice Presidents, Trust Officers or Assistant Trust Officers; and (b) all other capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to such terms in the above-mentioned Indenture.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Bonds), except only the certificate(s) referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificate(s).

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce, Publication No. 500 (the "Uniform Customs"). This Letter of Credit shall be deemed to be a contract made under the laws of the State of Georgia and shall, as to matters not governed by the Uniform Customs, be governed by and construed in accordance with the laws of such State.

Very truly yours,

SUNTRUST BANK

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

CERTIFICATE FOR "A DRAWING"

[Date]

SunTrust Bank  
225 East Robinson - Suite 250  
Orlando, Florida 32801

Attention: Standby Letters of Credit Department

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized officer of SunTrust Bank, as trustee (the "Trustee"), hereby certifies to SunTrust Bank (the "Bank") that:

(a) The undersigned is the Trustee under the Indenture for the holders of the Bonds.

(b) The undersigned, in its capacity as Trustee, is making a drawing under the above-referenced Letter of Credit in the amount of \$ \_\_\_\_\_ with respect to payment of the portion of the purchase price of Bonds corresponding to the principal amount thereof, which Bonds are to be purchased pursuant to Section [4.01] or [4.02] of the Indenture.

(c) The amount demanded hereby does not exceed the amount available on the date hereof to be drawn under the above-referenced Letter of Credit in respect of the portion of the Purchase Price of Bonds corresponding to the principal amount thereof.

(d) The amount demanded hereby does not include any amount in respect of the purchase of any Pledged Bonds.

(e) Upon receipt by the undersigned of the amount demanded hereby, (i) the undersigned will apply the same directly to the payment when due of the principal amount owing on account of the purchase of Bonds pursuant to the Indenture and, upon receipt of written request by the Bank, will cause the Trustee to deliver promptly to the Bank Pledged Bonds in an aggregate principal amount equal to the amount demanded hereby (together with any and all due bills for interest due on the next succeeding interest payment date delivered pursuant to Section 4.04 of the Indenture in respect of such Pledged Bonds), (ii) no portion of said amount shall be applied by the undersigned for any other purpose and (iii) no portion of said amount shall be commingled with other funds held by the undersigned.

Any capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to such terms in the Indenture of Trust, dated as of December 1, 2003 between the Issuer and the undersigned, as Trustee.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

SUNTRUST BANK,  
as Trustee

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

CERTIFICATE FOR "B DRAWING"

[Date]

SunTrust Bank  
225 East Robinson - Suite 250  
Orlando, Florida 32801

Attention: Standby Letters of Credit Department

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized officer of SunTrust Bank, as trustee (the "Trustee"), hereby certifies to SunTrust Bank (the "Bank") that:

- (a) The undersigned is the Trustee under the Indenture for the holders of the Bonds.
- (b) The undersigned, in its capacity as Trustee, is making a drawing under the above-referenced Letter of Credit in the amount of \$\_\_\_\_\_ with respect to the payment of principal of the Bonds, which amount has, or will, on the Business Day immediately following the date hereof, become due and payable pursuant to the Indenture, upon maturity or as a result of acceleration or redemption of the Bonds.
- (c) The amount demanded hereby does not include any amount in respect of the principal amount of any Pledged Bonds.
- (d) The amount demanded hereby, together with the aggregate of all prior payments made pursuant to "B Drawings" under the above-referenced Letter of Credit, does not exceed \$5,500,000.
- (e) The amount demanded hereby does not exceed the amount available on the date hereof to be drawn under the above-referenced Letter of Credit in respect of the principal of the Bonds.
- (f) Upon receipt by the undersigned of the amount demanded hereby, (i) the undersigned will apply the same directly to the payment when due of the principal amount owing on account of the Bonds pursuant to the Indenture, (ii) no portion of said amount shall be applied by the undersigned for any other purpose and (iii) no portion of said amount shall be commingled with other funds held by the undersigned.

Any capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to such terms in the Indenture of Trust, dated as of December 1, 2003 between the Issuer and the undersigned, as Trustee.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

SUNTRUST BANK,  
as Trustee

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

EXHIBIT C

CERTIFICATE FOR "C DRAWING"

[Date]

SunTrust Bank  
225 East Robinson - Suite 250  
Orlando, Florida 32801

Attention: Standby Letters of Credit Department

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, a duly authorized officer of SunTrust Bank, as trustee (the "Trustee"), hereby certifies to SunTrust Bank (the "Bank") that:

(a) The undersigned is the Trustee under the Indenture for the holders of the Bonds.

(b) The undersigned, in its capacity as Trustee, is making a drawing under the above-referenced Letter of Credit in the amount of \$\_\_\_\_\_ with respect to payment of [the portion of the purchase price of \$\_\_\_\_\_ in principal amount of the Bonds corresponding to the accrued interest thereon, which Bonds are to be purchased pursuant to Section 4.02 of the Indenture] [interest on the Bonds, which amount has accrued and become due and payable pursuant to the Indenture, upon a stated interest payment date or as a result of acceleration or redemption of the Bonds].

(c) The amount demanded hereby does not exceed the amount available on the date hereof to be drawn under the above-referenced Letter of Credit in respect of interest on the Bonds.

(d) The amount demanded hereby does not include any amount in respect of the interest on any Pledged Bonds.

(e) Upon receipt by the undersigned of the amount demanded hereby, (i) the undersigned will apply the same directly to the payment when due of the [interest owing on account of the Bonds pursuant to the Indenture] [portion of the Purchase Price of Bonds pursuant to Section 4.02 of the Indenture corresponding to accrued interest thereon], (ii) no portion of said amount shall be applied by the undersigned for any other purpose and (iii) no portion of said amount shall be commingled with other funds held by the undersigned.

Any capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to such terms in the Indenture of Trust, dated as of December 1, 2003 between the Issuer and the undersigned, as Trustee.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SUNTRUST BANK,  
as Trustee

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

EXHIBIT D

INSTRUCTION TO ISSUE SUBSTITUTE LETTER OF CREDIT

[Date]

SunTrust Bank  
225 East Robinson - Suite 250  
Orlando, Florida 32801

Attention: Standby Letters of Credit Department

Re: Irrevocable Letter of Credit No. \_\_\_\_\_

Gentlemen:

Reference is made to (a) the above-referenced letter of credit (the "Old Letter of Credit") and (b) the Indenture of Trust dated as of December 1, 2003 (the "Indenture") between St. Johns County, Florida and us.

[Name and address of successor trustee] (the "Successor Trustee") has been appointed successor trustee under the Indenture. The Successor Trustee has been properly appointed and qualified pursuant to Article X of the Indenture. You are hereby requested to issue, in accordance with the terms of the Old Letter of Credit, a new letter of credit to the Successor Trustee having the same terms and providing for the same Stated Amount as the Old Letter of Credit.

We submit herewith for cancellation the original of the Old Letter of Credit.

The individual signing below on our behalf hereby represents that he or she is duly authorized to so sign on our behalf.

Very truly yours,

SUNTRUST BANK,  
as Trustee

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

APPENDIX "C"

FORM OF OPINION OF BOND COUNSEL

*Upon delivery of the Bonds in definitive form, Foley & Lardner, Jacksonville, Florida, Bond Counsel, proposes to render its final approving opinion with respect to such Bonds in substantially the following form:*

\_\_\_\_\_, 2003

The Honorable Chairman and Members  
of the Board of County Commissioners  
of St. Johns County, Florida  
St. Augustine, Florida

Re: \$5,500,000 St. Johns County, Florida Educational Facilities  
Revenue Bonds (Flagler College, Inc. Project), Series 2003

Ladies and Gentlemen:

We have acted as bond counsel for St. Johns County, Florida in connection with the issuance by St. Johns County, Florida (the "Issuer") of its Educational Facilities Revenue Bonds (Flagler College, Inc. Project), Series 2003, in the aggregate principal amount of \$5,500,000 (the "Bonds"), pursuant to a Trust Indenture dated as of December 1, 2003 (the "Indenture"), between the Issuer and SunTrust Bank, as trustee (the "Trustee").

The Issuer loaned the proceeds of the Bonds to Flagler College, Inc., a Florida not for profit corporation (the "Borrower"), pursuant to a Loan Agreement dated as of December 1, 2003 (the "Loan Agreement"), between the Issuer and the Borrower. Under the Loan Agreement, the Borrower agreed to make payments sufficient to pay when due the purchase price and principal of, premium, if any, and interest on the Bonds in the manner provided in the Indenture, and such payments and the rights of the Issuer under the Loan Agreement (except for the right to enforce certain limited provisions of the Loan Agreement) were pledged and assigned by the Issuer to the Trustee as security for the Bonds.

Payment of the Bonds is further secured initially by a Letter of Credit (the "Letter of Credit") issued by SunTrust Bank in favor of the Trustee. The Letter of Credit will expire on the earlier of December \_\_, 2006, or the occurrence of certain other events specified therein, unless extended or renewed. A Substitute Credit Facility (as such term is defined in the Indenture) may be substituted for the Letter of Credit upon the terms and conditions specified in the Indenture and the Loan Agreement.

The Bonds are payable solely from (i) payments made by the Borrower pursuant to the Loan Agreement, (ii) all cash and securities held by the Trustee from time to time in specified trust funds under the Indenture, and (iii) amounts available under the Letter of Credit or any Substitute Credit Facility, all in the manner and to the extent provided in the Indenture (collectively, the "Pledged Revenues").

The Issuer and the Borrower have entered into a Tax Agreement, dated as of December 1, 2003 (the "Tax Agreement"). The Tax Agreement contains certain certifications as to expectations and facts, representations and covenants with respect to establishing and maintaining the excludability of interest on the Bonds from gross income of the owners thereof for federal income tax purposes.

For purposes of this opinion we have examined (i) the resolution of the Issuer authorizing the issuance of the Bonds, (ii) executed counterparts of the Indenture, the Loan Agreement and the Tax Agreement, (iii) the opinion of even date herewith of the Office of the County Attorney, St. Augustine, Florida, as counsel to the Issuer, (iv) the opinion of even date herewith of Upchurch, Bailey & Upchurch, P.A., St. Augustine, Florida (the "Borrower Counsel Opinion"), as counsel to the Borrower, and (v) such certified proceedings and other papers as we have considered necessary and appropriate to render this opinion.

In rendering this opinion, we are relying on the Borrower Counsel Opinion with respect to various matters concerning the Borrower, including (i) the Borrower's corporate existence, (ii) the status of the Borrower as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), which is exempt from federal income taxation pursuant to Section 501(a) of the Code and is not a private foundation as defined in Section 509(a) of the Code, (iii) the Borrower's power to enter into and perform the Loan Agreement, (iv) the authorization, execution and delivery of the Loan Agreement by the Borrower, and (v) the validity, binding effect and enforceability of the Loan Agreement against the Borrower.

As to questions of fact material to our opinion, we have relied upon representations and covenants made on behalf of the Issuer and the Borrower in the Indenture, the Loan Agreement and the Tax Agreement, certificates of officials of the Issuer and certificates of officers of the Borrower (including certifications as to the use of Bond proceeds and the operation and use of the property financed thereby), without undertaking to verify the same by independent investigation.

We express no opinion herein as to the accuracy, completeness or sufficiency of any offering material relating to the Bonds. We have not passed upon any matters relating to the business, affairs or condition (financial or otherwise) of the Borrower and no inference should be drawn that we have expressed any opinion on matters relating to the ability of the Borrower to perform its obligations under the contracts described herein.

Based upon the foregoing, we are of the opinion that, under existing law:

1. The Issuer validly exists as a political subdivision of the State of Florida and has the power to issue the Bonds and to enter into and perform its obligations under the Indenture and the Loan Agreement.
2. The Indenture and the Loan Agreement were duly authorized, executed and delivered by the Issuer and are valid, binding and enforceable obligations of the Issuer in accordance with their terms. All rights of the Issuer under the Loan Agreement (except for the right to enforce certain limited provisions of the Loan Agreement) have been validly assigned to the Trustee under the Indenture.
3. The Bonds were duly authorized, executed and delivered by the Issuer and are valid, binding and enforceable special and limited obligations of the Issuer payable solely from the Pledged Revenues.
4. The interest on the Bonds (a) is excluded from gross income of the owners of the Bonds for federal income tax purposes, and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed on all taxpayers, however, such interest is taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on certain corporations. The Issuer has included provisions and procedures in the Loan Agreement, the Indenture and the Tax Agreement in order to meet certain requirements of the Code subsequent to the issuance of the Bonds. The opinion set forth in the first sentence of this paragraph is subject to the condition that the Borrower comply with, and the Borrower has covenanted to comply with, each such requirement. Failure to comply with certain of such requirements may cause the interest on the Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal income tax consequences arising with respect to the Bonds.
5. The Bonds and the interest thereon are exempt from taxation under the laws of the State of Florida, except as to estate taxes and taxes on interest, income or profits on debt obligations owned by corporations,



The Honorable Chairman and Members  
of the Board of County Commissioners  
of St. Johns County, Florida  
\_\_\_\_\_, 2003

Page 3

as defined in Chapter 220, Florida Statutes, as amended.

Our opinions expressed herein are predicated upon present laws and interpretations thereof. We assume no affirmative obligation with respect to any change of circumstances or law that may adversely affect after the date hereof the exclusion from gross income for federal income tax purposes of interest on the Bonds. We call to your attention that our opinion expressed in paragraph 4 above is applicable only so long as the Bonds bear interest at the Weekly Rate. Subsequent opinions are required under the Indenture with respect to certain changes that may be effected in interest rates and other matters.

It is to be understood that the rights of the owners of the Bonds and the enforceability of the Bonds, the Indenture, the Loan Agreement and the Tax Agreement may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

Respectfully submitted,

FOLEY & LARDNER

JAX\703350\_4

**REMARKETING AGREEMENT**

This REMARKETING AGREEMENT dated as of December 1, 2003 between FLAGLER COLLEGE, INC. (the "Company"), a Florida not-for-profit corporation and SUNTRUST CAPITAL MARKETS, INC., a Tennessee corporation, as remarketing agent (the "Remarketing Agent");

**W I T N E S S E T H:**

WHEREAS, St. Johns County, Florida (the "Issuer") pursuant to the provisions of the Act (as defined in the Indenture hereinafter referred to) intends to issue and sell its Educational Facilities Revenue Bonds (Flagler College, Inc. Project), Series 2003 in the aggregate principal amount of \$5,500,000 (the "Bonds") pursuant to an Indenture of Trust dated as of December 1, 2003 (the "Indenture") from the Issuer to SunTrust Bank, as trustee (in such capacity, the "Trustee") and to loan the proceeds thereof to the Company, pursuant to the provisions of a Loan Agreement dated as of December 1, 2003 between the Issuer and the Company, in order to enable the Company to finance, in whole or in part, the cost of the acquisition, construction and equipping of the "Project" (as defined in the Indenture); and

WHEREAS, the Bonds are subject to purchase under certain circumstances, as described in the Bonds and in *Article IV* of the Indenture; and

WHEREAS, the Company desires that the Remarketing Agent provide a mechanism for remarketing the Bonds according to the terms and subject to the conditions described herein;

NOW, THEREFORE, for and in consideration of the covenants herein made, the parties hereto hereby agree as follows:

**Section 1. Definitions.**

Unless a different meaning clearly appears from the context, all words and terms used herein shall have the respective meanings assigned to such terms in the Indenture.

**Section 2. Remarketing of the Bonds.**

(a) Demand Purchase Option. So long as no Default under the Indenture has occurred and is continuing, upon delivery of notice to the Remarketing Agent in accordance with *Section 4.02* of the Indenture, the Remarketing Agent shall offer for sale and shall use its best efforts to remarket the Bonds referred to in such notice, any such sale to be made at a price equal to the principal amount thereof plus accrued interest thereon to the date of sale; *provided, however,* that the Remarketing Agent shall not offer for sale or remarket any Bonds pursuant to this *Section 2(a)* to the Company or the Issuer or to any affiliate of either. At or prior to 12:00 noon, New York City time, on the date any Bonds are to be purchased pursuant to *Section 4.04* of the Indenture, the Remarketing Agent shall give notice by telephone or telex, promptly confirmed in writing, to the Company and the Trustee, specifying the principal amount

of such Bonds, if any, remarketed by it pursuant to *Section 2(a)* hereof, and shall provide the proceeds of the sale of such Bonds to the Trustee.

(b) Mandatory Purchase. Subject to the requirements of *Section 2(c)*, below, at the request of the Company, notice of such request having been received by the Remarketing Agent at least fifteen (15) days prior to a Mandatory Purchase Date in accordance with *Section 4.01* of the Indenture, and so long as no default under the Indenture has occurred and is continuing, the Remarketing Agent agrees to offer for sale and use its best efforts to remarket the Bonds referred to in such notice, any such sale to be made at a price at least equal to the principal amount thereof; *provided, however*, that the Remarketing Agent shall not offer for sale or remarket any Bonds pursuant to this *Section 2(b)* to the Company or the Issuer or to any affiliate of either.

(c) Requirements for Remarketing. The obligation of the Remarketing Agent to remarket Bonds delivered to the Trustee in connection with a Mandatory Purchase Date, as described in *Section 2(b)*, above, shall be subject to the satisfaction of the following requirements:

(i) satisfactory compensation and other terms and conditions shall have been agreed upon by the Company and the Remarketing Agent;

(ii) to the extent required by the Indenture, the Remarketing Agent shall have received an opinion of nationally recognized bond counsel to the effect that the interest on such Bonds will not be includable in gross income for federal income tax purposes after the Mandatory Purchase Date;

(iii) the Remarketing Agent shall have received an official statement, or other appropriate disclosure document satisfactory in form and substance to the Remarketing Agent, to be used in connection with its efforts to remarket the Bonds; and

(iv) the Remarketing Agent shall have received such additional documents, certificates and legal opinions as it may reasonably request.

Further details regarding such remarketing shall be negotiated between the Company and the Remarketing Agent prior to the Mandatory Purchase Date.

### **Section 3. Remarketing Agent Compensation.**

(a) So long as the Bonds bear interest at the Daily Rate or the Weekly Rate, the Company hereby agrees to pay to the Remarketing Agent a continuing remarketing and administration fee computed at the rate of one-tenth of one percent per annum (0.10%) of the average daily aggregate principal amount of Bonds Outstanding from time to time, excluding Pledged Bonds, calculated on the basis of a 360-day year, actual number of days elapsed, for the period from and including the date of issuance and delivery of the Bonds to and including the earlier of (i) the Conversion Date preceding a Commercial Paper Period or a Long Term Period or (ii) the date on which the Bonds mature, are fully redeemed, are accelerated or otherwise cease to be Outstanding, payable in arrears on January 1, 2004, and on the first day of each January thereafter, and on the earlier of the Conversion Date preceding a Commercial Paper

Period or a Long Term Period or the date on which the Bonds mature, are fully redeemed, are accelerated or otherwise cease to be Outstanding.

(b) If pursuant to *Section 2(b)* hereof the Remarketing Agent is requested by the Company to use its best efforts to remarket the Bonds, the Remarketing Agent shall be paid such remarketing fee as may then be mutually agreed upon by the Company and the Remarketing Agent.

(c) In addition to the fees set forth above, the Company hereby agrees to reimburse the Remarketing Agent for its actual out-of-pocket expenses reasonably incurred in connection herewith. The Company also agrees to indemnify the Remarketing Agent for, and to hold it harmless against, any loss, liability or expense (including reasonable counsel fees and disbursements) incurred without gross negligence or willful misconduct on its part arising out of or in connection with its performance of its obligations hereunder.

#### **Section 4. Announcement of the Daily Rate and Weekly Rate.**

The Remarketing Agent agrees to use its best efforts to announce the Daily Rate and Weekly Rate on the date of issuance and delivery of the Bonds and on the first day of each Short Term Period thereafter at the dates and times provided in the Indenture, until payment in full of the Bonds. The Remarketing Agent shall communicate the Daily Rate and Weekly Rate to the Trustee as provided in the Indenture.

#### **Section 5. Proceeds of Sale of the Bonds.**

The proceeds of the sale of any Bonds as a result of the remarketing thereof by the Remarketing Agent, to the extent not used to pay the Purchase Price of such Bonds in accordance with *Section 4.03* of the Indenture, shall be paid in accordance with the provisions of *Section 4.05* of the Indenture.

#### **Section 6. Duties of the Remarketing Agent.**

By entering into this Agreement, SunTrust Capital Markets, Inc. agrees to serve as the Remarketing Agent for the Bonds, on the terms and conditions set forth herein. The Remarketing Agent hereby designates as its Principal Office the address specified in *Section 8* hereof. The Remarketing Agent hereby agrees to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Issuer, the Company or the Trustee at all reasonable times.

#### **Section 7. Successor Remarketing Agent.**

The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Agreement by giving at least thirty (30) days' notice to the Company, the Issuer and the Trustee. The Remarketing Agent may be removed at any time, at the direction of the Company, by an instrument signed by the Company and filed with the Remarketing Agent, the Issuer and the Trustee, subject to the provisions of the Indenture.

In the event that the Remarketing Agent shall resign or be removed, or be

dissolved, or if the property or affairs of the Remarketing Agent shall be taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, the Company shall appoint a successor Remarketing Agent meeting the requirements set forth herein and in the Indenture.

Any successor Remarketing Agent shall be an institution authorized by law to perform all the duties imposed upon it under this Agreement.

If a successor Remarketing Agent shall be appointed pursuant to this Section, all references herein to the "Remarketing Agent" shall thereafter refer to such successor Remarketing Agent.

**Section 8. Notices.**

Unless otherwise provided herein, all notices, requests, certificates or other communications hereunder shall be sufficiently given if the same shall be duly mailed by registered or certified mail, return receipt requested, postage prepaid, or sent by any electronic method capable of creating a written document, in either case addressed as follows:

- (a) if to the Issuer: St. Johns County, Florida  
4020 Lewis Speedway  
St. Augustine, Florida 32085  
Attention: County Administrator
  
- (b) if to the Trustee: SunTrust Bank  
225 East Robinson - Suite 250  
Orlando, Florida 32801  
Attention: Corporate Trust Department
  
- (c) if to the Company: Flagler College, Inc.  
P.O. Box 1027  
St. Augustine, Florida 32085-1027  
74 King Street  
St. Augustine, Florida 32084  
Attention: Vice President for Business  
Services
  
- (d) if to the Remarketing Agent: SunTrust Capital Markets, Inc.  
303 Peachtree Street  
24th Floor  
Atlanta, Georgia 30303  
Attention: Municipal Desk

A duplicate copy of each notice, certificate, request or other communication given hereunder by any of the parties mentioned above to any one of the others shall also be given to each of the others. Any party mentioned above may, by notice given hereunder, designate any further or

different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

**Section 9. Amendments.**

This Agreement may be amended by an instrument in writing signed by the Company and the Remarketing Agent; provided, that the appointment of a substitute or successor Remarketing Agent hereunder shall be subject to receipt of the prior written consent of the Bank.

**Section 10. Governing Law.**

This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Florida.

**Section 11. Counterparts.**

This Agreement 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.

IN WITNESS WHEREOF, the parties hereto have caused this Remarketing Agreement to be duly executed as of the day and year first above written.

FLAGLER COLLEGE, INC.

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

SUNTRUST CAPITAL MARKETS, INC.

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