

*In the opinion of Bond Counsel, assuming compliance with the tax covenants described herein, interest on the Bonds is excludable from gross income for the purpose of federal income taxation under existing law, and interest on the Bonds is exempt from all State of North Dakota taxes except privilege taxes imposed on banks, trust companies and building and loan associations. Interest is not an item of tax preference in determining federal alternative minimum tax applicable to individuals and corporations; however, interest is includable in the calculation of certain federal taxes imposed on corporations. The Bonds have not been designated as "qualified tax-exempt obligations" for financial institutions pursuant to Section 265(b)(3) of the Code. For further discussion, see "TAX EXEMPTION" herein.*

**NORTH DAKOTA BUILDING AUTHORITY**  
**\$13,080,000**  
**LEASE REVENUE BONDS, 2003 SERIES B**  
**(the "Bonds")**

**DATED:** June 15, 2003

**DUE:** December 1, as shown on the inside cover page

The \$13,080,000 Lease Revenue Bonds, 2003 Series B (the "Bonds") are issuable as fully registered Bonds and, when initially issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Bonds. Purchases of Bonds will be made in book-entry only form, in the principal amount of \$5,000 or any integral multiple thereof, through brokers and dealers who are, or who act through, DTC participants. Beneficial owners of the Bonds will not receive physical delivery of bond certificates so long as DTC or a successor securities depository acts as the securities depository with respect to the Bonds. Interest is payable on December 1, 2003 and on each June 1 and December 1 thereafter. So long as DTC or its nominee is the registered owner of the Bonds, payments of the principal or redemption price of and interest on the Bonds will be made directly to DTC. Disbursement of such payments to DTC participants is the responsibility of DTC and disbursement of such payments to the beneficial owners is the responsibility of DTC participants. See "THE BONDS--Book-Entry-Only System."

The Bonds are subject to optional and extraordinary optional redemption prior to maturity upon the occurrence of certain events as described under "THE BONDS - Redemption" herein.

The Bonds are being issued to finance the acquisition, improving, equipping or construction of certain facilities (the "Projects") for the North Dakota State Board of Higher Education, the North Dakota Department of Corrections and Rehabilitation, and the North Dakota State Department of Health (the "Agencies"), as described under "THE PROJECTS" herein. The Industrial Commission of North Dakota, acting as the North Dakota Building Authority (the "Issuer"), will lease back the Projects to the Agencies pursuant to the Lease Back Agreements (the "Lease") under which the semiannual rental payments due under the Lease (the "Basic Rent") to be paid by each Agency, subject to biennial appropriations by the North Dakota Legislature, will be sufficient in amount and payable at such times to pay principal of and interest on the Bonds when due.

The Bonds are issued under and are equally and ratably secured by a Trust Indenture and Assignment of Lease Revenue (the "Indenture") between the Issuer and the Bank of North Dakota as trustee (the "Trustee"). The Bonds are limited obligations of the Issuer payable solely from the revenues received pursuant to the Lease, which are produced from biennial appropriations (if any) by the North Dakota Legislature, any money available to the lessee not requiring appropriation and other funds or amounts held by the Trustee as security for the Bonds. Payment of the principal of and interest on the Bonds when due will be insured by a municipal bond insurance policy to be issued by MBIA simultaneously with the delivery of the Bonds.



The Lease specifically provides that nothing therein shall be construed to require the North Dakota Legislature to appropriate any moneys to pay any Rent thereunder and that the Agencies shall not be obligated to pay such Rent except to the extent appropriated for each biennium. THE OBLIGATION OF THE AGENCIES TO PAY ANY RENT, AS HEREIN DEFINED, UNDER ITS LEASE IS SUBJECT TO BIENNIAL APPROPRIATIONS BY THE NORTH DAKOTA LEGISLATURE AS PROVIDED IN SUCH LEASE. NEITHER THE OBLIGATION OF THE AGENCIES TO PAY SUCH RENT NOR THE OBLIGATION OF THE ISSUER TO PAY THE BONDS WILL CONSTITUTE A DEBT OF THE STATE OF NORTH DAKOTA OR ANY AGENCY OR POLITICAL SUBDIVISION OF THE STATE OF NORTH DAKOTA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE ISSUANCE OF THE BONDS DOES NOT DIRECTLY OR CONTINGENTLY OBLIGATE THE AGENCIES TO PAY ANY RENT BEYOND THAT APPROPRIATED FOR THE CURRENT BIENNIUM OF THE STATE. THE ISSUER HAS NO TAXING POWER. See "BONDOWNERS' RISKS" herein.

The Bonds are offered when, as and if issued by the Issuer subject to the approving legal opinion of Cook Wegner & Wike PLLP, Bismarck, North Dakota, Bond Counsel, as to validity and tax exemption. Certain legal matters will be passed upon for the Issuer by the Attorney General of the State of North Dakota. Public Financial Management, Inc., Minneapolis, Minnesota, will serve as financial advisor for the Issuer. The Bonds will be available for delivery at The Depository Trust Company in New York, New York on June 30, 2003.

An account group managed by **U.S. Bancorp Piper Jaffray** has agreed to purchase the Bonds for an aggregate price of \$12,883,856.17.

**U.S. Bancorp Piper Jaffray**  
**RBC Dain Rauscher Inc.**

**NORTH DAKOTA BUILDING AUTHORITY**  
**\$13,080,000**  
**Lease Revenue Bonds, 2003 Series B**

**MATURITY SCHEDULE**

**\$6,895,000 Serial Bonds**

<u>Maturity</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u>
2005	\$500,000	2.000%	1.500%	658906 NN 8
2006	510,000	2.000%	1.650%	658906 NP 3
2007	565,000	2.250%	2.000%	658906 NQ 1
2008	575,000	2.500%	2.250%	658906 NR 9
2009	615,000	2.750%	2.550%	658906 NS 7
2010	635,000	3.000%	2.875%	658906 NT 5
2011	655,000	3.000%	3.100%	658906 NU 2
2012	675,000	3.200%	3.250%	658906 NV 0
2013	695,000	3.300%	3.350%	658906 NW 8
2014	720,000	3.500%	3.550%	658906 NX 6
2015	750,000	3.700%	3.750%	658906 NY 4

**\$2,425,000 4.000% Term Bond due December 1, 2018 priced to yield 4.125% CUSIP No.: 658906 PB 2**  
**\$1,790,000 4.250% Term Bond due December 1, 2020 priced to yield 4.375% CUSIP No.: 658906 PD 8**  
**\$1,970,000 5.000% Term Bond due December 1, 2022 priced to yield 4.450% CUSIP No.: 658906 PF 3**

This Official Statement, which includes the cover page and the Appendices hereto, 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. No broker, dealer, salesperson or other person has been authorized by the Industrial Commission of North Dakota acting as the North Dakota Building Authority (the "Issuer"), the State of North Dakota (the "State") or the Financial Advisor to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representation must not be relied upon as having been authorized by any of the foregoing.

The information set forth herein has been obtained from the Issuer, the State, and other sources believed to be reliable, but such information is not guaranteed as to accuracy or completeness and is not to be construed as the promise or guarantee of the Issuer, the State or the Financial Advisor. This Official Statement contains, in part, estimates and matters of opinion which are not intended as statements of fact, and no representation is made as to the correctness of such estimates and opinions or that they will be realized. The information and expressions of opinion contained herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer or the State or in the information or opinions set forth herein since the date of this Official Statement.

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IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES 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 DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

STATE OF NORTH DAKOTA



**ELECTED OFFICIALS**

Governor.....	John Hoeven
Lieutenant Governor.....	Jack Dalrymple
Secretary of State .....	Alvin A. Jaeger
Attorney General.....	Wayne Stenehjem
Public Service Commissioner.....	Tony Clark
Public Service Commissioner.....	Leo Reinbold*
Public Service Commissioner.....	Susan Wefald
Agriculture Commissioner.....	Roger Johnson
Tax Commissioner.....	Rick Clayburgh
State Auditor.....	Robert R. Peterson
Insurance Commissioner.....	Jim Poolman
Superintendent of Public Instruction .....	Wayne Sanstead
State Treasurer.....	Kathi Gilmore

**THE INDUSTRIAL COMMISSION OF NORTH DAKOTA  
ACTING AS THE NORTH DAKOTA BUILDING AUTHORITY**

**MEMBERS**

Governor John Hoeven .....	Chairman
Attorney General Wayne Stenehjem.....	Member
Agriculture Commissioner Roger Johnson .....	Member

**AUTHORIZED OFFICERS**

Karlene Fine	Pamela Sharp
Executive Director and Secretary	Director
Industrial Commission of North Dakota	Office of Management and Budget

**BOND COUNSEL**

Cook Wegner & Wike PLLP  
Bismarck, North Dakota

**FINANCIAL ADVISOR TO THE INDUSTRIAL COMMISSION**

Public Financial Management, Inc.  
Minneapolis, Minnesota

**TRUSTEE, REGISTRAR AND PAYING AGENT**

Bank of North Dakota  
Bismarck, North Dakota

\* Resigning as of July 31, 2003. The Governor has appointed Kevin Cramer to complete the Public Service Commissioner's term through December 31, 2004.

## INTRODUCTION TO THE OFFICIAL STATEMENT

*The following information is furnished solely to provide limited introductory information regarding the North Dakota Building Authority (the "Issuer") \$13,080,000 Lease Revenue Bonds, 2003 Series B (the "Bonds"), and does not purport to be comprehensive. All such information is qualified in its entirety by reference to the more detailed descriptions appearing in this Official Statement, including the appendices hereto.*

**Issuer:** The Industrial Commission of North Dakota, acting as the North Dakota Building Authority.

**Dated Date:** June 15, 2003.

**Purpose:** The Bonds are being issued to finance the acquisition, improving, equipping, or construction of certain facilities (the "Projects") for the State Board of Higher Education, the North Dakota Department of Corrections and Rehabilitation, and the North Dakota State Department of Health, as provided in House Bill Nos. 1003 and 1023 enacted by the Fifty-Eighth Legislative Assembly. Bond proceeds will also be used to provide funds for deposit into the Reserve Fund, to capitalize interest on the Bonds, to pay costs of issuance and to repay interim borrowing, if any.

**Security:** The Bonds are issued pursuant to a Trust Indenture and Assignment of Lease Revenue (the "Indenture") dated as of June 19, 2003 between the Issuer and the Bank of North Dakota, as Trustee, pursuant to which the Issuer will pledge to the Trustee all Basic Rent payable under the Lease Back Agreements (the "Lease") dated as of June 19, 2003 for the payment of the principal of and interest on the Bonds. The Bonds are limited obligations of the Issuer payable solely from revenues received pursuant to the Lease which are produced from biennial appropriations by the North Dakota Legislature. See "SECURITY FOR THE BONDS." Summary definitions of certain capitalized terms appear below.

**Optional Redemption:** Bonds maturing on or before December 1, 2013 are not subject to optional redemption prior to maturity except under extraordinary circumstances as described herein under "THE BONDS--Redemption Provisions." Bonds maturing on or after December 1, 2014 are subject to redemption at the option of the Issuer in whole or in part on December 1, 2013 and on any business day thereafter at a price of par plus accrued interest.

**Sinking Fund Redemptions:** The Bonds maturing on December 1, 2018 are subject to sinking fund redemption of a price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest on December 1 as shown below:

<b>Sinking Fund Redemption</b>	
<u>Date (December 1)</u>	<u>Principal Amount</u>
2016	\$775,000
2017	810,000
2018 (Final Maturity)	840,000

The Bonds maturing on December 1, 2020 are subject to sinking fund redemption of a price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest on December 1 as shown below:

**Sinking Fund Redemption**

<u>Date (December 1)</u>	<u>Principal Amount</u>
2019	\$875,000
2020 (Final Maturity)	915,000

The Bonds maturing on December 1, 2022 are subject to sinking fund redemption of a price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest on December 1 as shown below:

**Sinking Fund Redemption**

<u>Date (December 1)</u>	<u>Principal Amount</u>
2021	\$ 960,000
2022 (Final Maturity)	1,010,000

**Extraordinary Optional Redemption:**

In the event of damage, destruction or condemnation of a Project or any portion thereof, which is leased to any Agency pursuant to its Lease, the Bonds will be subject to redemption prior to stated maturity, in whole or in part on any business day, at a redemption price equal to 100% of the principal amount of such Bonds to be redeemed plus accrued interest thereon to the Redemption Date, at the option of the Issuer as directed by the affected Agency in the event that Agency elects under the Lease or any Amended Lease to redeem the Bonds rather than repair or rebuild the affected Projects.

**Denominations:**

\$5,000 or integral multiples thereof.

**Record Date:**

The 15th day of the month preceding the payment date.

**Principal Payments:**

Due annually on December 1, 2005 through 2022.

**Interest Payments:**

Semiannually on June 1 and December 1 of each year, commencing December 1, 2003. Interest on the Bonds will be capitalized through June 1, 2005.

**Tax Status:**

Generally exempt from federal and North Dakota income taxes (see "TAX EXEMPTION" herein). The Bonds will not be designated qualified tax-exempt obligations under Section 265(b)(3) of the Code.

**Professional Consultants:**

<i>Bond Counsel:</i>	Cook Wegner & Wike PLLP Bismarck, North Dakota
<i>Financial Advisor:</i>	Public Financial Management, Inc. Minneapolis, Minnesota
<i>Trustee, Registrar and Paying Agent:</i>	Bank of North Dakota Bismarck, North Dakota

**Legal Matters:**

Legal matters incident to the authorization and issuance of the Bonds are subject to the opinion of Cook Wegner & Wike PLLP, Bond Counsel, as to validity and tax exemption. The opinion will be substantially in the form set forth in Appendix G attached hereto.

<b>Authority for Issuance:</b>	The Bonds are being issued pursuant to Chapter 54-17.2 of the North Dakota Century Code.
<b>Continuing Disclosure:</b>	The Issuer has agreed with the Bondholders to provide ongoing disclosure of certain information. See “CONTINUING DISCLOSURE” herein.
<b>Conditions Affecting Issuance of Bonds:</b>	The Bonds are offered when, as and if issued, subject to the approving legal opinion of Cook Wegner & Wike PLLP, Bismarck, North Dakota.
<b>Delivery:</b>	On or about June 30, 2003.
<b>Book-Entry Only:</b>	The Bonds will be issued as book-entry-only securities through The Depository Trust Company.
<b>Selected Definitions:</b>	<p>“Additional Rent” Additional amounts due under the Lease relating to administrative matters under the Indenture and certain costs of operating and maintaining the Projects.</p> <p>“Agencies” The North Dakota State Board of Higher Education, the North Dakota State Department of Health, and the North Dakota Department of Corrections and Rehabilitation.</p> <p>“Basic Rent” Semiannual rental payments due under the Lease.</p> <p>“Indenture” The Trust Indenture and Assignment of Lease Revenue dated as of June 19, 2003 between the Issuer and the Bank of North Dakota, as trustee.</p> <p>“Initial Term” The term of the Lease commencing on the date of the sale of the Bonds and expiring on June 30, 2005.</p> <p>“Lease” Any or all of the Lease Back Agreements dated as of June 19, 2003 between the Issuer and an Agency.</p> <p>“Projects” The acquisition, construction, improving or equipping of certain facilities which is being financed with the proceeds of the Bonds.</p> <p>“Renewal Term” Each of the consecutive two-year renewal terms following the Initial Term, commencing on July 1.</p> <p>“Rent” The aggregate of Basic Rent and Additional Rent.</p> <p>“Trustee” Bank of North Dakota.</p>

The information set forth herein has been obtained from the Issuer and other sources which are believed to be reliable, but it is not to be construed as a representation by the Financial Advisor or the Underwriter. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Final Official Statement nor any sale made thereafter shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer or in any other information contained herein, since the date hereof.

Questions regarding the Bonds or the Official Statement can be directed to, and additional copies of the Official Statement, the Issuer’s audited financial reports and the Indenture, Lease and General Authorization Resolution may

be obtained from, Public Financial Management, Inc., 650 Third Avenue South, Suite 1800, Minneapolis, Minnesota 55402 (612) 338-3535, the Issuer's financial advisor, or Karlene Fine, Executive Director and Secretary, Industrial Commission of North Dakota, State Capitol, 600 East Boulevard, Bismarck, North Dakota 58505 (701) 328-3722.

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**OFFICIAL STATEMENT**

**NORTH DAKOTA BUILDING AUTHORITY**

**\$13,080,000**

**LEASE REVENUE BONDS, 2003 SERIES B**

This Official Statement, including the cover page and Appendices hereto (the “Official Statement”), is furnished to prospective purchasers in connection with the sale and delivery by the Industrial Commission of North Dakota acting as the North Dakota Building Authority (the “Issuer”) of \$13,080,000 aggregate principal amount of Lease Revenue Bonds, 2003 Series B (the “Bonds”). The Issuer was created pursuant to Chapter 571 of the 1985 Session Laws of the State of North Dakota for the purpose of acquiring, owning, constructing, reconstructing, extending, rehabilitating or improving buildings, related structures, parking facilities, equipment, improvements, real and personal property and interests therein primarily for the use of the State of North Dakota (the “State”) and its agencies and instrumentalities. See “The Industrial Commission of North Dakota” at Appendix A.

The Bonds are being issued pursuant to Chapter 54-17.2 of the North Dakota Century Code, known as the North Dakota Building Authority Act (the “Act”), and as authorized by House Bill Nos. 1003 and 1023 enacted by the Fifty-Eighth Legislative Assembly and an authorizing resolution of the Issuer adopted on June 18, 2003 (the “General Authorization Resolution”). Proceeds of the Bonds will be used to (i) finance the Projects for the Agencies, as provided in House Bill Nos. 1003 and 1023; (ii) provide moneys for deposit into the Reserve Fund established with respect to the Bonds; (iii) provide moneys which, with the investment earnings thereon, will capitalize interest on the Bonds; (iv) pay costs of issuance related to the Bonds; and (v) to repay interim borrowing, if any.

With respect to the Bonds, certain higher education projects located on the campuses of the institutions of the State Board of Higher Education will be let by the Issuer to the State Board of Higher Education pursuant to a Lease Back Agreement I (the “Lease Back Agreement I”) dated as of June 19, 2003. A project managed by North Dakota State Department of Health will also be let by the Issuer to the North Dakota State Department of Health pursuant to a Lease Back Agreement II (the “Lease Back Agreement II”) dated as of June 19, 2003. Certain correctional facilities will also be let by the Issuer to the North Dakota Department of Corrections and Rehabilitation pursuant to a Lease Back Agreement III (the “Lease Back Agreement III”) dated as of June 19, 2003. These agreements are referred to collectively as the “Lease”.

The Bonds are issued under and are equally and ratably secured by a Trust Indenture and Assignment of Lease Revenue (the “Indenture”) dated as of June 19, 2003, by and between the Issuer and the Bank of North Dakota, as trustee (the “Trustee”). Pursuant to the Indenture, the Issuer has pledged and assigned to the Trustee Basic Rent payable under the Lease as security for the payment of the principal of and interest on the Bonds.

Under its Lease, each Agency has agreed to make semiannual rental payments (“Basic Rent”). The Basic Rent payable under each Lease will be sufficient to pay each Agency’s proportionate share of the principal of and interest on the Bonds coming due in each fiscal year, but only if and to the extent that the North Dakota Legislature (the “Legislature”) biennially appropriates funds or there is available any other funds authorized by law sufficient to pay the Basic Rent plus such additional amounts related to administrative matters under the Indenture and, if necessary, certain costs to operate and maintain each of the Projects (the “Additional Rent”) as are required to be paid pursuant to the Lease.

The Basic Rent and the Additional Rent are hereinafter collectively referred to as the “Rent.” An Event of Nonappropriation will occur under the Indenture if the Legislature fails to appropriate sufficient moneys for the payment of any Rent under the Lease during any Renewal Term. If an Event of Nonappropriation has occurred and continues without cure until the following August 1, unless such Agency has certified to the Authority and the Trustee that it will pay the Rent when due from sources other than appropriation by the Legislative Assembly of the State, provided the Legislative Assembly of the State has not specifically terminated the Lease, the Event of Nonappropriation will become an Event of Default under the Indenture, and will entitle the Trustee to exercise the

remedies available under the Indenture. See “**BONDOWNERS’ RISKS** -- Expiration or Termination of the Lease “ herein.

The Bonds are limited obligations of the Issuer payable solely from the revenues received pursuant to each Lease, which are produced from biennial appropriations (if any) by the Legislature, other funds or amounts held by the Trustee as security for the Bonds under the Indenture and/or any other funds available and authorized by law. Each Lease specifically provides that nothing therein shall be construed to require the Legislature to appropriate any moneys to pay any Rent thereunder and that each Agency shall not be obligated to pay such Rent except to the extent appropriated for each biennium. THE OBLIGATION OF THE AGENCIES TO PAY ANY RENT UNDER ITS LEASE IS SUBJECT TO BIENNIAL APPROPRIATION BY THE LEGISLATURE AS PROVIDED IN SUCH LEASE. NEITHER THE OBLIGATION OF THE AGENCIES TO PAY SUCH RENT NOR THE OBLIGATION OF THE ISSUER TO PAY THE BONDS WILL CONSTITUTE A DEBT OF THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION OF THE STATE OF NORTH DAKOTA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE ISSUANCE OF THE BONDS DOES NOT DIRECTLY OR CONTINGENTLY OBLIGATE THE AGENCIES TO PAY ANY RENT BEYOND THAT APPROPRIATED FOR THE CURRENT BIENNIUM OF THE STATE. THE ISSUER HAS NO TAXING POWER. For certain economic and financial information with respect to the State, see Appendix A and Appendix C hereto.

Each Agency has covenanted in its Lease to include in its submission to the Governor for inclusion by the Governor in the biennial executive budget of the State for each year of each biennium during the term of such Lease, as a line item for Rent, an amount fully sufficient to pay the Basic Rent required to be paid in each year of the biennium and certain Additional Rent. For each biennium in which the Legislature appropriates funds to pay Rent, the State is legally committed to pay semiannually to the Trustee the specified Rent as described above. For information with respect to North Dakota State Board of Higher Education, see Appendix D. For information with respect to the North Dakota Department of Corrections and Rehabilitation, see Appendix E. For information with respect to the North Dakota State Department of Health, see Appendix F.

Capitalized terms used herein have the same meaning as ascribed to them in the Lease and the Indenture. See “Defined Terms” in Appendix B hereto.

## **BONDOWNERS’ RISKS**

Purchase of the Bonds involves certain investment risks which are discussed throughout this Official Statement. Accordingly, each prospective Bond purchaser should make an independent evaluation of all of the information presented in this Official Statement in order to make an informed investment decision. Certain of these risks are described below.

### *Limited Obligations*

The Bonds are payable from the aggregate of Basic Rent due under each Lease, payable from budgeted expenditures of the State subject to biennial appropriations (if any) by the Legislature from general funds and other additional funds as required by House Bill Nos. 1003 and 1023, other funds or amounts held by the Trustee as security for the Bonds under the Indenture and/or any other funds available and authorized by law. The Lease will commence as of the date of the sale of the Bonds and will expire on June 30, 2005 (the “Initial Term”), subject to successive automatic extensions under the provisions of the Lease of the term of the Lease for consecutive two-year renewal terms commencing on July 1. Upon conclusion of the Initial Term, the Lease with respect to the Bonds will be subject to automatic two-year renewal terms commencing on July 1 of the years 2005, 2007, 2009, 2011, 2013, 2015, 2017 and 2019 and a final renewal term commencing July 1, 2021 and ending December 2, 2022. Each renewal term is referred to individually as a “Renewal Term” and collectively as the “Renewal Terms”. The State’s obligation under a Lease

does not constitute a general obligation or other indebtedness of the State or any agency or political subdivision of the State within the meaning of any constitutional or statutory provision or limitation. The Issuer has no taxing power.

There is no assurance that the Legislature will appropriate sufficient funds to extend the term of a Lease for any additional Renewal Terms. Accordingly, the likelihood that there will be sufficient funds to pay the principal of and interest on the Bonds depends upon certain factors which are beyond the control of the Bondowners, including (a) the continuing need of the State and the Agencies for the Projects, (b) the economic and demographic conditions within the State and (c) the ability of the State to generate sufficient funds from sales taxes, personal and corporate income taxes and other taxes and other sources of revenue to pay obligations associated with the Lease and other obligations of the State (whether now existing or hereafter created)..

The obligation of each Agency under a Lease will be satisfied solely from funds of that Agency or for the benefit of the Agency which the Legislature appropriates biennially for such use or other funds that are legally available for such use. Neither the Indenture nor any Lease limits the ability of the State to incur additional obligations against its revenues.

The term of a Lease is automatically extended unless specifically terminated by the Legislative Assembly of the State. If a Lease is terminated, the affected Agency will have no obligation under its Lease to pay any further Rent or any other payments with respect to any Lease or the Bonds. However, the termination of a Lease will result in the occurrence of an Event of Default under the Indenture. See “Expiration or Termination of the Lease” below.

### *Expiration or Termination of Lease*

Each Lease will expire on June 30 of each odd-numbered year commencing June 30, 2005 as described under “BONDOWNERS’ RISKS - Limited Obligations” above, but is automatically renewed for each next succeeding Renewal Term, unless specifically terminated by the Legislative Assembly of the State. In the event that the State chooses not to extend the term of a Lease for any Renewal Term, the obligation of the State and the affected Agency to pay any Rent under that Lease will terminate on the June 30 occurring at the end of that Renewal Term. If an Event of Nonappropriation or Event of Default occurs, the Trustee is to use moneys in the Reserve Fund to make payments of principal of and interest on the Bonds coming due to the extent of moneys then held in such fund.

**An Event of Nonappropriation, which is not cured as provided in the Indenture, with respect to any of the Projects constitutes an Event of Default under the Indenture. The Indenture further provides that an Event of Default under a Lease constitutes an Event of Default under such Indenture. See “THE INDENTURE --Events of Default; Remedies – Events of Default” in Appendix B.**

In the event an Agency’s Lease is terminated for any reason, the obligation of that Agency to pay Rent under the Lease will continue throughout the Renewal Term then in effect, but not thereafter, and the Bonds will be payable, among other sources, from any moneys as may be available by way of recovery from that Agency of the Rent which is due throughout the Renewal Term then in effect.

### *Destruction of a Project*

All of the Projects are to be insured by policies (including casualty and property damage insurance) as provided in each Lease in an amount equal to the greater of the Discharge Price or the full replacement cost of the Projects. In the event of the damage to or destruction of any of the Projects, each Agency is nevertheless required to continue to pay Rent during the biennium for which the Legislature had appropriated moneys, subject to the State’s right with respect to the Projects at the end of each biennium to terminate the Lease by the Legislature’s failure to appropriate sufficient funds to extend the term of such Lease. In such event, the Agency will decide whether to apply the proceeds from any available insurance (and any other legally available source) to replace, repair or rebuild such

Projects or whether to apply the available proceeds to redemption of Bonds. If the net proceeds from insurance or certain other sources are not used to repair or replace such Projects, the Agency may cause such proceeds to be paid to the Trustee for the redemption of the Bonds (or a portion thereof) as provided in the Indenture, but the Agency will nevertheless be required to continue to pay Rent under the Lease until the Bonds have been paid in full, subject to biennial appropriation by the Legislature. There can be no assurance either as to the adequacy of or timely payment under property damage insurance in effect at that time. Furthermore, there can be no assurance that such insurance proceeds will be sufficient to redeem the Bonds in whole. See “THE LEASE – Operation, Maintenance and Insurance of Project – Insurance” in Appendix B hereto.

**Bond Ratings**

There is no assurance that the ratings assigned to the Bonds at the time of original issuance (see “RATINGS” herein) will not be lowered or withdrawn at any time, the effect of which could adversely affect the market price for or marketability of the Bonds.

**THE PROJECTS**

House Bill Nos. 1003 and 1023 authorized the financing of several capital projects at various State facilities. These Projects will be financed from the proceeds of the Bonds.

<u>Facility</u>	<u>Project Description</u>	<u>Amount</u>
Department of Health	Morgue and Storage Annex Construction	\$ 960,000
Department of Corrections and Rehabilitation	James River Correctional Center Phase II	2,662,890
Department of Corrections and Rehabilitation	Missouri River Correctional Center Energy Conservation	105,326
Dickinson State University	Murphy Hall Phase 1 Addition	5,882,047
Valley City State University	Graichen Gymnasium Elevator and Emergency Exits	785,300
Mayville State University	Steamline Replacement Phase II	<u>1,355,000</u>
Total of Authorized Projects		<u>\$11,750,563</u>

**Department of Health Project**

The Department of Health Project will construct a 4,773 square foot morgue for the State Forensic Examiner and staff and a 3,000 square foot storage annex. The morgue facility would provide office space for the staff, working space to conduct autopsies, refrigerated space and storage space in a secure facility. The facility would allow for appropriate response to multiple-fatality incidents occurring in the State. Construction on the project is expected to begin in Spring 2004.

**Department of Corrections and Rehabilitation Projects**

The Department of Corrections and Rehabilitation Projects include Phase II of the James River Correctional Center (JRCC) Master Plan and an energy conservation project at the Missouri River Correctional Center. Phase II of the JRCC Master Plan transfers several buildings on the State Hospital Campus to JRCC as part of the integration of the two institutions. The list of buildings currently being proposed for transfer includes the food services building, dining area, daycare building, old plumbing building, office building 18A and shared services out of the purchasing

complex. The transferred buildings require certain renovations for use in a correction setting. Such renovations include the addition of sally ports and secure gates in the series of existing tunnels currently crisscrossing the campus, the demolition of several tunnel systems, the resurrection of additional fences to encircle the transferred buildings, installation of surveillance equipment, expansion of the perimeter road and other building improvements. The renovations will allow for treatment programming, educational opportunities, meaningful employment through the Rough Rider Industries program and expanded work opportunities at both the food service operation and the laundry facility.

The Missouri River Correctional Center Energy Conservation Project consists of a number of smaller projects in 3 buildings on the Missouri River Correctional Center campus. These projects include installation of energy management controls, installation of energy efficient motors and lighting, installation of heat pump loop enhancements and installation of a radiant heating system. It is estimated, upon completion of this Project, the Missouri River Correctional Center campus will experience annual utility savings of over \$14,000.

#### **Dickinson State University Project**

The Dickinson State University Project consists of Phase I of the remodeling and expansion of Murphy Hall which provides classroom and laboratory space for all of the natural sciences and corollary courses. Phase I expands the current square footage by an additional 32,018 square feet to a total of 57,384 square feet. Construction on this phase is scheduled to begin in June 2003 with completion before the end of the 2003-2005 biennium. Phase II will include the remodeling and upgrading of the existing structure of Murphy Hall. Phase II is expected to be completed during the 2005-2007 biennium.

#### **Mayville State University Project**

The Mayville State University Project consists of the completion of the replacement and upgrade of the campus's existing steam line. The current piping was installed in the 1950's, and one major line break has already been experienced. The steam line extends through the center of campus and provides heat to half of the campus. The Legislature has previously provided \$510,000 to fund the first phase of this project. Construction on this phase is scheduled to begin in June 2003 with completion in October 2003.

#### **Valley City State University Project**

The Valley City State University Project consists of a number of upgrades to Graichen Gymnasium including the addition of a lobby area, elevator, rest rooms and a second stairwell at the north end of the building providing an emergency egress and making both levels of the building accessible to the handicapped. The project will also improve air quality by upgrading the lower level ventilation system. Fire safety will be improved by upgrading the lower level corridor, and classroom and office doors.

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## ESTIMATED SOURCES AND USES OF FUNDS

The estimated sources of funds from the proceeds to be received from the sale of the Bonds and the estimated uses of such funds are shown in the following schedule:

### **Sources of Funds:**

Principal Amount of Bonds	\$13,080,000.00
Reoffering Premium	47,749.15
Equity Contribution – State Board of Higher Education	<u>830,000.00</u>
Total Sources	<u>\$13,957,749.15</u>

### **Uses of Funds:**

Deposit to the Construction Fund:	
State Board of Higher Education	\$ 8,022,347.00
North Dakota Department of Corrections and Rehabilitation	2,768,216.00
North Dakota State Department of Health	960,000.00
Deposit to Reserve Fund	1,035,450.00
Capitalized Interest to June 1, 2005	849,885.57
Underwriter’s Discount	188,092.98
Insurance Premium Paid by Underwriter	55,800.00
Costs of Issuance	75,000.00
Contingency	<u>2,957.60</u>
Total Uses	<u>\$13,957,749.15</u>

## THE BONDS

### *General Provisions*

The Bonds will be issued in the aggregate principal amount of \$13,080,000, will be dated June 15, 2003, and will bear interest (computed on the basis of a 360-day year consisting of twelve 30-day months) at the rates specified on the inside cover page of this Official Statement, payable on December 1, 2003 and semiannually thereafter on June 1 and December 1 of each year (collectively, the “Interest Payment Dates”), and mature on the dates, all as set forth on the inside cover page of this Official Statement. The Bonds are issuable only in fully registered form without coupons in the denomination of \$5,000 or any integral multiple thereof.

The principal of the Bonds is payable at the principal trust office of the Trustee, as paying agent, in Bismarck, North Dakota, or at any paying agent appointed by the Issuer as provided in the Indenture, upon presentation and surrender thereof. Interest on the Bonds will be paid to the person who is the registered owner thereof as of the close of business on the 15th day of the month next preceding such Interest Payment Date (the “Record Date”) and will be paid by check or draft drawn on the Trustee, or on any paying agent appointed by the Issuer as provided in the Indenture, and mailed on each Interest Payment Date to the registered owner thereof at the address on the registration books maintained by the Trustee notwithstanding the cancellation of any such Bond upon any exchange or transfer thereof subsequent to the Record Date and prior to such Interest Payment Date. The principal of, if any, and interest on the Bonds will be paid in lawful money of the United States of America.

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

*The information contained in the following paragraphs of this subsection “Book-Entry Only System” has been extracted from a schedule prepared by Depository Trust Company (“DTC”) entitled “SAMPLE OFFERING DOCUMENT LANGUAGE DESCRIBING BOOK-ENTRY ONLY ISSUANCE.” The information in this section concerning DTC and DTC’s book-entry system has been obtained from sources that the Issuer believes to be reliable, but the Issuer takes no responsibility for the accuracy thereof.*

1. The Depository Trust Company (“DTC”), New York, NY will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity specified on the cover page hereof in the aggregate principal amount of such maturity, and will be deposited with DTC.

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

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

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

5. 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.

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

7. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's procedures. Under its usual procedures, DTC mails an Omnibus Proxy to 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 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Principal of, redemption premium, if any, and interest 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 or Trustee, on payable date in accordance with their respective holding 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, 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 payment to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Trustee, disbursement of such payments to Direct Participants will be responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be responsibility of Direct and Indirect Participants.

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

10. 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.

NEITHER THE ISSUER NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, TO INDIRECT PARTICIPANTS, OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (I) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT, OR ANY INDIRECT PARTICIPANT; (II) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE BONDS UNDER THE RESOLUTION; (III) THE SELECTION BY DTC OR BY ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE BONDS; (IV) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR REDEMPTION PREMIUM, IF ANY, OR INTEREST DUE WITH RESPECT TO THE BONDS; (V) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF BONDS; OR (VI) ANY OTHER MATTER.

### *Redemption Provisions*

**Optional Redemption.** The Bonds maturing on or before December 1, 2013 are not subject to call and redemption prior to maturity, except as described under "Extraordinary Optional Redemption Upon the Occurrence of Certain Events" below. The Bonds maturing on or after December 1, 2014 are subject to redemption from moneys deposited to the credit of the Bond Fund pursuant to the Lease, at the option of the Issuer in whole or in part on December 1, 2013 and on any business day thereafter, by direction of the Issuer, at a Redemption Price equal to 100% of the principal amount of Bonds to be redeemed plus accrued interest thereon to the Redemption Date.



**Sinking Fund Redemption.** The Bonds maturing on December 1, 2018 are subject to sinking fund redemption in part by lot at a Redemption Price equal to 100% of the principal amount of the Bonds to be redeemed together with accrued interest thereon to the Redemption Date on December 1 of each of the following years and in the following amounts:

Sinking Fund Redemption Date (December 1)	Principal Amount
2016	\$775,000
2017	810,000
2018 (Final Maturity)	840,000

The Bonds maturing on December 1, 2020 are subject to sinking fund redemption in part by lot at a Redemption Price equal to 100% of the principal amount of the Bonds to be redeemed together with accrued interest thereon to the Redemption Date on December 1 of each of the following years and in the following amounts:

Sinking Fund Redemption Date (December 1)	Principal Amount
2019	\$875,000
2020 (Final Maturity)	915,000

The Bonds maturing on December 1, 2022 are subject to sinking fund redemption in part by lot at a Redemption Price equal to 100% of the principal amount of the Bonds to be redeemed together with accrued interest thereon to the Redemption Date on December 1 of each of the following years and in the following amounts:

Sinking Fund Redemption Date (December 1)	Principal Amount
2021	\$ 960,000
2022 (Final Maturity)	1,010,000

**Extraordinary Optional Redemption Upon the Occurrence of Certain Events.** In the event of damage, destruction or condemnation of a Project or any portion thereof as provided in the Lease, the Bonds will be subject to redemption prior to stated maturity, in whole or in part on any business day, at a Redemption Price equal to 100% of the principal amount of such Bonds to be redeemed plus accrued interest thereon to the Redemption Date, at the option of the Issuer as directed by the affected Agency in the event that Agency elects under the Lease or any Amended Lease to redeem the Bonds rather than to repair or rebuild the affected Projects.

**Selection of Bonds for Redemption.** Outstanding Bonds subject to redemption shall, unless otherwise directed by the Issuer, be redeemed in inverse order of serial maturity. If less than all of the Outstanding Bonds of a serial maturity are to be redeemed, the particular Bonds to be redeemed shall be selected by lot in such manner as the Trustee shall deem fair and appropriate, in denominations of not less than \$5,000.

**Notice of Redemption.** Notice of redemption shall be given by the Trustee by registered or certified mail with return receipt requested, postage prepaid, mailed not less than 30 days before the Redemption Date to each Owner of Bonds to be redeemed at the address of such Owner appearing in the Register; but neither failure to give such notice by mail nor defect in any notice so mailed shall affect the validity of the proceedings for redemption of any Bond not affected by such failure or defect.

## *Payment of the Bonds*

Each Lease requires semiannual Basic Rent to be paid by each Agency to the Issuer which, when aggregated, represents the total amount of principal of and interest on the Bonds, which Basic Rent has been assigned to the Trustee pursuant to the Indenture. See “SECURITY FOR THE BONDS--The Lease and the Indenture” herein. The aggregate amount of such Basic Rent payable under each Lease is designed to be sufficient to pay the principal of and interest on the Bonds becoming due during the term of such Lease (assuming that the Legislature appropriates sufficient funds in each biennium for the succeeding biennium to automatically extend the term of such Lease).

The following table shows the scheduled Basic Rent payable under the Lease for the entire term of the Lease (assuming that the Legislature appropriates biennially sufficient moneys to pay Basic Rent under the Lease coming due during the stated term of the Lease), which are equal to the payments of principal of and interest on the Bonds:

### **Scheduled Basic Rent**

Fiscal Year Ending <u>June 30</u>	Principal <u>Component</u>	Interest <u>Component</u>	Total <u>Basic Rent</u>
2004	\$ --	\$ 453,606.00	\$ 453,606.00
2005	--	471,960.00	471,960.00
2006	500,000.00	466,960.00	966,960.00
2007	510,000.00	456,860.00	966,860.00
2008	565,000.00	445,403.75	1,010,403.75
2009	575,000.00	431,860.00	1,006,860.00
2010	615,000.00	416,216.25	1,031,216.25
2011	635,000.00	398,235.00	1,033,235.00
2012	655,000.00	378,885.00	1,033,885.00
2013	675,000.00	358,260.00	1,033,260.00
2014	695,000.00	335,992.50	1,030,992.50
2015	720,000.00	311,925.00	1,031,925.00
2016	750,000.00	285,450.00	1,035,450.00
2017	775,000.00	256,075.00	1,031,075.00
2018	810,000.00	224,375.00	1,034,375.00
2019	840,000.00	191,375.00	1,031,375.00
2020	875,000.00	155,981.25	1,030,981.25
2021	915,000.00	117,943.75	1,032,943.75
2022	960,000.00	74,500.00	1,034,500.00
2023	<u>1,010,000.00</u>	<u>25,250.00</u>	<u>1,035,250.00</u>
Total	<u>\$13,080,000.00</u>	<u>\$6,257,113.50</u>	<u>\$19,337,113.50</u>

### **SECURITY FOR THE BONDS**

#### *The Lease and the Indenture*

The Bonds are payable from Basic Rent due under each Lease, payable from budgeted expenditures of the State subject to biennial appropriations (if any) by the Legislature from general funds and other additional funds as required by House Bill Nos. 1003 and 1023, and certain other revenues as provided in the Indenture. The term of the Lease will commence as of the date of the sale of the Bonds and will expire on June 30, 2005, subject to successive automatic extensions under the provisions of such Lease, unless specifically terminated by the State Legislative Assembly. For circumstances under which a Lease may be terminated, see “THE LEASE – Options in Favor of Agency” in Appendix B. In the opinion of Bond Counsel, neither the Lease, nor the Bonds constitute a general obligation or indebtedness of the State within the meaning of any constitutional or statutory debt limitation. The State has not pledged its credit to the payment of the Lease, or the Bonds, and the State is not directly or

contingently obligated to apply money from, or to levy or pledge, any form of taxation to the payment of the Lease, or the Bonds. The Issuer has no taxing power.

The Issuer, as lessor under each Lease and pursuant to the Indenture, will assign to the Trustee all Basic Rent payable under the Leases for the benefit of the Owners of the Bonds.

So long as the term of the Lease has not expired on June 30, 2005 by its terms, each Agency is required under the Lease to pay semiannually to the Trustee specified Basic Rent for the Projects leased to the Agency under such Lease. The aggregated Basic Rent payable under the Lease represents an amount sufficient to pay the principal of and interest on the Bonds.

Each Agency has covenanted in its Lease to cause to be included in the Governor's budget submitted to the Legislature for each successive biennium for so long as such Lease is in effect a request or requests for a sufficient amount to permit the Agency to discharge all of its obligations under the Lease for each succeeding Renewal Term. See "THE LEASE – Lease of Project – Appropriation Request" in Appendix B hereto. The Issuer has covenanted in the Indenture that, upon notification from the Trustee, the Issuer will request that the Legislature include in the executive budget of the State a sufficient amount for payment of Rent pursuant to the Lease if any Agency has failed to comply with its covenant to request such an appropriation as described above.

In the event the Legislature does not appropriate sufficient funds to extend the term of a Lease and such Lease thereby expires by its terms at the end of a Renewal Term, the affected Agency will have no further payment obligation under its Lease, except for the Rent which is payable prior to the termination of the Lease. Upon such expiration, the Trustee may exercise one or more of the rights provided in the Lease and the Indenture. See "BONDOWNERS' RISKS" herein. Should such a shortfall occur, the Bonds would be paid ratably as to interest and principal as described under "THE INDENTURE – Events of Default; Remedies – Application of Moneys" in Appendix B hereto.

### *Maintenance and Insurance of the Projects*

Each Agency has agreed in its Lease, at its own expense, to maintain, manage and operate the Projects and all improvements thereon in good order, condition and repair, ordinary wear and tear excepted. Each Agency will provide or cause to be provided all maintenance, power, gas, telephone, light, heating, water and all other public utility services. As provided in the Lease, the Issuer, the Trustee and the owners of the Bonds will not have any obligation to incur any expense of any kind or character for the management, operation or maintenance of the Projects during the term of such Lease.

The Projects are required to be insured to the extent described under "THE LEASE – Operation, Maintenance and Insurance of Project – Insurance" in Appendix B hereto. All net proceeds (including any moneys derived from any self-insurance program) from policies of insurance required by the Lease or condemnation awards will be deposited into the Repair and Replacement Fund under the Indenture if the affected Agency elects to proceed with the repair and restoration of the affected Projects as described under (a) below or into the Bond Fund under the Indenture if the Agency elects to effect the redemption of a portion or all of the Bonds then outstanding as described under (b) below. Within 90 days after any such damage, destruction or taking, the Agency is required under the Lease to notify the Trustee in writing of the Agency's intent as to the application and disbursement of such funds as follows:

- (a) to the prompt repair, replacement or restoration of the damaged or destroyed portion of the Projects with the understanding as provided in the Lease that if the net proceeds of insurance or condemnation awards are not sufficient to pay the costs of repair, replacement or restoration in full, the Agency will nonetheless complete the same and will pay that portion of the cost thereof in excess of the amount of such net proceeds or condemnation awards, but only from legally available moneys; or
- (b) to the redemption, in whole or in part, of the principal of and interest on the then outstanding Bonds as described under "THE BONDS – Redemption – Extraordinary Optional Redemption Upon the Occurrence of Certain Events" above.

## *Reserve Fund*

A Reserve Fund is established by the Indenture for the Bonds and will be fully funded at the time of original issuance of the Bonds, from proceeds of the sale of the Bonds in an amount equal to the Reserve Fund Requirement. The Bonds maturing on December 1, 2022 and accrued interest thereon is expected to be paid, in part, from amounts then held in the Reserve Fund.

Amounts in the Reserve Fund are to be used for the payment of principal of and interest on the Bonds to the extent amounts in the Bond Fund under the Indenture are insufficient therefor and for certain other purposes as specified in the Indenture. See “THE INDENTURE – Funds; Disposition of Pledged Revenues – Reserve Fund” in Appendix B hereto.

## *Bond Insurance*

The following information has been furnished by MBIA Insurance Corporation ("MBIA") for use in this Official Statement. Reference is made to Appendix I for a specimen of MBIA's policy.

MBIA's policy unconditionally and irrevocably guarantees the full and complete payment required to be made by or on behalf of the Issuer to the Paying Agent or its successor of an amount equal to (i) the principal of (either at the stated maturity or by an advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, the Bonds as such payments shall become due but shall not be so paid (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed by MBIA's policy shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration); and (ii) the reimbursement of any such payment which is subsequently recovered from any owner of the Bonds pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such owner within the meaning of any applicable bankruptcy law (a "Preference").

MBIA's policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any Bonds. MBIA's policy does not, under any circumstance, insure against loss relating to: (i) optional or mandatory redemptions (other than mandatory sinking fund redemptions); (ii) any payments to be made on an accelerated basis; (iii) payments of the purchase price of Bonds upon tender by an owner thereof; or (iv) any Preference relating to (i) through (iii) above. MBIA's policy also does not insure against nonpayment of principal of or interest on the Bonds resulting from the insolvency, negligence or any other act or omission of the Paying Agent or any other paying agent for the Bonds.

Upon receipt of telephonic or telegraphic notice, such notice subsequently confirmed in writing by registered or certified mail, or upon receipt of written notice by registered or certified mail, by MBIA from the Paying Agent or any owner of a Bond the payment of an insured amount for which is then due, that such required payment has not been made, MBIA on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with U.S. Bank Trust National Association, in New York, New York, or its successor, sufficient for the payment of any such insured amounts which are then due. Upon presentment and surrender of such Bonds or presentment of such other proof of ownership of the Bonds, together with any appropriate instruments of assignment to evidence the assignment of the insured amounts due on the Bonds as are paid by MBIA, and appropriate instruments to effect the appointment of MBIA as agent for such owners of the Bonds in any legal proceeding related to payment of insured amounts on the Bonds, such instruments being in a form satisfactory to U.S. Bank Trust National Association, U.S. Bank Trust National Association shall disburse to such owners or the Paying Agent payment of the insured amounts due on such Bonds, less any amount held by the Paying Agent for the payment of such insured amounts and legally available therefor.

**MBIA.** MBIA Insurance Corporation (“MBIA”) is the principal operating subsidiary of MBIA Inc., a New York Stock Exchange listed company (the “Company”). The Company is not obligated to pay the debts of or claims against MBIA. MBIA is domiciled in the State of New York and licensed to do business in and subject to regulation under the laws of all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States and the Territory of Guam. MBIA has three branches, one in the Republic of France, one in the Republic of Singapore and one in the Kingdom of Spain. New York has laws prescribing minimum capital requirements, limiting classes and concentrations of investments and requiring the approval of policy rates and forms. State laws also regulate the amount of both the aggregate and individual risks that may be insured, the payment of dividends by MBIA, changes in control and transactions among affiliates. Additionally, MBIA is required to maintain contingency reserves on its liabilities in certain amounts and for certain periods of time.

MBIA does not accept any responsibility for the accuracy or completeness of this Official Statement or any information or disclosure contained herein, or omitted herefrom, other than with respect to the accuracy of the information regarding the policy and MBIA set forth under the heading “Bond Insurance”. Additionally, MBIA makes no representation regarding the Bonds or the advisability of investing in the Bonds.

The Financial Guarantee Insurance Policies are not covered by the Property/Casualty Insurance Security Fund specified in Article 76 of the New York Insurance Law.

**MBIA Information.** The following documents filed by the Company with the Securities and Exchange Commission (the “SEC”) are incorporated herein by reference:

- (1) The Company’s Annual Report on Form 10-K for the year ended December 31, 2002; and
- (2) The Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2003.

Any documents filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act of 1934, as amended, after the date of this Official Statement and prior to the termination of the offering of the Bonds offered hereby shall be deemed to be incorporated by reference in this Official Statement and to be a part hereof. Any statement contained in a document incorporated or deemed to be incorporated by reference herein, or contained in this Official Statement, shall be deemed to 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 such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Official Statement.

The Company files annual, quarterly and special reports, information statements and other information with the SEC under File No. 1-9583. Copies of the SEC filings (including (1) the Company’s Annual Report on Form 10-K for the year ended December 31, 2002, and (2) the Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2003, are available (i) over the Internet at the SEC’s web site at <http://www.sec.gov>; (ii) at the SEC’s public reference room in Washington D.C.; (iii) over the Internet at the Company’s web site at <http://www.mbia.com>; and (iv) at no cost, upon request to MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504. The telephone number of MBIA is (914) 273-4545.

As of December 31, 2002, MBIA had admitted assets of \$9.2 billion (audited), total liabilities of \$6.0 billion (audited), and total capital and surplus of \$3.2 billion (audited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities. As of March 31, 2003 MBIA had admitted assets of \$9.3 billion (unaudited), total liabilities of \$6.1 billion (unaudited), and total capital and surplus of \$3.2 billion (unaudited) determined in accordance with statutory accounting practices prescribed or permitted by insurance regulatory authorities.

**Financial Strength Ratings of MBIA.** Moody’s Investors Service, Inc. rates the financial strength of MBIA “Aaa.”

Standard & Poor’s, a division of The McGraw-Hill Companies, Inc. rates the financial strength of MBIA “AAA.”

Fitch Ratings rates the financial strength of MBIA “AAA.”

Each rating of MBIA should be evaluated independently. The ratings reflect the respective rating agency's current assessment of the creditworthiness of MBIA and its ability to pay claims on its policies of insurance. Any further explanation as to the significance of the above ratings may be obtained only from the applicable rating agency.

The above ratings are not recommendations to buy, sell or hold the Bonds, and such ratings may be subject to revision or withdrawal at any time by the rating agencies. Any downward revision or withdrawal of any of the above ratings may have an adverse effect on the market price of the Bonds. MBIA does not guaranty the market price of the Bonds nor does it guaranty that the ratings on the Bonds will not be revised or withdrawn.

*There can be no assurances that payments made by the Insurer representing interest on the Bonds will be excluded from gross income, for federal tax purposes, in the event of nonappropriation by the Issuer.*

### **TAX EXEMPTION**

In the opinion of Bond Counsel, assuming compliance with the tax covenants described below, under existing law, interest on the Bonds is excludable from the “gross income” of the owners thereof for purposes of federal and State of North Dakota income taxation (other than the tax imposed on certain financial institutions by North Dakota Century Code, Chapter 57-35.3).

Noncompliance following issuance of the Bonds with certain requirements of the Internal Revenue Code of 1986 as amended (the “Code”) may result in the inclusion of interest on the Bonds in the federal and North Dakota “gross income” of the owners thereof retroactive to the date of issuance of the Bonds. The Issuer and the Agency have covenanted to comply with such requirements. The opinion of Bond Counsel assumes compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken) or events occurring (or not occurring) after the date of delivery of the Bonds may adversely affect the value of, or the tax status of interest on, the Bonds.

The Code imposes an alternative minimum tax with respect to individuals and corporations on alternative minimum taxable income. Interest on the Bonds will not be treated as a preference item in calculating the federal alternative minimum taxable income of individuals and corporations. The Code provides, however, that 75 percent of the interest on bonds held by corporations will be included for purposes of calculating the alternative minimum tax that may be imposed with respect to corporations.

Although Bond Counsel is of the opinion that interest on the Bonds is excludable from the “gross income” of the owners thereof for purposes of federal and State of North Dakota income taxation (other than the tax imposed on certain financial institutions by North Dakota Century Code, Chapter 57-35.3), the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may otherwise affect a beneficial owner’s federal or state tax liability. The nature and extent of these other tax consequences will depend upon the particular tax status of the beneficial owner or the beneficial owner’s other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

In addition, no assurance can be given that any future legislation, including amendments to the Code, if enacted into law, or changes in interpretation of the Code, will not cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent owners of the Bonds from realizing the full current benefit of the tax status of such interest. Prospective purchasers of the Bonds should consult their own tax advisors regarding any pending or proposed federal tax legislation. Further, no assurance can be given that the introduction or enactment of any such future legislation, or any action of the Internal Revenue Service (“IRS”), including but not limited to regulation, ruling, or selection of the Bonds for audit examination, or the course or result of any IRS examination of the Bonds, or obligations which present similar tax issues, will not affect the market price for the Bonds.

The opinion of Bond Counsel is based on current legal authority and represents Bond Counsel's judgment as to the proper treatment of the Bonds for federal income tax purposes. It is not binding on the IRS or the courts. Bond Counsel's engagement with respect to the Bonds ends with the issuance of the Bonds, and, unless separately engaged, Bond Counsel is not obligated to defend the tax-exempt status of the Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the Issuer, including beneficial owners, will have little if any right to participate in the examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions, with which the Issuer legitimately disagrees, may not be practical. If such a situation arises, the Issuer or the beneficial owners may incur significant expense, loss of market value to the beneficial owners or both.

### **LITIGATION**

It is a condition of closing that the Issuer execute a certificate to the effect that there is no litigation pending or known to be threatened (i) to restrain or enjoin the issuance or delivery of the Bonds or the collection of revenues pledged under the Indenture, (ii) in any way contesting or affecting the authority for the issuance of the Bonds, the validity of the Bonds, the Lease or the Indenture, or (iii) in any way contesting the organization, existence or powers of the Issuer.

### **APPROVAL OF LEGAL PROCEEDINGS**

Legal matters incident to the authorization, validity and enforceability of the Lease, as to the Issuer and the Agencies and the authorization and issuance of the Bonds are subject to the unqualified approving opinion of Cook Wegner & Wike PLLP, Bismarck, North Dakota, Bond Counsel. The opinion of Bond Counsel is attached to this Official Statement as Appendix G. Copies of the opinion will be available at the time of the initial delivery of the Bonds. Certain legal matters will be passed upon for the Issuer by the Attorney General.

### **CONTINUING DISCLOSURE**

In the Bond Resolution, the Issuer will covenant for the benefit of all Bondholders to provide certain continuing disclosure information relating to the Bonds and the security therefor to permit the Underwriter of the Bonds to comply with the amendments to Rule 15c2-12 under the Securities and Exchange Act. At the time of the initial delivery of the Bonds, the Issuer will furnish an undertaking to provide continuing disclosure substantially in the form attached to this Official Statement as Appendix H.

### **FUTURE FINANCING**

The Issuer intends to issue an additional \$20,000,000 of lease revenue bonds on a negotiated basis within the next six months.

## **RATINGS**

Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's Ratings Group ("S&P") will assign the Bonds the ratings of "Aaa" and "AAA" respectively, based on the issuance by MBIA Insurance Corporation of its financial guaranty insurance policy simultaneously with the delivery of the Bonds. Moody's and S&P have assigned underlying ratings to the Bonds of "A1" and "A+", respectively. For an explanation of the significance of a particular rating, an investor should communicate directly with the appropriate rating agency. Such rating reflects only the views of such rating agency. The Issuer furnished to the agencies certain materials and information regarding the Issuer and the Bonds. Generally, rating agencies base their ratings on such material and information and on investigations, studies and assumptions by the rating agency. There is no assurance that a particular rating will remain in effect for any given period of time or that it will not be lowered, suspended or withdrawn entirely, if, in an agency's judgment, circumstances warrant. Any such downgrade change or suspension or withdrawal of such rating may have an adverse effect on the market price of the Bonds.

## **UNDERWRITING**

The Issuer has sold the Bonds at public sale to U.S. Bancorp Piper Jaffray, as Underwriter, for a price of \$12,883,856.17 and accrued interest.

## **FINANCIAL ADVISOR**

Public Financial Management, Inc., of Minneapolis, Minnesota, has served as Financial Advisor to the Issuer in connection with the offering of the Bonds. The Financial Advisor will not participate in the underwriting of the bonds.

## **ADDITIONAL INFORMATION**

All of the summaries of the statutes, resolutions, opinions, contracts, agreements, financial and statistical data and other related documents described in this Official Statement are made subject to the provisions of such documents. These summaries do not purport to be complete statements of such provisions and reference is made to such documents, copies of which are publicly available for inspection during normal business hours at the offices of the Industrial Commission of North Dakota, Bismarck, North Dakota or Public Financial Management, Inc., Minneapolis, Minnesota. This Official Statement is not to be construed as a contract or agreement between the Underwriter and the purchasers or owners of the Bonds.

The execution and delivery of this Official Statement has been duly authorized by the State.

### **STATE OF NORTH DAKOTA**

/s/ Karlene Fine  
Authorized Officer  
North Dakota Building Authority



**APPENDIX A**

**General Information Regarding  
The State of North Dakota**

## **THE INDUSTRIAL COMMISSION OF NORTH DAKOTA**

The Legislature created the Industrial Commission of North Dakota (the "Commission") in 1919 to conduct and manage, on behalf of the State, certain utilities, industries, enterprises and business projects established by State law. The North Dakota Building Authority Act (the "Act") provides that the Commission, acting as the North Dakota Building Authority (the "Authority"), may negotiate the sale of the bonds of the Authority in such amounts and in such manner as may be provided by law for projects of the Authority. The Commission is responsible for the operation and management of certain other State enterprises, including the Bank of North Dakota, the North Dakota Mill and Elevator Association, the North Dakota Municipal Bond Bank, the North Dakota Housing Finance Agency and the North Dakota Student Loan Trust. The Commission performs regulatory functions through its Oil and Gas Division and Geological Survey and administers the Agricultural Revenue Bond Program. Effective August 1, 1997, the Commission also became the Farm Finance Agency. The Commission, effective July 1, 1991, among other powers, has the authority to borrow money and issue evidences of indebtedness for the purpose of funding lignite research, development and marketing projects, processes or activities directly related to lignite and products derived from lignite.

The members of the Commission are the Governor, the Attorney General and the Agriculture Commissioner of the State. The Governor is the Chairman of the Commission, and a quorum for the transaction of business of the Commission consists of the Governor and one additional member. The present members of the Commission, all of whom have been elected to office for four-year terms expiring December 14, 2004 (with respect to the Governor) and December 31, 2004 (with respect to the other two members), are:

John Hoeven, Governor  
Wayne Stenehjem, Attorney General  
Roger Johnson, Agriculture Commissioner

The Attorney General of the State serves as general counsel to the Commission. Each State enterprise under the control of the Commission employs and is operated by a separate staff or authorized agents under the supervision of the Commission.

The Commission's mailing address is the Industrial Commission of North Dakota, State Capitol, 600 East Boulevard, Bismarck, North Dakota 58505, c/o Executive Director and its telephone number is (701) 328-3722.

## **NORTH DAKOTA STATE GOVERNMENT**

The following description of State government is written with an emphasis on those functions of government that might have a direct bearing or effect on the financial condition of the State and the State's ability to pay Rents under the Lease, but is not a detailed description of all functions of the State's government.

### ***General***

The State of North Dakota is governed by its constitution, the present form of which was adopted in 1889 and which has been amended from time to time.

The legislative power of North Dakota is vested in the Legislative Assembly. Pursuant to the legislative redistricting plan adopted by the Fifty-seventh Session of the Legislative Assembly (2001 N.D. Sp. Sess. Laws ch. 691), the Legislative Assembly consists of a 47-member Senate elected for four-year terms and a 94-member House of Representatives elected for four-year terms from legislative districts established by law on the basis of population.

The Legislative Assembly meets every two years, beginning on the first Tuesday after the first Monday in January after the general election, or as otherwise determined by the Legislative Assembly, for a period not to exceed 80 legislative days. The people, however, reserve the power to propose measures and to approve or reject the same at the polls by initiative and to approve or reject at the polls by referendum any measure or any item, section, part or parts of any measure enacted by the Legislative Assembly.

The chief executive power of the State is vested in the Governor who, with a Lieutenant Governor, is elected on a joint ballot for a four-year term. The Governor is responsible for all executive actions and for the execution of laws passed by the Legislative Assembly. Under the Constitution the Governor can veto legislation, which veto may be overridden by a two-thirds majority vote of each house of the Legislative Assembly. The constitutional veto power of the Governor also includes the power to “veto items in an appropriation bill”. The Governor has direct control of 14 departments of the Executive Branch, and chairs a number of State Commissions including the Industrial Commission, the Indian Affairs Commission and the State Water Commission.

The judicial powers of the state are vested in a unified judicial system consisting of the Supreme Court, the temporary court of appeals, district courts, and such other courts as are or may be created by law for cities. The Supreme Court, consisting of five justices elected for ten-year terms, may only exercise appellate jurisdiction except as otherwise specifically provided by statute or by the constitution. In the exercise of its original jurisdiction, the Supreme Court may issue writs of habeas corpus, mandamus, quo warrant to, certiorari, and injunction, and may exercise its original jurisdiction only in habeas corpus cases and in cases of strictly public concern involving questions affecting the sovereign rights of the state or its franchises or privileges. In the exercise of its appellate jurisdiction and in its superintending control over inferior courts, the Supreme Court may issue such original and remedial writs as are necessary to the proper exercise of such jurisdiction.

## **NORTH DAKOTA STATE FINANCES**

### ***State Fund Structure; Accounting Basis***

The State maintains a general fund for the receipt of all unrestricted tax revenues from which the State appropriates moneys for the activities of the State. The State also maintains several hundred special funds (including trust funds) for tax revenues and federal revenues received by the State which are restricted as to use.

The State operates a statewide accounting and management information system. This system is an accrual system capable of providing information for preparation of statewide financial statements in accordance with generally accepted accounting principles (“GAAP”) for governmental units. The system maintains general ledger accounts for all of the State’s funds and also for the GAAP funds and account groups as recommended by the Governmental Accounting Standards Board. The Office of Management and Budget has been statutorily mandated to prepare annual statewide financial statements. The comprehensive annual financial report of the State for fiscal year 2002 is attached as Appendix C.

### ***Budget Procedures***

The focus of North Dakota’s budget format and process is on programs. The budget includes spending requests for general funds, federal funds and other state-appropriated revenues. State agencies submit their budget requests on a biennial basis to the Office of Management and Budget based on guidelines that are published by the Office of Management and Budget to assist in preparation. State agencies have complete discretion in the formulation of their budget requests. The agency director makes the final determination regarding overall formulation of the budget request. Once the budget request is submitted to OMB, a budget hearing is held for further clarification of budgetary data and discussion of outstanding issues and policy.

The Governor presents the executive budget to the Legislative Assembly for its consideration. The Legislative Assembly then makes changes to the executive budget in the course of its deliberations.

In addition, the Governor presents a capital budget recommendation separate from operating budget recommendations to the Legislature. Key components in the decision to prepare a formalized capital budget included statewide concerns of possible deferred building maintenance and the lack of long-term planning for new construction.

### ***Non-Legislative Powers to Control Expenditures from Appropriations***

By statute, the Director of the Office of Management and Budget exercises continual control over the execution of the budget affecting the departments and agencies of the executive branch of the State government. This control entails the analysis and approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and, on the basis of these analyses and comparisons, control of the rate of expenditures through a system of allotments. The allotment must be made by specific fund and all departments and agencies that receive moneys from that fund must be allotted moneys on a uniform percentage basis except that appropriation to the Department of Public Instruction for foundation aid, transportation aid and special education aid may only be allotted to the extent that the allotment can be offset by transfers from the foundation aid stabilization fund. Before an allotment is made which will reduce the amount of funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the Director must find one or more of the following circumstances to exist:

1. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund.
2. The payment or the obligation incurred is not authorized by law.
3. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, including:
  - a. Statements of legislative intent expressed in enacted appropriation measures or other measures enacted by the Legislative Assembly; and
  - b. Statements of purpose of amendment explaining amendments to enacted appropriation measures, as recorded in the journals of the Legislative Assembly.
4. Circumstances or availability of facts not previously known or foreseen by the Legislative Assembly which make possible the accomplishment of the purpose of the appropriation at a lesser amount than that appropriated.

The foregoing allotment system applies to the various funds maintained by the State and the departments and agencies which receive moneys from such funds. Except for certain appropriations to the Department of Public Instruction, any reduction in expenditures from appropriations is required to be on a uniform percentage basis among the departments and agencies that draw on any particular fund. The allotments are also subject to objection by the Budget Section of the Legislative Council.

A percentage reduction in the moneys available from any affected fund to any department, agency or institution in all three branches of the State government may also occur as a result of an initiated or referendum action pursuant to Article III of the Constitution of North Dakota.

## ***2002 Allotments***

On July 9, 2002, Governor John Hoeven stated that based on a new 2001-2003 forecast the State of North Dakota was facing a \$43 million shortfall in General Fund revenues. The Governor immediately directed that two steps be taken to resolve the shortfall. First, the Governor directed that an additional \$25,000,000 be transferred from the Bank of North Dakota to the General Fund during the 2001-2003 biennium. Secondly, he authorized the Director of the Office of Management and Budget to implement the allotment process and direct a 1.05% allotment (a reduction in the General Fund appropriation authority) for all General Fund agencies totaling \$18 million. This allotment impacts all state agencies that receive General Fund appropriations except for the Department of Public Instruction as it relates to the funding of foundation aid, transportation aid and special education aid. (As noted above under "Non-Legislative Powers to Control Expenditures from Appropriations" the Department of Public Instruction's allotment is offset by transfers from the foundation aid stabilization fund.) It is not expected that the allotments will impact the lease payments for debt service during the current 2001-2003 biennium.

On August 22, 2002 the Budget Section of the North Dakota Legislature met and approved the transfer of up to \$25,000,000 from the Bank of North Dakota to the extent necessary to meet the revenue shortfall. The Budget Section did not file any objections to the allotment.

## ***Financial Controls***

The State has financial controls over the appropriation and expenditure of funds. No moneys can be spent in excess of appropriations or without a cash balance in the particular fund from which the expenditure is to be made. In addition, by statute, no State institution, department, board, commission or bureau may disburse more than 75% of the operating and salary appropriations made by the Legislative Assembly for the biennium during the first eighteen months of the biennium. Under certain circumstances, an exception to this limitation may be authorized except for salaries and wages. The State's financial control is centered in the Office of Management and Budget, including pre-audit of claims. The post-audit function is carried out by the State Auditor, an elected official.

In order to meet the cash flow needs of State government, the Office of Management and Budget may issue certificates, notes or bonds in anticipation of revenue to special funds on deposit in the State Treasury. Any such borrowing must be approved by the Emergency Commission and be utilized for cash flow financing only and not to offset any projected deficits in State finances unless first approved by the Budget Section of the Legislative Council. The terms of any such issue may not exceed 180 days from the date of issuance, with principal and interest paid in full from the State general fund by the close of the biennium.

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## REVENUES AND EXPENDITURES OF NORTH DAKOTA

The following table sets forth a five-year analysis of the State's General Fund revenues and expenditures as of the end of each of the past five fiscal years.

### Five-Year Analysis of General Fund Revenues and Expenditures

	Fiscal Year End June 30				
	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
<b>Revenues</b>					
Taxes	\$ 705,385,031	\$ 684,654,913	\$ 734,974,065	\$ 755,449,647	\$ 773,815,240
Licenses & Permits	9,130,177	8,657,036	11,317,453	11,260,815	11,327,505
Intergovernmental	244,980	314,659	164,095	381,322	--
Sales and Services	1,603,631	1,606,971	1,408,547	1,891,369	1,358,059
Royalties and Rents	5,481,495	3,222,016	4,451,445	6,705,433	3,797,829
Fines and Forfeits	2,538,787	2,234,407	1,664,005	2,294,372	2,296,396
Interest and Investment Income	6,456,854	7,060,830	7,511,546	9,264,494	3,431,724
Miscellaneous	<u>306,138</u>	<u>53,764</u>	<u>1,664,074</u>	<u>61,592</u>	<u>363,255</u>
<b>TOTAL REVENUES</b>	<b><u>\$ 731,147,093</u></b>	<b><u>\$ 707,804,596</u></b>	<b><u>\$ 763,155,230</u></b>	<b><u>\$ 787,309,404</u></b>	<b><u>\$ 766,390,008</u></b>
<b>Expenditures</b>					
General Government	\$ 48,943,272	\$ 63,584,503	\$ 51,857,281	\$ 62,140,718	\$ 63,145,955
Education	269,078,165	270,305,831	288,446,110	284,909,751	287,577,112
Health and Human Services	167,143,804	183,052,329	166,163,619	185,861,396	196,337,923
Regulatory	5,509,119	5,399,367	5,909,924	6,250,073	7,569,309
Public Safety and Corrections	27,972,292	31,695,743	44,230,789	40,616,062	60,631,989
Agriculture and Commerce	5,107,912	5,801,158	5,399,415	5,576,666	10,312,451
Natural Resources	11,242,861	12,973,132	12,507,337	13,851,581	13,069,208
Highways	--	140,500	263,872	--	--
Capital Outlay	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>58,354</u>
<b>TOTAL EXPENDITURES</b>	<b><u>\$ 534,997,425</u></b>	<b><u>\$ 572,952,563</u></b>	<b><u>\$ 574,778,347</u></b>	<b><u>\$ 599,206,247</u></b>	<b><u>\$ 639,037,118</u></b>
<b>Other Financing Sources (Uses)</b>					
Operating Transfers In	\$ 37,442,899	\$ 11,695,796	\$ 33,460,525	\$ 31,402,315	\$ 42,294,412
Operating Transfers Out	(204,932,308)	(200,007,664)	(194,061,401)	(231,297,905)	(213,412,321)
Operating Transfers to Component Units	(1,204,936)	(1,204,936)	(375,000)	(375,000)	--
Other	<u>76,759</u>	<u>7,448</u>	<u>5,606</u>	<u>11,273</u>	<u>204,715</u>
<b>Total Other Financing Sources (Uses)</b>	<b><u>\$(168,617,586)</u></b>	<b><u>\$(189,509,356)</u></b>	<b><u>\$(160,970,270)</u></b>	<b><u>\$(200,259,317)</u></b>	<b><u>\$(170,913,194)</u></b>
Revenues and Other Sources Over Expenditures and Other Uses	27,532,082	(54,657,323)	27,406,613	(12,156,160)	(43,560,304)
Beginning Cash Balance	115,021,689	142,553,771	87,896,448	118,632,571 <sup>(1)</sup>	159,048,414 <sup>(2)</sup>
Other Transfers in (Out)	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>
<b>FUND BALANCE – END OF YEAR</b>	<b><u>\$ 142,553,771</u></b>	<b><u>\$ 87,896,448</u></b>	<b><u>\$ 115,303,061</u></b>	<b><u>\$ 106,476,411</u></b>	<b><u>\$ 115,488,110</u></b>

- (1) Pursuant to GASB 33, the beginning fund balance was increased by \$3,329,510 to reflect the change in accounting for nonexchange transactions.
- (2) Pursuant to GASB 34, the beginning fund balance was increased by \$50,422,000 to reflect a change in the revenue recognition policy. The policy was changed to classify all revenues as available if they are collected within one year of the fiscal year. Previously the period of availability extended to thirty days after fiscal year end. The beginning fund balance was also restated by \$2,150,043 to properly reflect unemployment insurance fees collected to pay unemployment claims.

Source: Office of Management and Budget.

### ***Analysis of General Fund Balances***

The following table sets forth the cash balances (General Fund only) as of the end of each quarter, Fiscal Year 1997 through Fiscal Year 2002 (dollars in millions).

<u>Quarter</u>	<u>Fiscal 1998</u>	<u>Fiscal 1999</u>	<u>Fiscal 2000</u>	<u>Fiscal 2001</u>	<u>Fiscal 2002</u>	<u>Fiscal 2003</u>
First	\$66.7	\$94.3	\$45.4	\$50.8	\$24.8	\$38.6
Second	26.6	63.3	21.1	10.1	13.6	50.8
Third	23.6	60.3	15.2	32.4	16.9	74.6
Fourth	76.5	66.0	43.0	74.0	2.7	NA

Source: Office of Management and Budget.

### ***Analysis of Total State End of Biennium Balances***

The following table sets forth the results of the financial operations of the State (including both General Fund and special fund revenues and expenditures) for the biennium periods 1993 to 1995, 1995 to 1997, 1997 to 1999 and 1999 to 2001.

	<u>1993-95</u>	<u>1995-97</u>	<u>1997-99</u>	<u>1999-01</u>
Cash Balance Beginning July 1	\$ 131,779,342	\$ 170,958,855	\$ 210,872,624	\$ 221,694,897
Collections	3,923,059,395	4,283,926,637	4,781,013,805	5,550,897,975
Transfer from Other Funds	0	0	0	0
Disbursements	(3,883,879,882)	(4,244,012,868)	(4,770,191,532)	(5,438,453,710)
Transfer to Other Funds	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Cash Balance Ending June 30	<u>\$ 170,958,855</u>	<u>\$ 210,872,624</u>	<u>\$ 221,694,897</u>	<u>\$ 334,139,162</u>

Source: Biennial Reports of the State of North Dakota, Office of the Treasurer; July 1, 1993 to June 30, 1995; July 1, 1995 to June 30, 1997; July 1, 1997 to June 30, 1999; and July 1, 1999 to June 30, 2001.

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### ***2001-2003 General Fund Appropriations***

<u>Purpose</u>		<u>Appropriation</u>
General Government		\$ 159,825,655
Education:		963,311,533
Public Institutions and Other	\$596,357,697	
Higher Education	366,953,836	
Health and Human Services		390,302,863
Regulatory		22,240,849
Public Safety		111,181,566
Agricultural, Economic Development, Extension and Research:		74,569,578
Extension and Research	51,742,895	
Other Agricultural and Economic Development	22,826,683	
Natural Resources		<u>25,551,669</u>
<b>TOTAL</b>		<b><u>\$1,746,983,713</u></b>

Note: Using the allotment process, the General Fund 2001-2003 appropriation has been reduced by \$18,316,037. See "2002 Allotments" herein.

Source: Office of Management and Budget.

### ***2003-2005 General Fund Appropriations***

<u>Purpose</u>		<u>Appropriation</u>
General Government		\$ 151,008,049
Education:		991,170,010
Public Institutions and Other	\$629,628,592	
Higher Education	361,541,418	
Health and Human Services		430,097,751
Regulatory		21,593,990
Public Safety		110,488,151
Agricultural, Economic Development, Extension and Research:		74,569,964
Extension and Research	50,766,966	
Other Agricultural and Economic Development	23,829,998	
Natural Resources		<u>24,706,246</u>
<b>TOTAL</b>		<b><u>\$1,803,661,161</u></b>

Source: Office of Management and Budget.



## Sources of General Fund Revenues

Actual collections for the General Fund portion of State revenues for the 1997-99 and 1999-01 biennia and the State's Legislative and revised forecasted revenue projections for the 2001-03 biennium are shown below.

Revenue Source	1997-1999 Actual Collections	1999-2001 Actual Collections	2001-2003 Final Revised Forecast	2003-2005 Legislative Forecast
Sales and Use Tax	\$ 569,501,827	\$ 613,066,466	\$ 643,668,333	\$ 674,764,000
Motor Vehicle	94,863,089	109,115,230	119,742,675	126,784,840
Individual Income Tax	358,287,825	409,331,437	396,136,091	435,255,000
Corporate Income Tax	123,420,219	99,134,855	86,864,297	91,450,000
Business Privilege Tax	6,494,162	5,464,955	5,200,000	5,200,000
Cigarette and Tobacco Tax	44,091,170	41,706,350	39,435,582	36,709,000
Oil and Gas Production Tax	26,973,613	38,433,365	39,159,000	42,348,719
Oil Extraction Tax	16,703,114	23,566,635	22,841,000	28,651,281
Coal Severance Tax	22,596,137	22,173,854	0	0
Coal Conversion Tax	23,786,790	25,672,170	46,779,502	47,221,000
Insurance Premium Tax	33,133,216	39,113,433	49,752,204	55,869,000
Wholesale Liquor Tax	11,140,328	10,321,999	11,131,782	11,634,000
Gaming Tax	22,801,868	27,437,507	27,474,000	23,145,000
Lottery	0	0	0	1,431,000
Departmental Collections	32,997,069	40,816,171	57,487,180	54,410,473
Interest Income	19,013,889	20,832,123	8,796,000	12,629,000
Mineral Leasing Fees	7,257,989	9,531,698	6,225,800	4,215,000
Bank of North Dakota Transfers	29,600,000	50,000,000	87,457,922	60,000,000
State Mill Transfers	3,000,000	3,000,000	9,000,000	26,258,969
Student Loan Trust Fund Transfers	0	0	6,000,000	5,000,000
Gas Tax Administration	1,128,872	1,380,608	1,363,392	1,396,200
Other Transfers <sup>(1)</sup>	<u>36,713,873</u>	<u>5,159,194</u>	<u>15,363,481</u>	<u>64,091,408</u>
Total	<u>\$1,483,505,050</u>	<u>\$1,595,258,050</u>	<u>\$1,669,878,241</u>	<u>\$1,808,463,890</u>

<sup>(1)</sup> Other transfers for the 1997-99 biennium include \$28,016,830 from the State Aid Distribution Fund and \$5,500,000 from the Land and Minerals Trust Fund. Other transfers for the 1999-2001 biennium include \$3,000,000 from Land & Minerals Trust Fund, \$1,500,000 from the PERS Life Insurance Fund, \$200,000 from the Financial Institutions Regulatory Fund and \$2,150,000 from the Developmental Disability Loan Sale. Other transfers estimated for the 2001-03 biennium include \$3,545,102 from the Land and Minerals Trust Fund, \$9,733,820 from the Water Development Trust Fund, \$2,000,000 from the Developmental Disability Loan Sale, and \$84,559 from miscellaneous transfers. Other transfers estimated for the 2003-05 biennium include \$2,000,000 from the Land and Minerals Trust Fund, \$11,910,000 from the Permanent Oil Tax Trust Fund, \$2,800,000 from the Bonding Fund, \$10,070,373 from the Water Development Trust Fund, \$1,400,000 from the Information Technology Department transfer of accumulated savings, and \$35,911,035 from the Health Care Trust Fund.

Source: Office of Management and Budget.

## ***Sources of Total State Appropriations***

A comparison of the sources for the total appropriations made for the 1997-99, 1999-01, 2001-03 and 2003-05 biennia is presented below:

	1997-1999 Legislative <u>Appropriation</u>	1999-2001 Legislative <u>Appropriation</u>	2001-2003 Legislative <u>Appropriation</u> <sup>(1)</sup>	2003-2005 Legislative <u>Appropriation</u>
General Fund	\$1,489,240,087	\$1,594,038,538	\$1,746,983,713	\$1,803,661,161
Special Funds	<u>2,485,367,317</u>	<u>3,215,299,301</u>	<u>3,025,896,983</u>	<u>3,255,778,235</u>
Total	<u>\$3,974,607,404</u>	<u>\$4,809,337,839</u>	<u>\$4,772,880,696</u>	<u>\$5,059,439,396</u>

<sup>(1)</sup> Using the allotment process, the General Fund 2001-2003 appropriation has been reduced by \$18,316,037. See "2002 Allotments" herein.

## ***Tax Structure***

The State general fund receives the major share of its revenues from the following six taxes:

Sales and Use Tax. North Dakota currently imposes a State retail tax of 9% on the purchase price of most commodities, with food being the most notable exception. A 7% sales tax is levied upon retail sales of all alcoholic beverages. New farm machinery, irrigation equipment, new mobile homes and the purchase of qualifying manufacturing equipment are subject to a sales and use tax of 3%. The tax is collected by businesses and remitted to the State.

The history for sales and use tax rates during the past ten years is as follows:

1991 Session reduced the rate on natural gas from 5% as follows: 4% effective January 1, 1993; 3% effective January 1, 1994; and 2% effective January 1, 1995. Effective July 1, 1991, the 3% rate has been eliminated on manufacturing or processing machinery and equipment used by new or expanding manufacturers or agricultural processors.

1993 Session clarified and expanded the exemption for manufacturing machinery and equipment to include recycling machinery and equipment. Performances of community non-profit music or dramatic arts organizations held in a public facility were exempted. Items purchased by political subdivisions of another state were made taxable if the other state also taxes the items. A new highway contract privilege tax was established at 5% of the gross contract amount.

1994 Special Session broadened the qualifications for the manufacturing and equipment exemption to include machinery and equipment used primarily in the manufacturing operation from receipt of raw materials to any process before final transportation from the site. The exemption was expanded to include research and development equipment. A new exemption was created for materials used to construct an agricultural processing facility.

1995 Session redefined the application of sales and use tax on the sale and installation of carpet and drapes. The sale and installation of carpet, draperies or drapery hardware will always constitute a construction contract. The expiration provision for the sales and use tax exemption for recycling machinery and equipment was removed. The solid waste management surcharge was repealed effective July 1, 1995. The controlled substance tax was repealed effective July 1, 1995. The definition of a retail sale was amended to include tire retreading.

1997 Session enacted legislation enabling the Tax Commissioner to accept the filing of a sales tax return electronically.

1999 Session enacted legislation reducing the sales and use tax rate on used farm machinery and repair parts from three percent to one and one-half percent from May 1, 1999 through June 30, 2001. This is expected to impact General Fund revenues by approximately \$4.471 million during the 1999-2001 biennium. Also enacted by the 1999 Legislature was the Renaissance Zone Act. The provisions of this legislation include income and property tax exemptions in addition to income and financial institutions tax credits. At this time there is no estimate on the impact to the General Fund for exemptions for tax credits provided in this legislation.

2001 Session enacted legislation that continued the one and one-half percent sales tax rate on used farm machinery and repair parts through June 30, 2002. Beginning July 1, 2002, sales of used farm machinery and repair parts will be exempt from sales tax.

Individual Income Tax. A tax on income (defined as federal taxable income with adjustments) is imposed upon individuals and fiduciaries. The 2003 rates and brackets for married taxpayers filing joint return are as follows:

2001

Up to \$45,200	Computed at 2.10%
\$45,200 to \$109,250	\$949.20 plus 3.92% of excess over \$45,200
\$109,250 to \$166,500	\$3,459.96 plus 4.34% of excess over \$109,250
\$166,500 to \$297,350	\$5,944.61 plus 5.04% of excess over \$166,500
Over \$297,350	\$12,539.45 plus 5.54% of excess over \$297,350

The same rates apply on different income brackets for taxpayers with filing statuses of single, married filing separately, or head of household. The income brackets are adjusted annually for inflation.

Individual income taxpayers have the option of using a long-form method of computing their state income tax liability. This method allows several deductions and tax credits not available on the standard form. The long form rates, imposed on federal taxable income with adjustments, range from 2.67% on income up to \$3,000 to 12.00% on income in excess of \$50,000. As these rates are substantially higher than those on the standard form, only 3% of all taxpayers file the long form.

Corporate Income Tax. All corporations doing business in the State are subject to a tax on the amount of net income derived from business done in the State. The current rates are as follows:

Up to \$3,000	Computed at 3%
\$3,000 to \$8,000	\$90 plus 4.5% of excess over \$3,000
\$8,000 to \$20,000	\$315 plus 6.0% of excess over \$8,000
\$20,000 to \$30,000	\$1,035 plus 7.5% of excess over \$20,000
\$30,000 to \$50,000	\$1,785 plus 9.0% of excess over \$30,000
Over \$50,000	\$3,585 plus 10.5% of excess over \$50,000

Oil Extraction Tax. The State imposes a 6.5% tax on the value (or selling price) of oil at the wellhead. This tax applies only to oil and not natural gas. New wells drilled after April 27, 1987 receive a 15-month holiday from this tax, and a subsequent reduction in the rate from 6.5% to 4%. In addition, a one-year exemption is available after a well has undergone a qualifying workover. The revenues from this tax are distributed 60% to the General Fund, 20% as provided in Article X, Section 24 of the North Dakota Constitution, and 20% to a resources trust fund. The Oil Extraction Tax went into effect January 1, 1981. Effective July 1, 1991, the Legislature expanded oil extraction tax incentives. Effective July 1, 1993, the Legislature loosened the definition of a qualifying workover project. Effective July 1, 1995, the Legislature again expanded oil exploration tax incentives.

Oil and Gas Production Tax. The State imposes a tax on oil and gas production at a rate equal to 5% of gross well value, payable on a monthly basis. Effective July 1, 1991, instead of gas being taxed at 5% of gross value at the well it will be taxed at four cents per non exempt mcf of gas produced. This rate will be adjusted annually to follow fluctuations in gas value by using the yearly producer price index for gas fuels.

Cigarette and Tobacco Products Tax. A tax of 44 cents per package is imposed on cigarettes with 41 cents per package going to the State General Fund and 3 cents to cities on a population basis. A tax equal to 28% of the wholesale price of other tobacco products is collected and distributed to the General Fund.

Below are descriptions of other major taxes and fees in North Dakota:

Alcohol and Beverage Tax. This tax is imposed on the wholesalers of alcoholic beverages for the privilege of doing business in the State. The tax is based on gallonage sold by wholesalers in the following amounts:

Beer sold in bulk containers	\$0.08/gallon
Beer sold in bottles, cans	\$0.16/gallon
Wine with less than 17% alcohol	\$0.50/gallon
Wine with between 17% and 24% alcohol	\$0.60/gallon
Sparkling wines	\$1.00/gallon
Distilled spirits	\$2.50/gallon
Straight distilled alcohol	\$4.05/gallon

Financial Institutions Tax. All financial institutions are required to file and pay a 7% tax on taxable income, in lieu of all other income taxes.

Coal Conversion Facilities Tax. Electrical generating plants which use coal and have a single generating unit with the capacity of 10,000 kilowatts or more (effective January 1, 2002) are taxed at a rate equal to 0.65 mill times 60% of installed capacity times the number of hours in the taxable period plus 0.25 mill per kilowatt hour of electricity produced for sale. This tax is in lieu of all ad valorem taxes except on land. Other energy installations which are subject to the coal conversion facilities tax include, but are not limited to, coal gasification plants, coal liquefaction plants and plants for the manufacture of fertilizer and other products, which use or are designed to use over 500,000 tons of coal per year. These types of plants pay a tax of 4.1% of gross receipts, or in the case of coal gasification plants, either 4.1% of gross receipts or \$.135 per 1,000 cubic feet of gas produced for sale, whichever is greater. A plant which is designed for coal beneficiation is taxed at the rate of \$.20 on each ton of beneficiated coal produced for sale or 1.25% of gross receipts, whichever is greater. This tax is collected on a monthly basis. A newly constructed coal conversion facility is exempt from the State's share of the coal conversion tax for five years and may be exempted from all or part of the county's share by resolution of the county commissioners.

Coal Severance Tax. This tax applies to coal severed from the ground for sale or for industrial purposes. Effective July 1, 2001, there is a \$0.375 per ton tax with an additional \$.02 per ton to be deposited into the Lignite Research Fund.

Estate Tax. North Dakota's estate tax is entirely contingent on credits which the federal government allows on federal estate taxes. Specifically, the federal government allows a credit for State estate taxes paid, a credit which is applied against the federal estate tax. North Dakota law now provides that its State estate tax will be equal to, but no more than, the credit allowed on federal estate tax returns.

Gaming Tax. A gaming tax is levied on the total adjusted gross proceeds from games of chance conducted by various licensed organizations. The tax rate is 5% for the first \$200,000 of adjusted gross proceeds, increasing to a maximum rate of 20% for adjusted gross proceeds in excess of \$600,000. In addition, a 4.5% excise tax is imposed on gross proceeds from pull tabs. In a special election held on December 6, 1989, a measure authorizing and regulating the use of electronic video gaming devices was defeated.

Insurance Premium Tax. This tax is on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees and finance and service charges received in North Dakota by any insurance company doing

business in the State. The tax is imposed in an amount of 2% of life insurance, 1.75% with respect to accident and sickness insurance and 1.75% on all other lines of insurance, excluding annuity considerations.

Mineral Leasing Fees. This fee represents the money the State receives for the lease of the State's mineral interests. As of June 30, 2001, the State had rights to approximately 700,000 acres, of which approximately 13.7% was under lease.

Motor Vehicle Fuels Tax. North Dakota generally imposes a tax of 21 cents per gallon on all sales of motor vehicle fuels. The State also imposes a special fuels tax on certain other motor fuels, primarily diesel fuel. The special fuels tax is 21 cents per gallon if the fuel is for use in licensed vehicles or if it is sold to public contractors performing public-funded contracts. If the special fuels are sold for heating, agricultural, railroad or privately funded industrial purposes, the special fuels tax is 2% of the purchase price of these fuels. The 1995 Legislature enacted provisions for up to two cents additional tax on motor fuels and special fuels, dependent upon the availability of federal highway matching funds. The 1997 Legislature continued the two cent tax through December 31, 1999. The 1999 Legislature established the motor fuels tax at 21 cents per gallon a decrease of one cent per gallon.

The Legislature has established statutory limitations on the amount of general fund revenues that will be made available for lease payments during a biennium, tying the limitation to a percentage of a portion of the net sales, use, and motor vehicle excise tax collections during a biennium. In 1995 the Legislature set the limitation at no more than 11% of that portion of the sales, use and motor vehicle excise taxes representing collections from one cent of the five cent (per dollar) sales, use, and motor vehicle excise taxes. In 1997 the Legislature reduced the percentage limitation from 11% to 10% of that portion of the sales, use, and motor vehicle excise taxes representing collections from one cent of the five cent (per dollar) sales, use, and motor vehicle excise taxes. The percentage limitation remains at 10% currently. (Because these limitations are statutory, the Legislature is free to alter or even eliminate such limitations in future sessions.) Lease payments made by the University of North Dakota and North Dakota State University on behalf of their energy conservation projects are excluded from the statutory limitations on general fund revenues. Additionally, the \$20,000,000 of lease revenue bonds anticipated to be sold before the end of third quarter 2003 will not be subject to such statutory limitations.

**NORTH DAKOTA STATE TAX DEPARTMENT  
NET COLLECTIONS  
FOR THE FISCAL YEARS ENDED JUNE 30, 1998 TO 2002**

<u>TAX TYPE</u>	<u>FY 1998</u>	<u>FY 1999</u>	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>
Sales and Use Taxes <sup>(1)</sup>	\$363,095,256	\$383,173,850	\$390,332,981	\$ 398,639,332	\$401,554,861
Oil Extraction Tax	15,328,212	12,074,588	22,033,670	24,793,997	198,922,525
Gross Production Tax	29,521,309	22,705,995	38,464,671	46,029,027	41,600,758
Motor Fuels Taxes	105,131,399	103,050,448	111,937,585	112,685,871	17,068,846
Individual Income Tax	177,904,251	181,389,034	198,287,830	213,442,150	36,515,072
Corporation Income Tax	65,543,025	57,877,194	47,528,001	51,606,853	38,200,783
Coal Taxes <sup>(2)</sup>	37,257,693	38,274,528	38,959,421	39,539,107	111,635,118
All Other Taxes and Fees <sup>(3)</sup>	<u>86,067,863</u>	<u>106,892,031</u>	<u>109,509,989</u>	<u>117,682,317</u>	<u>121,243,054</u>
<b>Total Net Collections</b>	<b><u>\$879,849,008</u></b>	<b><u>\$905,437,668</u></b>	<b><u>\$957,054,148</u></b>	<b><u>\$1,004,418,654</u></b>	<b><u>\$966,741,017</u></b>

(1) Includes sales and use tax, motor vehicle excise tax and State Aid Distribution Fund.

(2) Includes coal severance tax and coal conversion facilities privilege tax.

(3) Includes cigarette tax, tobacco tax, estate tax, business and corporation privilege tax, financial institutions tax, telecommunications tax, transmission lines tax, city sales tax, city lodging tax, music and composition tax, sales and use tax and motor fuel tax cash bonds, motor fuel license fees, solid waste management fees, centennial tree contributions, organ transplant support contributions, drug tax, city restaurant and lodging, nongame wildlife contributions, and miscellaneous remittances.

Source: Comparative Statement of Collections, North Dakota State Tax Department.

## **NORTH DAKOTA STATE INDEBTEDNESS**

### ***Authorization and Debt Limits***

Article X, Section 13 of the North Dakota Constitution provides that:

“The state may issue or guarantee the payment of bonds, provided that all bonds in excess of two million dollars shall be secured by first mortgage upon real estate in amounts not to exceed sixty-five percent of its value; or upon real and personal property of state-owned utilities, enterprises or industries, in amounts not exceeding its value, and provided further, that the State shall not issue or guarantee bonds upon property of state-owned utilities, enterprises or industries in excess of ten million dollars.

No further indebtedness shall be incurred by the state unless evidenced by a bond issue, which shall be authorized by law for certain purposes, to be clearly defined. Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semiannually, and the principal within thirty years from the date of the issue of such bonds and shall specially appropriate the proceeds of such tax, or of such other provisions to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid. No debt in excess of the limit named herein shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the State in time of war or to provide for the public defense in case of threatened hostilities.”

The State currently has no general obligation debt outstanding.

### ***Previous North Dakota Building Authority Financings***

The Industrial Commission of North Dakota acting as the North Dakota Building Authority previously issued and has outstanding as of June 1, 2003, Lease Revenue Bonds as follows:

1998 Series A:	
4.40% to 5.125% Serial Bonds, due December 1, 2003-2013	4,345,000
5.125% Term Bonds, due December 1, 2018	2,910,000
1998 Series B:	
4.50% to 5.00% Serial Bonds, due December 1, 2003-2010	9,090,000
1998 Series C:	
3.85% to 4.35% Serial Bonds, due December 1, 2003-2009	2,300,000
2000 Series A:	
5.125% to 5.60% Serial Bonds, due December 1, 2003-2019	4,145,000
2001 Series A:	
4.00% to 5.125% Serial Bonds, due December 1, 2003-2018 and 2022	10,250,000
5.125% Term Bonds, due December 1, 2021	2,700,000
2002 Series A:	
3.50% to 5.125% Serial Bonds, due December 1, 2003-2017	7,390,000
5.20% Term Bond, due December 1, 2019	815,000
5.25% Term Bond, due December 1, 2022	1,390,000

2002 Series B:	
4.00% to 5.20% Serial Bonds, due December 1, 2003-2006	1,535,000
2002 Series C:	
3.00% to 4.30% Serial Bonds, due August 15, 2003-2014	10,665,000
2002 Series D:	
3.00% to 4.50% Serial Bonds, due December 1, 2003-2016	15,480,000
2003 Series A:	
5.25% Serial Bonds, due December 1, 2004-2010	<u>15,145,000</u>
<b>Total Outstanding (Excluding the Bonds)</b>	<b><u>\$88,160,000</u></b>

The 1998A Bonds were issued to finance the acquisition, construction, improvement or equipping of certain facilities for the State Board of Higher Education and the Department of Corrections and Rehabilitation.

A portion of the 1998B Bonds were issued to advance refund the callable maturities, June 1, 2002 through 2011, of the then outstanding 1991 Series A Bonds. The 1991 Bonds were called on June 1, 2001 at a price of par and in the amount of \$9,495,000. The remainder of the 1998B Bonds were issued to advance refund the callable maturities, August 15, 2001 through 2007, of the then outstanding 1992 Series A Bonds. The 1992 Bonds were called on August 15, 2000 at a price of par and in the amount of \$1,755,000.

The 1998C Bonds were issued to finance a portion of the renovation and addition to the Ed James Wing of the medical school at the University of North Dakota for the State Board of Higher Education.

The 2000A Bonds were issued to finance a portion of the construction of an Animal Research Facility at North Dakota State University for the State Board of Higher Education and to fund a portion of the renovation of the Pine Cottage at the North Dakota Youth Correctional Center for the Department of Corrections and Rehabilitation.

The 2001A Bonds were issued to finance a portion of the construction of an addition to the Health and Wellness Center at Williston State College and to fund a portion of the renovation of Old Main at Minot State University for the State Board of Higher Education.

The 2002A Bonds were issued to finance a portion of the construction of a Bismarck service delivery office for Job Service North Dakota, a laboratory addition for the North Dakota State Department of Health and certain energy conservation projects at the University of North Dakota and North Dakota State University for the State Board of Higher Education.

The 2002B Bonds were issued to finance a portion of certain energy conservation projects at the University of North Dakota for the State Board of Higher Education.

The 2002C Bonds were issued to current refund the callable maturities of the then outstanding 1993 Series B Bonds. The 1993B Bonds were called on August 15, 2002 at a price of par.

The 2002D Bonds were issued to advance refund all of the outstanding maturities of the 1995 Series A Bonds totaling \$15,225,000. The 1995A Bonds will be called on December 1, 2004 at a price of par.

The 2003A Bonds were issued to current refund the callable maturities of the then outstanding 1993 Series A Bonds totaling \$17,295,000. The 1993A Bonds were called on June 1, 2003 at a price of 101% of par.

Building Authority bonds do not constitute an obligation of the State within the meaning of any constitutional or statutory provision. All of the Building Authority bonds listed above were issued under separate indentures of trust and are not on a parity with each other.

## ***Revenue Debt***

The State and certain State-created entities have the authority to incur debt supported by revenues derived from the assets of the various programs financed by such indebtedness. Only the Municipal Bond Bank Bonds listed below include a moral obligation provision. Such outstanding debt as of June 1, 2003 is shown below:

	<u>Outstanding</u>
State of North Dakota Student Loan Revenue Bonds	\$126,650,000
North Dakota Municipal Bond Bank Bonds <sup>(1)</sup>	133,605,000
North Dakota Housing Revenue Bonds, including accreted value	625,718,000
Board of Higher Education <sup>(2)</sup>	62,301,000
North Dakota State Water Commission <sup>(3)</sup>	43,970,998
Lignite Bonds <sup>(3)</sup>	<u>3,755,000</u>
Total	<u>\$995,999,998</u>

(1) Section 6-09.4-10 of the North Dakota Municipal Bond Bank Act provides that in order to assure the maintenance of the required Debt Service Reserve in the Reserve Fund, if a reserve is required or implemented under or by the Act, there shall be appropriated by the Legislative Assembly and paid to the Bond Bank for deposit in said Fund, such sum, if any, as shall be certified by the Industrial Commission, as necessary to restore said Fund to an amount equal to the Required Debt Service Reserve.

(2) As of June 30, 2002.

(3) A portion of the outstanding North Dakota State Water Commission Bonds and the Lignite Bonds are supported by biennial legislative appropriations from special funds and not from revenues as set out above.

## **NORTH DAKOTA ECONOMY**

### ***General***

North Dakota lies in the central portion of the Northern Plains with a land area of 70,665 square miles. Elevation in the northeast corner of the State is 750 feet above sea level and in the southwest corner of the State is 3,506 feet.

In the east, the Red River Valley is flat with fertile soil, and particularly suited to agricultural activity. Gently rolling hills characterize the glaciated plains in the central area of the State and west of this area is the Missouri Plateau.

With an average growing season of 120 days, relatively low growing season temperatures and an average growing season rainfall of 13 inches, North Dakota's climate is particularly conducive to the growing of grains. The premier farming area is located in the eastern part of the State, gradually displaced by ranching toward the west.



## *Agriculture*

North Dakota's economy is dependent upon the well-being of agriculture. Agriculture is the state's chief source of revenue and composes one-third of the state's economic base (excluding federal activity). Crops make up two-thirds of the State's annual agricultural productivity; livestock makes up the rest.

Cash receipts for 2001 from the marketing of crops and livestock in the State totaled over \$2.98 billion, as compared to \$2.69 billion in 2000. Each dollar produced by agriculture turns over an additional three to four dollars of revenue in the business sector.

Historically, wheat has been the single most important source of agricultural income in North Dakota, and accounted for 21.4% of the total cash receipts in 2001. Cattle and calves ranked third, with 13.4% of the total and government payments ranked first with 24.1% of the total.

Agricultural exports totaled \$1.20 billion in 2001 with wheat and wheat products accounting for 51.5% of the total. Soybeans and products were the second most exported commodities in the State, followed by feeds grains and products.

Below is a table which lists the major crops of North Dakota in 2001, the State's rank in national production of each of these crops, and the percentage of the national production of each of these crops that is grown in North Dakota.

### **State of North Dakota Major Crop Production 2001**

<u>Crop</u>	<u>Rank in Nation</u>	<u>Percent of U.S. Production</u>
All Wheat	2 <sup>nd</sup>	15%
Durum Wheat	1 <sup>st</sup>	65%
Spring Wheat	1 <sup>st</sup>	46%
Barley	1 <sup>st</sup>	32%
Flaxseed	1 <sup>st</sup>	95%
All Sunflower	1 <sup>st</sup>	44%
Sunflower, Oil	1 <sup>st</sup>	44%
Sunflower, Non-Oil	1 <sup>st</sup>	44%
All Dry Edible Beans	1 <sup>st</sup>	32%
Pinto Beans	1 <sup>st</sup>	47%
Navy Beans	1 <sup>st</sup>	57%
Canola	1 <sup>st</sup>	90%
Dry Edible Peas	1 <sup>st</sup>	46%
Oats	1 <sup>st</sup>	13%
Rye	4 <sup>th</sup>	5%
Sugar Beets	3 <sup>rd</sup>	17%
Lentils	3 <sup>rd</sup>	21%
Potatoes	4 <sup>th</sup>	6%
All Hay	10 <sup>th</sup>	3%
All Other Hay	17 <sup>th</sup>	2%
Alfalfa Hay and Mixtures	10 <sup>th</sup>	4%
Soybeans	11 <sup>th</sup>	2%
Corn for Silage	20 <sup>th</sup>	2%
Corn for Grain	17 <sup>th</sup>	1%
Honey	2 <sup>nd</sup>	14%
Total Acreage of Principal Crops Harvested	4 <sup>th</sup>	6%

Source: North Dakota Agricultural Statistics Service.

**North Dakota 2001 Cash Receipts From Crops and Livestock (\$000)**

	<u>Receipts</u>	Rank Among All <u>States</u>
Crops	\$2,258,615	14 <sup>th</sup>
Livestock	<u>719,933</u>	37 <sup>th</sup>
Total Crops & Livestock	\$2,978,548	28 <sup>th</sup>
Government Payments	<u>944,591</u>	N/A
<b>TOTAL</b>	<b><u>\$3,923,139</u></b>	

**Five Leading Commodities<sup>(1)</sup>:**

Wheat	\$839,582
Cattle/Calves	524,924
Soybeans	283,873
Corn	163,119
Sugarbeets	162,162

<sup>(1)</sup> Receipts data in dollars are for 2001, the latest year for which data is available.

Source: North Dakota Agricultural Statistics and U.S. Department of Agriculture.

**North Dakota Net Income Per Farm**

<u>Year</u>	<u>Amount</u>
2000	\$24,724
1999	16,928
1998	24,706
1997	2,843
1996	34,289

Source: North Dakota Agricultural Statistics.

***Energy and Mineral Resources***

Commodities commercially produced in North Dakota include oil and gas, lignite, leonardite, sand and gravel, and clay.

Oil and gas have been produced in 19 counties from an estimated 934 separate pools that have been discovered in North Dakota since 1951. North Dakota's crude oil production reached its first peak in 1966 at 27 million barrels, then declined to 19.6 million barrels in 1974. An exploration boom began in the late 1970's, triggered by higher crude oil prices, a high success ratio for wildcat wells, and significant new discoveries such as Little Knife Field in 1976. Drilling peaked in 1981, with annual crude oil production reaching its all-time peak in 1984 at 52.7 million barrels.

The downward slide in crude oil production that began in 1985 continued through 1994, when production hit its lowest point since 1979. Production in 1994 was 27.6 million barrels with a daily average of 75,826 barrels. Exploration for new oil and production of existing resources continued to lag through much of the 1990's, a result of low crude oil prices, but production has risen to its current level of 84,728barrels/day in December, 2001 as a result of increasing horizontal drilling activity. North Dakota remains the nation's 9th ranking oil-producing state.

Lignite coal is the only rank of coal found in North Dakota in economic amounts. It underlies much of the western two-thirds of the state. Lignite is a “low-rank” coal, meaning it has been altered only slightly by heat and pressure, is still relatively soft, and has a relatively low heat value. Lignite is generally high in moisture content and volatile matter. North Dakota lignite has a low sulfur content (generally less than one percent) and a low ash content.

Twenty-one North Dakota counties have strippable lignite reserves. The North Dakota Geological Survey estimates total strippable reserves of lignite at about 26 billion tons. This represents more than 60% of the recoverable lignite in the United States.

The earliest recorded economic production of lignite in North Dakota is for the year 1884, but small quantities had been mined for domestic use prior to that time. Production increased steadily, with some fluctuations, rising to above two million short tons in the late 1930’s and above three million tons in the early 1950’s. It remained at about that level into the early 1960’s. Production turned sharply upward in the late 1960’s and 1970’s, chiefly to provide fuel for new electrical generating plants built in the state. By 1975, lignite production was about 11 million tons. Today, several large-scale plants are clustered near the plentiful water supply of Lake Sakakawea in west-central North Dakota.

A decade of rapidly increasing lignite production began in the mid-1970’s, with production reaching about 25 million tons by 1985 and increasing to over 32 million tons by 1993. In 2001, coal production was 31 million tons. North Dakota currently ranks 10th among coal-producing states.

Nearly all the lignite produced in North Dakota is consumed in the state. About 79% of the lignite mined is used to generate electricity (13.5% is used to generate synthetic natural gas, and 7.5% is used to produce fertilizer products). Electricity from lignite-fired power plants is one of North Dakota’s leading exports.

Source: North Dakota Industrial Commission, North Dakota Geological Survey.

### ***Population and Labor Force***

The 2000 population of North Dakota as reported by the United States Census Bureau is 642,200. The State is divided into 53 counties with the City of Bismarck as the capitol of the State and county seat of Burleigh County.

#### **North Dakota Population by Decade, 1950-1990, Current Estimate**

<u>Year</u>	<u>Population</u>	<u>Percent Change</u>
1950	619,636	(3.5%)
1960	632,446	2.1%
1970	617,792	(2.3%)
1980	652,717	5.6%
1990	638,800	(2.1%)
2000	642,200	1.3%

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**2000 Population by Age**

<u>Age</u>	<u>Population</u>	<u>Percent</u>
0-19	183,464	28.6%
20-24	50,503	7.9%
25-44	174,891	27.2%
45-64	138,864	21.6%
65+	<u>94,478</u>	<u>14.7%</u>
Total	<u>642,200</u>	<u>100.0%</u>

Source: U.S. Census Bureau.

Total average nonagricultural employment in the State in 2001 was approximately 330,050. Below is a table with North Dakota annual nonagricultural employment for the years 1997 through 2001.

**North Dakota Annual Average Total Nonagricultural Employment**

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Mining	4,200	3,900	3,500	3,750	3,750
Construction	<u>14,950</u>	<u>15,600</u>	<u>16,650</u>	<u>16,150</u>	<u>15,200</u>
Manufacturing:					
Durable Goods	13,450	13,950	14,350	15,200	15,700
Non-Durable Goods	<u>9,950</u>	<u>10,150</u>	<u>9,850</u>	<u>9,750</u>	<u>9,750</u>
Total Manufacturing	<u>23,400</u>	<u>24,100</u>	<u>24,200</u>	<u>24,950</u>	<u>25,450</u>
Total Goods Employment	<u>42,550</u>	<u>43,600</u>	<u>44,350</u>	<u>44,850</u>	<u>44,400</u>
Transportation, Comm. & Public Utilities	18,050	17,950	18,500	18,700	19,100
Wholesale Trade	21,550	21,700	21,850	21,400	20,950
Retail Trade	59,000	59,550	59,550	60,300	60,700
Finance, Insurance & Real Estate	14,750	15,800	16,400	16,600	17,100
Other Services	87,450	89,850	91,400	92,400	94,200
Government	<u>70,750</u>	<u>71,100</u>	<u>71,800</u>	<u>72,850</u>	<u>73,600</u>
Total Services Employment	<u>271,550</u>	<u>275,950</u>	<u>279,500</u>	<u>282,250</u>	<u>285,550</u>
Total Nonagricultural Employment	<u>314,100</u>	<u>319,550</u>	<u>323,850</u>	<u>327,100</u>	<u>330,050</u>

Source: North Dakota Job Service.

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**Annual Average  
Unemployment Rates**

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
United States	4.5%	4.2%	4.0%	4.8%	5.8%
North Dakota	3.2%	3.4%	3.0%	2.8%	4.0%
Bismarck MSA	3.0%	3.0%	2.5%	2.5%	3.6%
Fargo MSA	1.7%	2.0%	2.0%	1.9%	2.5%
Grand Forks MSA	2.7%	3.0%	3.4%	3.4%	4.2%

Source: North Dakota Job Service.

***Personal Income Trends***

The table below shows trends in per capita personal income in current dollars in the State of North Dakota, the United States and other states in the Northern Plains Region.

	<u>1980</u>	<u>1990</u>	<u>1995<sup>(1)</sup></u>	<u>1998<sup>(1)</sup></u>	<u>1999<sup>(1)</sup></u>	<u>2000<sup>(1)</sup></u>	<u>2001<sup>(1)</sup></u>	<u>2002<sup>(2)</sup></u>	<u>2002 Rank</u>
United States	\$9,940	\$18,667	\$23,255	\$26,893	\$27,880	\$29,760	\$30,413	\$30,941	--
North Dakota	7,641	15,320	18,899	22,716	23,046	24,990	25,798	26,982	37 <sup>th</sup>
Other Northern Plains States									
Minnesota	9,982	18,784	24,295	29,092	30,194	32,231	33,059	34,071	8 <sup>th</sup>
Iowa	9,346	16,683	20,985	24,555	24,989	26,540	27,225	28,280	32 <sup>nd</sup>
South Dakota	7,701	15,628	19,588	23,453	24,576	25,815	26,566	26,894	38 <sup>th</sup>
Montana	8,728	14,743	18,592	21,225	21,621	22,961	24,044	25,020	46 <sup>th</sup>

<sup>(1)</sup> Revised

<sup>(2)</sup> Preliminary

Source: Department of Commerce, Bureau of Economic Analysis.

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### ***Taxable Sales and Purchases***

Below is a table which sets forth the taxable sales and purchases within the State of North Dakota by sales category for the fiscal years 1998-2002.

<u>Sales Category</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Mining, Construction, & Manufacturing	\$ 547,830,200	\$ 719,239,494	\$ 692,292,638	\$ 532,281,142	\$ 540,338,418
Transportation, Communication, & Public Utilities <sup>(1)</sup>	530,697,438	498,876,964	520,249,975	659,367,459	599,641,011
Wholesale & Retail Trade	4,759,734,012	4,694,052,502	4,959,046,582	5,012,155,708	5,243,133,516
Services	655,596,265	659,377,754	683,652,769	685,894,218	708,635,488
Other	<u>42,366,524</u>	<u>53,571,680</u>	<u>46,123,347</u>	<u>46,209,173</u>	<u>60,128,993</u>
Total	<u>\$6,536,224,439</u>	<u>\$6,476,111,865</u>	<u>\$6,901,365,311</u>	<u>\$6,935,907,700</u>	<u>\$7,151,877,426</u>

<sup>(1)</sup> Includes Gas and Sanitary Services.

Source: North Dakota Sales and Use Tax statistical report, North Dakota Tax Department.

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**APPENDIX B**

**The Indenture and a Form of the Lease**

**\$15,145,000  
NORTH DAKOTA BUILDING AUTHORITY  
LEASE REVENUE REFUNDING BONDS  
2003 SERIES A**

**TRUST INDENTURE**

**AND**

**ASSIGNMENT OF LEASE RENTALS**

between

**NORTH DAKOTA INDUSTRIAL COMMISSION**  
acting in its capacity as the North Dakota Building Authority

and

**BANK OF NORTH DAKOTA**  
as Trustee

Effective as of March 5, 2003  
(Date of Initial Adoption November 13, 2002)

*Cook Wegner & Wike PLLP  
811 East Interstate Avenue, Suite B  
Bismarck, ND 58503  
Phone: (701) 255-1008  
Fax: (701) 255-6325  
E-mail: [cww@cwwbondlaw.com](mailto:cww@cwwbondlaw.com)*



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TRUST INDENTURE

THIS TRUST INDENTURE AND ASSIGNMENT OF LEASE RENTALS by and between the State of North Dakota acting by and through the INDUSTRIAL COMMISSION OF NORTH DAKOTA acting in its capacity as the NORTH DAKOTA BUILDING AUTHORITY, a governmental agency created by the laws of the State, and the BANK OF NORTH DAKOTA, a bank organized by and existing pursuant to the laws of the State and having its main office and place of business in the City of Bismarck, North Dakota.

WITNESSETH

WHEREAS, the Authority (such term, and each other capitalized term used herein, having the meaning set forth in Appendix A hereof) is a duly organized and existing instrumentality of the State under the Act; and

WHEREAS, the Authority issued on February 1, 1993, the State of North Dakota, North Dakota Building Authority Refunding Lease Revenue Bonds, 1993 Series A in the original principal amount of \$34,740,000 (the "**Prior Bonds**"), which refunded the State of North Dakota, North Dakota Building Authority Lease Revenue Bonds, 1990 Series A (State Board of Higher Education) in the original principal amount of \$25,830,000, 1990 Series B (North Dakota Department of Corrections and Rehabilitation) in the original principal amount of \$5,500,000, and 1990 Series C (Administrative Committee on Veterans' Affairs) in the original amount of \$1,405,000 (the "Refunded Bonds"); and

WHEREAS, the Authority is authorized, under the Act, to issue and sell its bonds for the purpose of refunding bonds previously issued, paying all costs of issuance and funding of reserves, and is authorized to pledge revenues as herein provided to a trustee to secure the payment of principal and interest on bonds and to enter into this Indenture with the Trustee for the benefit and security of the Bondholders; and

WHEREAS, the Authority has deemed it advisable to refund the Prior Bonds and to preserve the pledge of the lease revenues and real property security interests pledged to the Prior Bonds to the Bonds issued hereunder and to enter into this Indenture to secure the payment of the Bonds described in this Indenture, and has duly authorized and directed the issuance of such Bonds; and

WHEREAS, the proceeds of such Bonds, together with any other available funds, will be used to refund the Prior Bonds, fund the Reserve Fund and pay costs of issuance; and

WHEREAS, the Authority has acquired interests in the Projects; and

WHEREAS, as permitted by the Act, the Authority has entered into the Leases with the Agency providing for, among other items, rentals payable in amounts and at times which shall include amounts adequate to pay the principal of and interest on the Bonds when due; and

WHEREAS, the execution and delivery of this Indenture and the issuance of the Bonds have been in all respects duly and validly authorized by the Authority pursuant to the Bond Resolution; and

WHEREAS, the execution and delivery of this Indenture has been duly authorized by the Authority, and all conditions, acts and things necessary and required by the Constitution and laws of the State, or otherwise, to exist, to have happened or to have been performed precedent to and in the execution and delivery of this Indenture, and in the issuance of the Bonds, do exist, have happened or have been performed in regular form, time and manner; and

WHEREAS, the Trustee has accepted the trust created by this Indenture and in evidence thereof has joined in the execution hereof;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

GRANTING CLAUSES

That the Authority, in order to secure the payment of the principal of and interest on the Prior Bonds and the Bonds issued under this Indenture according to their tenor and effect and the performance and observance of each and all of the covenants and conditions herein and therein contained, whether now or hereafter existing and whether absolute or contingent, and for and in consideration of the premises and of the purchase and acceptance of the Bonds by the respective registered Owners thereof, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, executed and delivered pursuant to the Prior Bonds Indenture, the Granting Clauses thereof which are incorporated by reference as though fully set out herein, and by such presents did mortgage, grant, bargain, sell, assign, transfer, convey, and pledge a security interest in and a lien upon and set over, unto the Trustee and to its successor or successors in the trust thereby created and to its assigns forever:

I.

All the Authority's present and future interest in the Projects and any Additional Security, as defined and described herein.

II.

The reversion or reversions, remainder or remainders, in and to the interests in the Projects described in Granting Clause I hereof and each and every part thereof, together with the entire interest of the Authority in and to all and singular the tenements, hereditaments, easements, rights, privileges and appurtenances to the Projects belonging or in any wise appertaining thereto.

III.

All right, title and interest of the Authority as lessor under the Leases and all Basic Rent payable under Section 3.3 of the Leases and the Additional Rent payable under Section 3.5(d) of the Leases, due or to become due thereunder or any extension or renewal thereof.

IV.

All the (i) moneys, securities and investments in the Bond Fund, the Reserve Fund, the Repair and Replacement Fund, and the Administration Fund covenanted to be created and maintained under this Indenture, and (ii) accounts, contract rights, general intangibles, moneys and instruments arising therefrom or relating thereto and all proceeds and products of and accessions to any thereof.

V.

All proceeds from any property described in the Granting Clauses and any and all other interests in the Leases for the Projects of every name and nature from time to time hereafter by delivery or by writing of any kind assigned or transferred, or in which a security interest is granted, by the Authority or the Agency or by anyone on behalf of them or with their written consent, to the Trustee which is hereby authorized to receive any and all such interest in the Leases for the Projects at any and all times and to hold and apply the same subject to the terms hereof.

SUBJECT, however, to Permitted Encumbrances, all benefit, security interest in and protection granted by this Indenture shall be perfected by filing in the records of the Commission pursuant to NDCC §54-17.2-17.

TO HAVE AND TO HOLD all and singular the property interests hereby conveyed and assigned, or agreed or intended so to be, to the Trustee, its successor or successors in trust and its assigns, FOREVER.

IN TRUST NEVERTHELESS, upon the terms and trust herein set forth, for the equal and proportionate benefit, security and protection of all Owners of the Bonds issued or to be issued under and secured by this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any of the others.

PROVIDED, HOWEVER, that if the Authority, its successors or assigns, shall well and truly pay or cause to be paid the principal, premium, if any, of the Bonds and the interest due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient to pay the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof; then upon such final payment this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture to be and remain in full force and effect.

NOW, THEREFORE, it is mutually covenanted and agreed for the equal and proportionate benefit of all Owners of the Bonds as follows:

ARTICLE I  
DEFINITION OF CERTAIN TERMS

Section 1.01. Defined Terms. Definitions used herein are defined in Appendix A hereto.

Section 1.02. Characteristics of Certificate. Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include: (1) a statement that the person or persons making such certificate or opinion have read such covenant or condition and the definitions herein relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate made or given by an officer of the Authority or the Agency may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by Counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous, or, in the exercise of reasonable care, should have known that the same were erroneous. Any such certificate or opinion made or given by Counsel may be based (insofar as it relates to factual matters or information with respect to which is in the possession of the Authority or the Agency) upon the certificate or opinion of or representations by an officer or officers of the Authority or the Agency, unless such Counsel knows that the certificate or opinion or representations with respect to the matters upon which the opinion may be based as aforesaid are erroneous, or, in the exercise of reasonable care, should have known that the same were erroneous.

Section 1.03. Additional Provisions as to Interpretation. All references herein to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; and the words "herein", "hereof", "hereunder" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section or subdivision hereof.

ARTICLE II  
THE BONDS

Section 2.01. Authorization and Terms of Bonds. There is hereby established an issue of Bonds of the Authority to be issued as a single series of Bonds and to be known and designated as "North Dakota Building Authority Lease Revenue Refunding Bonds, 2003 Series

A". The aggregate principal amount of Bonds that may be authenticated and delivered under this Indenture is limited to and shall not exceed \$16,285,000, except as provided in Sections 2.06, 2.07, or 2.11 hereof.

The Bonds shall be dated as provided in Section 2.08 hereof, shall bear interest from their date until payment of principal has been made or provided for, payable at the rates per annum as shown below.

The Bonds shall mature on June 1 in each of the years and in the principal amounts, either as serial bond maturities or as sinking fund installments if all or a part of the Bonds are designated as Term Bonds, and shall bear interest at the rates per annum as set forth in Exhibits D and E hereto.

The Bonds shall be issued as fully registered Bonds without coupons in denominations of \$5,000 and any integral multiple thereof. The Bonds shall be numbered in such manner, as the Registrar shall determine.

The Bond shall initially be issued as book-entry only bonds with one certificate issued for each stated maturity of the Bonds in the aggregate principal amount equal to the principal amount of that maturity set forth above. The Bonds shall be initially registered in the name of Cede & Co., as nominee of the Depository Trust Company, New York, New York ("DTC"), and the Trustee shall treat the record owner as the absolute owner of the Bonds. So long as Cede & Co. is the registered Owner of the Bonds, references herein to the Owner, Bondholder or Holder shall mean Cede & Co. and shall not mean the beneficial owners of the Bonds.

The Authority hereby authorizes any of its Authorized Officers to execute the Issuer Blanket Letter of Representations and to obtain from DTC an acknowledgment stating that DTC and its participants agree that the State and the Authority shall have no liability for the failure of DTC to perform its obligations to the participants as set forth in the "Operational Arrangements," "Rules" or "Procedures" of DTC; nor shall the State or the Authority be liable for the failure of any participant to perform any obligation the participant may incur to a beneficial owner of any Bond.

Interest on the Bonds is payable on June 1 and December 1 each year commencing December 1, 2003 and at Maturity and at the same respective rates per annum on overdue installments of interest (to the extent that the payment of such interest shall be legally enforceable).

The interest payable on each Interest Payment Date for the Bonds shall be that interest which has accrued through the last day of the last complete Interest Period immediately preceding the Interest Payment Date or, in the case of the Maturity of the Bonds, the last day preceding the date of such Maturity.

The principal of and premium, if any, on the Bonds shall be payable at the Principal Office of the Paying Agent, upon presentation and surrender of the Bonds. Payment of interest on any Bond shall be made to the Person who is the Owner thereof at 5:00 p.m. in the city in which the Principal Office of the Registrar is located on the Record Date for such Interest Payment Date by check or draft drawn upon the Paying Agent and mailed by the Paying Agent or by wire transfer in immediately available funds to any Holder, at its option, according to wire transfer instructions given to the Paying Agent in writing on or before a Record Date who agrees to pay the wire transfer service charge for such purpose in accordance with procedures prescribed by the Paying Agent. All payments of principal of and interest on the Bonds shall be made in lawful money of the United States of America.

The Bonds are subject to redemption before their Stated Maturities upon the terms and conditions and at the Redemption Prices specified in Article III hereof. Subject to the provisions of this Indenture, the Bonds shall be in substantially the form set forth in Section 2.04 hereof.

Section 2.02. Purposes of Issuance of Bonds. The Bonds are being issued (i) to refund the Prior Bonds, (ii) to deposit an amount in the Reserve Fund, and (iii) to pay Costs of Issuance.

Section 2.03. Deposit of Bond Proceeds and Transferred Proceeds. The proceeds derived from the sale of the Bonds, including any accrued interest on the Bonds paid as part of the purchase price thereof, less an underwriter's discount of \$113,587.50, shall be deposited with the Trustee as follows:

(a)	To the Bond Fund (accrued interest, if any)	\$	0.00
(b)	To the Reserve Fund	\$	1,514,500.00
(c)	To the Administration Fund (net of \$58,829.43 insurance premium)	\$	102,764.67
(d)	To the Bank of North Dakota for deposit in the Prior Bonds Bond Fund pursuant to the Prior Bonds Indenture	\$	19,995,933.75

Section 2.04. Form of Bonds. The Bonds, the certificate of authentication and the assignment shall be in substantially the form(s) of Exhibit A attached hereto with such variations, omissions and insertions as are incidental to their numbers, denominations, maturities, interest rates, redemption provisions and other details as permitted or required by law or by this Indenture.

Section 2.05. Execution, Authentication and Delivery. The Bonds shall be executed on behalf of the Authority by the manual or facsimile signatures of the Governor of the State and the seal of the Commission or a facsimile thereof shall be thereunto affixed and attested by the manual or facsimile signature of the Secretary of the Commission. In case any officer who shall have signed (whether manually or by facsimile) any of the Bonds shall cease to be such officer of the Authority or the Commission, as the case may be, before the Bonds have been authenticated or delivered or sold, such Bonds with the signature thereto affixed may nevertheless be authenticated and delivered, and may be sold by the Authority, as though the person who signed such Bonds had remained in office.

At any time and from time to time after the execution and delivery of this Indenture, the Authority may deliver Bonds executed by the Authority to the Trustee for authentication; and upon Authority Certificate the Trustee shall authenticate and deliver such Bonds as in this Indenture provided and not otherwise.

No Bond shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Bond a certificate of authentication substantially in the form provided for in Exhibit A attached hereto executed by the Trustee by the manual signature of one of its authorized officers, and such certificate upon any Bond shall be conclusive evidence that the Bond has been duly authenticated and delivered hereunder. It shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds.

Section 2.06. Temporary Bonds. Pending the preparation of definitive Bonds, the Authority may execute, and upon Authority Certificate the Trustee shall authenticate and deliver, temporary Bonds which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Bonds in lieu of which they are issued, in fully registered form without coupons, with such appropriate insertions, omissions, substitutions and other variations as the officer of the Authority executing the temporary Bonds may determine, as evidenced by his signing of the temporary Bonds.

If temporary Bonds are issued, the Authority will cause definitive Bonds to be prepared without unreasonable delay. After the preparation of definitive Bonds, the temporary Bonds shall be exchangeable for definitive Bonds upon surrender of the temporary Bonds at the Principal Office of the Registrar, without charge to the Owners thereof. Upon surrender for cancellation of any one or more temporary Bonds, the Authority shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Bonds of authorized denominations of like series, Stated Maturities and interest rates. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefits under this Indenture as definitive Bonds.

Section 2.07. Mutilated, Destroyed, Lost and Stolen Bonds. If the Authority, the Registrar and the Trustee receive evidence satisfactory to them of the ownership of and the loss, theft, destruction or mutilation of any Bond and, in the case of a lost, stolen or destroyed Bond, indemnity satisfactory to them, and in the case of a mutilated Bond, upon surrender and cancellation of the Bond, then in the absence of notice to the Authority, the Registrar or the Trustee that such Bond had been acquired by a bona fide purchaser, the Authority shall execute, and the Trustee shall authenticate and deliver, a new Bond of like tenor, principal amount, series, Stated Maturity and interest rate in lieu of the lost, stolen, destroyed or mutilated Bond; provided, that if the lost, stolen, destroyed or mutilated Bond shall have matured or shall have been called for redemption, in lieu of executing and delivering a new Bond as aforesaid, the Authority may pay the Bond. Any such new Bond shall bear a number not previously assigned to a Bond. The applicant for any such new Bond shall comply with the reasonable regulations prescribed by the Authority, the Registrar and the Trustee and shall be required to pay all expenses and charges of the Authority, the Registrar and the Trustee in connection with the issuance of the new Bond. All Bonds so surrendered to the Trustee shall be canceled by it, and evidence of the cancellation shall be given to the Authority.

Every new Bond issued pursuant to this Section in lieu of any destroyed, lost or stolen Bond shall constitute an original additional contractual obligation of the Authority, whether or not the destroyed, lost or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued and authenticated hereunder. Neither the Authority, the Trustee nor the Registrar shall be required to treat both the original Bond and any duplicate Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same.

All Bonds shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions of this Section are exclusive with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds.

Section 2.08. Interest Rights Preserved; Dating of Bonds. Each Bond delivered under this Indenture upon transfer or exchange for, or in lieu of, any other Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond, and each such Bond shall be so dated that neither gain nor loss in interest shall result from such transfer, exchange or substitution. Each Bond shall be dated by the Trustee as of the last Interest Payment Date preceding the date of authentication to which interest on the Bond has been paid or made available for payment, unless (i) the date of authentication is an Interest Payment Date to which interest has been paid or made available for payment, in which case such Bond shall be dated as of the date of authentication, or (ii) the date of authentication is before December 1, 2003, in which case such Bond shall be dated as of March 5, 2003.

Section 2.09. Persons Deemed Owners. The Authority, the Trustee, each Paying Agent, the Registrar and any other agent of the Authority may treat the Person in whose name any Bond is registered on the Register as the Owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the Authority, the Trustee, any Paying Agent, the Registrar nor any other agent of the Authority shall be affected by notice to the contrary.

Section 2.10. Cancellation. All Bonds surrendered for payment, redemption, exchange or transfer, if surrendered to the Trustee, shall be promptly canceled by it, and, if surrendered to any Person other than the Trustee, shall be delivered to the Trustee and, if not already canceled, shall be promptly canceled by it. The Authority may at any time deliver to the Trustee for cancellation any Bonds previously authenticated and delivered hereunder, which Bonds so delivered shall be promptly canceled by the Trustee. The Authority authorizes and directs the Trustee to destroy any Bonds surrendered to it for cancellation and to furnish certification evidencing such destruction to the Authority.

Section 2.11. Registration, Transfer and Exchange of Bonds. The Authority shall cause to be kept at the Principal Office of the Registrar a Register, which subject to such reasonable regulations as it may prescribe, the Authority shall provide for the registration and transfer of Bonds.

The Registrar shall adhere, with respect to transfer of Bonds, to the standards for efficiency in transfer agent performance established in Securities and Exchange Commission Rules 17Ad-2 through 17Ad-7 under the Securities Exchange Act of 1934, including Rule 17Ad-2, which requires that registered transfer agents process at least 90% of routine items (such as certificates presented for transfer) received during any month within three business days of their receipt.

Upon surrender for transfer or exchange of any Bond at the Principal Office of the Registrar, the Authority shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees, or in exchange for the Bond surrendered, one or more new fully registered Bonds of authorized denomination or denominations of like aggregate principal amount having the same series, Stated Maturity and interest rate and bearing numbers not previously assigned to Bonds.

All Bonds executed, delivered and authenticated pursuant to the preceding paragraph shall be registered in the name of the Owner presenting the Bond for exchange or the designated transferee, as the case may be, on the Register on the date of such transfer or exchange.

All Bonds surrendered upon any exchange or transfer provided for in this Indenture shall be promptly canceled by the Trustee and thereafter disposed of pursuant to Section 2.10 hereof.

All Bonds issued upon any transfer or exchange of Bonds shall be the valid obligations of the Authority evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such transfer or exchange or in lieu of which such Bonds were issued.

Every Bond presented or surrendered for transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Registrar, duly executed, by the Owner thereof or his attorney duly authorized in writing, with signature guarantees satisfactory to the Registrar.

The Authority and the Trustee may require payment by the Bondholder of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges under Section 2.06 hereof not involving any transfer. All other expenses incurred by the Authority, the Trustee or the Registrar in connection with any transfer or exchange of Bonds shall be paid by the Authority.

The Authority shall not be required to transfer or exchange any Bond, (i) during a period beginning at the opening of business 15 days before any selection of Bonds for redemption and ending at the close of business on the day of such selection, (ii) selected for redemption in whole or in part, or (iii) during the period beginning on the Record Date and ending on the next succeeding Interest Payment Date. The Trustee shall give the Registrar prompt notice of the commencement of any period specified in the respective clauses of the preceding sentence.

### ARTICLE III REDEMPTION; PURCHASE OF BONDS

Section 3.01. Optional Redemption of Bonds. The Bonds are not subject to call and redemption prior to maturity, except as described under Section 3.02(b) below.

Section 3.02. Sinking Fund Redemption of Bonds and Extraordinary Optional Redemption.

- (a) Sinking Fund Redemption of Term Bonds. Any Term Bond or Bonds in principal amount set out in any Exhibit E attached hereto is or are subject to sinking fund redemption in part by lot at a Redemption Price equal to 100% of the principal amount thereof together with accrued interest thereon to the Redemption Date on June 1 of the years and in the principal amounts set out in any Exhibit E attached hereto.

Within ten (10) days before the thirtieth (30th) day prior to each Redemption Date, the Trustee will proceed to select for redemption (by lot in such manner as the Trustee may determine) from all Outstanding Term Bonds a principal amount of such Term Bonds equal to the aggregate principal amount of such Term Bonds redeemable on the Redemption Date and will call such Term Bonds or portions thereof (\$5,000 in principal amount or any integral multiple thereof) for redemption on such Redemption Date and give notice of such call at the time and in the manner provided by Section 3.04 hereof.

In the event that Term Bonds are purchased or redeemed at the option of the Authority pursuant to Section 3.02(b) hereof, such Term Bonds may, at the option of the Authority, be applied as a credit against any subsequent redemption requirement for the respective series of Bonds under this Section 3.02(a). Such credit shall equal the principal amount of such Term Bonds purchased or redeemed. The Authority shall notify the Trustee in writing not less than forty-five days prior to the Redemption Date of its election to apply such Term Bonds as a credit and the Trustee shall reduce the amount of the respective Term Bonds to be paid or redeemed on the Redemption Date specified by the Authority. If the Authority fails to notify the Trustee at or before the time required above, the Authority shall not be permitted to make such reduction in the redemption payable on such Redemption Date.

- (b) Extraordinary Optional Redemption. In the event of damage, destruction or Condemnation of a Project or any portion thereof, which is leased to an Agency pursuant to a Lease, Bonds shall be subject to redemption prior to their Stated Maturity, in whole or in part, on any Business Day, at a Redemption Price equal to 100% of the principal amount of such Bonds or portions thereof to be redeemed, together with accrued interest thereon to the Redemption Date, in the principal amount equal to moneys which are deposited in or transferred to the Bond Fund pursuant to Section 4.4 of the Lease. The Trustee shall apply any such amounts described above to the redemption of the Bonds in accordance with the applicable provisions of such Section and this Section 3.02(b) on the first day of the month after



which proper notice of redemption has been given; provided, however, that such amount to be applied to such redemption shall be rounded to the next lower \$5,000 multiple.

The Bonds to be redeemed in accordance with this Section 3.02(b) shall be selected by the Authority pursuant to an Authority Certificate in the manner set forth in Section 3.03 hereof.

Section 3.03. Selection of Bonds for Redemption. The Outstanding Bonds subject to redemption shall, unless otherwise directed by the Authority, be redeemed on a pro rata basis among all Outstanding Bonds. If less than all of the Outstanding Bonds of a serial maturity are to be redeemed, the particular Bonds to be redeemed shall be selected by lot in such manner as the Trustee shall deem fair and appropriate, in denominations not less than \$5,000.

The Trustee shall promptly notify the Authority, the Registrar and each Paying Agent in writing of the Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Bonds shall relate, in the case of any Bond redeemed or to be redeemed only in part, to the portion of the principal of such Bond which has been or is to be redeemed.

Section 3.04. Notice of Redemption. Notice of redemption shall be given by the Trustee by registered or certified mail with return receipt requested, postage prepaid, mailed not less than thirty (30) days before the Redemption Date to each Owner of Bonds to be redeemed at the address of such Owner appearing in the Register; but neither failure to give such notice by mail nor defect in any notice so mailed shall affect the validity of the proceedings for redemption of any Bond not affected by such failure or defect.

All notices of redemption shall state:

- (a) the Redemption Date,
- (b) the Redemption Price,
- (c) the name and series designation of the Bond to be redeemed, the principal amount of Bonds to be redeemed, and, if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,
- (d) that, on the Redemption Date, the Redemption Price of and accrued interest on each such Bond will become due and payable and that the interest on each such Bond shall cease to accrue on and after such date,
- (e) the place or places where such Bonds are to be surrendered for payment of the Redemption Price thereof and accrued interest thereon, and
- (f) if it be the case, that such Bonds are to be redeemed by the application of certain specified trust moneys and for certain specified reasons.

Notice of redemption having been given as aforesaid and moneys sufficient to pay the Redemption Price and accrued interest thereon to the Redemption Date having been deposited with the Trustee on or prior to the Redemption Date: the Bonds so to be redeemed shall on the Redemption Date, become due and payable at the Redemption Price specified plus accrued interest thereon to the Redemption Date and on and after such date (unless the Authority shall default in the payment of the Redemption Price and accrued interest) such Bonds shall cease to bear interest. Upon surrender of any such Bonds for redemption in accordance with such notice, such Bond shall be paid at the Redemption Price thereof plus accrued interest to the Redemption Date. Installments of interest due on or before the Redemption Date shall continue to be payable to the applicable Bondholder.

Any Bond which is to be redeemed only in part shall be surrendered to the Registrar (with, if the Registrar so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Registrar, duly executed by the Owner thereof or his attorney duly authorized in writing) and the appropriate officers of the Authority shall execute and the Trustee shall authenticate and deliver to the Owner of such Bond, without service charge, a new Bond or Bonds of any authorized denominations, of the same series and having the same Stated Maturity and interest rate, as requested by such Owner, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bond so surrendered.

In addition to the foregoing notice, further notice shall be given by the Trustee as set out below, but no defect in such further notice nor any failure to give all or any portion of such further notice shall in any manner affect the validity of the proceeding for redemption of any Bonds if notice thereof is given as above prescribed.

- (a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the Maturity date of each Bond being redeemed; and (v) any other descriptive information needed to identify accurately the Bonds being redeemed.
- (b) Each further notice of redemption shall be sent at least 30 days before the Redemption Date by telecopy, registered or certified mail or overnight delivery service to:

The Depository Trust Company  
Attention: Supervisor, Call Notification Department  
55 Water Street  
50<sup>th</sup> Floor  
New York, NY 10041-0099  
FAX: (212) 855-7232, 7233, 7234, 7285

and if the Depository Trust Company is not the sole depository then to all other registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds designated to the Trustee by the Authority. Such notice shall also be sent to Moody's and S & P and to any other nationally recognized information services as designated by the Authority to the Trustee.

- (c) 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.

No notices of redemption under this Section 3.04 other than any redemption of Term Bonds shall be sent by the Trustee until funds sufficient for such redemption have been deposited to the credit of the Bond Fund or until arrangements satisfactory to the Trustee have been made for such deposit of funds.

Section 3.05. Purchase of Bonds. The Authority may, at any time, authorize and direct the Trustee to purchase Bonds in the open market from available moneys in the Bond Fund, such purchases to be made at a price not in excess of the principal amount thereof plus accrued interest thereon to the purchase date. In addition, the Authority may, from time to time, direct the Trustee to request the submission of tenders requesting such submission prior to making the purchases authorized pursuant to this Section 3.05. The Authority may specify the maximum and minimum period of time which shall transpire between the date upon which such notice is to be given and the date upon which such tenders are to be accepted or may authorize the Trustee to determine the same in its discretion. No tenders shall be considered or accepted at any price exceeding the maximum price (which shall not exceed the price specified in the first sentence of this paragraph) specified by the Authority for the purchase of the Bonds. The Trustee shall accept bids with the lowest price and, in the event the moneys available for purchase pursuant to such tenders are not sufficient to permit acceptance of all tenders and if there shall be tenders at an equal price above the amounts of moneys available for purchase, then the Trustee shall determine in its discretion which of the Bonds tendered shall be purchased.

#### ARTICLE IV

(RESERVED)

#### ARTICLE V

##### FUNDS; DISPOSITION OF PLEDGED REVENUES

Section 5.01. Bond Fund. The Authority covenants that it will establish and maintain or cause to be established and maintained, so long as any of the Bonds are Outstanding, with the Trustee a separate Fund to be designated the Bond Fund which shall be held by the Trustee in trust for application only in accordance with the provisions of this Indenture.

The Trustee shall deposit into the Bond Fund (i) the amount of Bond proceeds representing accrued interest paid on the Bonds on the date of purchase by the Original Purchaser, (ii) payments of Basic Rent received by the Trustee pursuant to the Leases, (iii) any Balance remaining in the Administration Fund relating to the Bonds as required by Section 5.06 hereof, (iv) investment earnings as provided in Section 5.03 hereof, (v) the money authorized to be transferred from the Reserve Fund hereunder, (vi) money transferred pursuant to Sections 3.01 and 3.02 hereof for redemption of the Bonds, (vii) such amount as necessary to pay at the earliest redemption date after the Bond closing, the principal and any accrued interest on any interim borrowings, and (viii) any other moneys required by the terms of this Indenture to be deposited in the Bond Fund or paid to the Trustee under the Leases or this Indenture for credit to the Bond Fund.

Any Balances in the Bond Fund shall be used for the payment when due of the principal of and interest on the Bonds and to pay the principal of and interest on the Bonds duly called for redemption in accordance with Article III hereof. Amounts required for such purpose shall be applied by the Trustee therefor without further authorization or direction.

Section 5.02. Reserve Fund. The Authority covenants that it will establish and maintain, so long as any of the Bonds are Outstanding, with the Trustee a Fund to be designated the Reserve Fund. The Trustee shall, upon delivery of the Bonds to the Original Purchaser thereof from Bond proceeds, credit to the Reserve Fund the amounts designated in Section 2.03 hereof.

The value of Permitted Investments credited to the Reserve Fund shall be determined by the Trustee as of each Interest Payment Date. In the event the Balance in the Reserve Fund is less than the Reserve Fund Requirement, the Trustee will deposit amounts paid to the Trustee pursuant to Section 3.5(d) of the Leases. In the event the Balance in the Reserve Fund is greater than the Reserve Fund Requirement, the Trustee shall transfer such excess to the Rebate Fund or Bond Fund. Any interest or profit derived from investments shall be credited to the Rebate Fund or the Bond Fund at the direction of the Authority.

The Reserve Fund shall be used and applied solely for the payment of Debt Service on the Bonds, except as otherwise provided in Section 5.08(d) hereof, upon transfer to the Bond Fund at any time when the Balance in the Bond Fund is insufficient to meet the requirements specified herein for payment of the principal of and interest on the Bonds; provided, however, that on the Stated Maturity or any Redemption Date of the Bonds, the moneys in the Reserve Fund may be applied to the payment of the maturing principal amount of such Bonds or to the Redemption Price (i) to the extent that such application will not reduce the Balance of the Reserve Fund below an amount equal to the Reserve Fund Requirement, or (ii) with respect to the retirement or redemption of Bonds within two years of the final Maturity of all Bonds, to the extent that such application will not reduce the Balance of the Reserve Fund below an amount at least equal to

the remaining principal amount of all then Outstanding Bonds, whether or not other moneys are available for the payment of such maturing or redeemed Bonds; and provided, further, that at any time when the aggregate of the Balance in the Bond Fund and the Reserve Fund equal an amount sufficient to redeem or retire at maturity all of the then Outstanding Bonds at the next Redemption Date or Stated Maturity, as the case may be, applicable to such Bonds, said Balance may thereafter be applied to such redemption in advance of the Stated Maturity of such Bonds, or applied to such payment of Bonds at their Stated Maturity, as the case may be, and whether or not other moneys are available for such redemption or payment.

The Trustee, at the direction of the Authority, may make a pro rata reduction in the Reserve Fund Requirement on deposit in the Reserve Fund to conform with the ratio of the principal amount of Bonds outstanding to the original principal amount of the Bonds, provided that the Authority has confirmation that any rating on the Bonds will not be adversely affected thereby and the consent to such reduction from any insurer of the Bonds, and provided further that said amounts are not scheduled to pay debt service on any maturity of the Bonds.

Section 5.03. Investment of Funds. Moneys on deposit to the credit of the Funds shall be invested by the Trustee in Permitted Investments. The Trustee may make any and all investments permitted under this Section through its own investment department. Obligations so purchased shall be deemed at all times to be a part of the respective Fund, but may from time to time be sold or otherwise converted into cash, whereupon the proceeds derived from such sale or conversion shall be credited to such Fund. Any interest accruing or any profit realized from such investment shall be credited to the specific Fund as specified elsewhere in this Indenture. However, investment income credited to the Bond Fund shall be credited against the amount of Basic Rent required to be deposited in the Bond Fund under Section 3.3 of the Leases prior to the next Interest Payment Date. The Trustee shall redeem or sell, at the best price obtainable, any obligations so purchased, whenever it shall be necessary to do so in order to provide moneys to meet any payment from the Bond Fund. The Authority shall direct the Trustee to, or in the absence of direction the Trustee shall, invest and reinvest the moneys in any Fund or any combination of Funds in Permitted Investments so that the maturity date or date of redemption at the option of the holder thereof shall coincide as nearly as practicable with the times at which moneys are needed to be so expended. If such Permitted Investments include any book entry government securities, the Trustee shall have such Permitted Investments held in the name of the Trustee at the appropriate Federal Reserve Bank. The Trustee shall sell at the best price obtainable in accordance with usual and customary trust department procedures, or present for redemption, any Permitted Investments purchased by it as an investment whenever it shall be necessary to provide moneys to meet any payment from such Fund. Neither the Trustee nor the Authority shall be liable for any loss resulting from any such investment, nor from failure to preserve rights against endorsers or other prior parties to instruments evidencing any such investment. Investment of funds pursuant to this Section shall be limited as to amount and Yield of investment in such manner that no part of the Outstanding Bonds shall be deemed "arbitrage bonds" under Section 148 of the Internal Revenue Code and regulations promulgated thereunder, and in accordance with the Tax Certificate.

Section 5.04. Transfer of Permitted Investments. Whenever any transfer is required by this Indenture to be made from any Fund to any other Fund, the Trustee may use Permitted Investments included in the Balance of the former to the extent necessary to make such transfer, but only to the extent such Permitted Investments are permissible investments for the Fund to which they are to be transferred. The amount of any such transfer of Permitted Investments shall be the value of Permitted Investments determined with respect thereto as of the date of transfer.

Section 5.05. Termination. When no Bonds remain Outstanding, the Trustee shall transfer to the Authority, or to the order of the Authority, the Balances in all Funds if, and to the extent that, such Balances are in excess of amounts needed to pay principal of and interest on the Bonds, any amount required to be rebated to the United States and the Bond Fees. To the extent that such Balances are needed to pay such amounts or fees, the Trustee shall retain such Balances hereunder and pay such amounts or fees to the Persons to whom such amounts are due and payable as provided hereunder. In the event that any portion or all of the Balances in the Funds payable to the Authority pursuant to this Section consist of Permitted Investments which are payable solely to the Trustee and cannot be effectively transferred to the Authority, the Trustee shall continue to hold such Permitted Investments under this Indenture on behalf of the Authority until such time as such securities can be transferred to the Authority or amounts payable thereunder received, whether by acceleration at the option of the holder thereof, at maturity or otherwise, all at the direction of an Authorized Officer.

Section 5.06. Administration Fund. The Authority covenants that it will establish and maintain, so long as any of the Bonds are Outstanding, with the Trustee a Fund to be designated the Administration Fund. The Trustee shall, upon delivery of the Bonds to the Original Purchaser thereof and from Bond proceeds, credit to the Administration Fund the amount specified in Section 2.03 hereof. The Trustee shall also credit to the Administration Fund all amounts received pursuant to Section 3.5(a), (b) and (c) of the Leases.

Amounts in the Administration Fund shall, upon receipt by the Trustee of Authority Certificates directing the payment to designated payees in designated amounts for stated services, or in the case of reimbursement of the Authority for its expenses, to the Authority, and in each case certifying that such payment is authorized by this Indenture, be used for and applied only to pay Costs of Issuance, Administrative Expenses and Bond Fees or to reimburse another Fund or other source of the Authority, for the previous payment of such Costs of Issuance, Administrative Expenses or Bond Fees incurred before, on or after the date of delivery of the Bonds. Payments from the Administration Fund for such purposes shall be made by check or draft, but only in accordance with such Authority Certificates.

The Balance in the Administration Fund shall also be applied to the following purposes in the following order of priority: to remedy deficiencies in the Bond Fund; to remedy deficiencies in the Rebate Fund; to pay Costs of Issuance, Bond Fees and Administrative Expenses; and any reimbursement to the Agency.

When directed by the Authority, any Balance remaining in the Administration Fund from the Bond proceeds deposited to the credit of the Administration Fund pursuant to Section 2.03 hereof shall be deposited by the Trustee in the Bond Fund and applied as provided in Section 5.01 hereof.

Pending transfers from the Administration Fund, the moneys therein shall be invested in Permitted Investments, and any earnings on or income from such investments shall be deposited in the Bond Fund as provided in Section 5.01 hereof.

Section 5.07. Building Authority Fund. All Funds created by this Indenture shall be Funds within the Building Authority Fund as established by NDCC §54-17.2-20.

Section 5.08. Rebate Fund. The Authority covenants that it will establish and maintain, so long as any Bonds are Outstanding, with the Trustee a separate Fund to be designated the Rebate Fund. The Trustee shall credit to the Rebate Fund any Excess Earnings.

- (a) The Authority shall calculate or cause to be calculated by Counsel, by an Independent Accountant or by a rebate analyst acceptable to the Trustee at the times set forth below, the Excess Earnings and the Trustee shall within 30 days thereafter transfer to the Rebate Fund the amount equal to (i) the Excess Earnings, plus (ii) investment income attributable to the Excess Earnings, if any. In order to comply with this Section 5.08, the Trustee is authorized to obtain such opinions of Bond Counsel, reports of accountants and certificates of the Authority, and rely on the information contained in such reports or certificates which may be necessary for the purpose of this calculation. The expenses incurred by the Authority or the Trustee shall be borne or reimbursed by the Agency and paid as Additional Rent.
- (b) No determination of Excess Earnings shall be made with respect to the Bond Fund as long as the Bond Fund is depleted annually except for an amount not to exceed the greater of one-twelfth of annual Debt Service or one year's earnings on the Bond Fund.
- (c) The Trustee, acting on behalf of the Authority, shall make installment payments of the Excess Earnings at the times and in the amounts required by the Internal Revenue Code.
- (d) In the event that (i) insufficient moneys are credited to the Rebate Fund to make any rebate or other payment required by subsection (c) hereof, and (ii) the Trustee shall not have received an Opinion of Bond Counsel, filed with the Trustee within five Business Days after the occurrence of the event described in clause (i) above, to the effect that failure to make such rebate or other payment will not cause the interest on the Bonds to be subject to income taxation under the Internal Revenue Code, the Trustee shall withdraw immediately the amount of any such deficiency from the following Funds in the following order of priority:
  - (1) The Administration Fund
  - (2) The Reserve Fund
  - (3) The Bond Fund

In the event that the Trustee receives the opinion of Bond Counsel to the effect that all or a part of the Excess Earnings are not required to be rebated to the United States, the Trustee shall transfer any such amount held in the Rebate Fund to the Bond Fund, which amount shall be a credit against the next payment of Rent. Notwithstanding any provision of this Section, if the Authority shall provide to the Trustee an Opinion of Bond Counsel that any specified action required under this Section is no longer required or that some further or different action is required to maintain or assure the exclusion from federal gross income of interest with respect to the Bonds, the Trustee and the Authority may conclusively rely on such Opinion in complying with the requirements of this Section, and the provisions herein shall be deemed to be modified to that extent.

Section 5.09. Repair and Replacement Fund. The Authority covenants that it will establish and maintain with the Trustee a Fund to be designated the Repair and Replacement Fund if and to the extent it receives Net Proceeds of insurance or Condemnation awards.

Moneys held in the Repair and Replacement Fund will be applied by the Trustee to the payment of the costs of repair, replacement or restoration upon such terms as the Trustee may reasonably require, if the Agency has elected to repair or restore the Project as provided in Section 4.4 of the applicable Lease. Any earnings on or income from the investment of moneys in the Repair and Replacement Fund shall be retained therein and expended for costs of repair, replacement or restoration. Any balance remaining in the Repair and Replacement Fund after the payment of all costs of any repair, replacement or restoration shall be transferred to the Bond Fund and used to pay the principal of the Bonds including the redemption of Term Bonds.

## ARTICLE VI PARTICULAR COVENANTS OF THE AUTHORITY

The Authority covenants and agrees, so long as any of the Bonds shall be Outstanding and subject to the limitations on its obligations herein set forth, that:

Section 6.01. Payment of Bonds. It will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture and the Bond Resolution and in each and every Bond executed, authenticated and delivered hereunder; will pay or cause to be paid, solely from the Basic Rent, any pledged net revenues and income of the Projects, the principal of, premium, if any, and interest on every Bond issued hereunder on the dates, at the places and in the manner prescribed in the Bonds in any coin or currency which, on the respective dates of payment is legal tender for the payment of public and private debts; and will cause any pledged net revenues and income to be deposited with the Trustee prior to the due date of each installment of principal and interest and prior to the Maturity of any Bond in amounts sufficient to pay such principal or interest due on the Bond; provided, however, that the principal of and interest on any Bond is not and shall not be deemed to represent a debt or pledge of the faith or credit or constitute an obligation of the State or grant to the Owner of any Bond any right to have the State or the Authority levy any taxes or appropriate any funds to the payment of principal of or interest on the Bonds, such payment to be made solely and only out of the revenues and income to be produced and received from the Basic Rent, any pledged net revenues and income of the Projects, those moneys held by the Trustee hereunder and hereby appropriated to such payment, and/or any other funds available and authorized by law.

Section 6.02. Appropriation Request. It will, upon notification from the Trustee, request that the Legislative Assembly of the State include in the executive budget of the State sufficient moneys for compliance with its continuing disclosure undertaking and for the

payment of Rent pursuant to the Leases, if the Agency has failed to comply with the requirements of Section 3.13 of the Leases and if the amounts available to the Trustee will not be sufficient to pay the principal of and interest on the Bonds when due.

Section 6.03. Powers of the Authority. It is duly authorized under the Constitution and laws of the State to acquire, install, renovate, construct and lease the Projects, to issue and sell the Bonds, to refund the Prior Bonds, to execute this Indenture and the Bond Purchase Agreement and assign and pledge to the Trustee the Trust Estate, including any pledged net revenues and income of the Projects, and to make the covenants as herein provided. All necessary action and proceedings on its part to be taken for the creation and issuance of the Bonds, the refunding of the Prior Bonds, and the execution and delivery of this Indenture and the Bond Purchase Agreement have been duly and effectively taken and the Bonds in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the Authority in accordance with their terms.

Section 6.04. Title or Other Real Property Interest and Possession. It is lawfully possessed of the Projects, subject only to the provisions of the Act. Title to or other legally sufficient real property interest in the Projects, including the Sites and any Additional Security, is vested in the Authority. There is no pledge of or lien or charge upon any pledged revenues or income of the Projects pursuant to the Leases other than the pledge and lien granted or assigned to the Trustee by this Indenture.

Section 6.05. Payment of Lawful Charges. It will, from time to time and before the same become delinquent, pay or cause the Agency to pay and discharge all taxes, assessments, governmental charges and claims for rent, royalties, labor, materials or supplies which if unpaid might by law become a lien or charge upon the Projects, the Sites, or any pledged revenues and income therefrom superior to, or which might interfere with, any pledge of and lien on the Trust Estate, including any pledged revenues and income of the Projects, and covenants and security granted hereby; provided, however, that no such tax, assessment, charge or claims shall be required to be paid if the Authority shall not have funds legally available therefor or so long as the Authority or the Agency shall in good faith contest the validity thereof and provide security satisfactory to the Trustee against enforcement and for payment thereof.

Section 6.06. To Maintain the Projects. It will not do or suffer to be done any act or thing whereby the Projects might or could be encumbered or the usefulness thereof impaired, and will at all times cause the Projects and the machinery, equipment, and the Sites thereof to be maintained, preserved and kept in good condition, repair and working order and from time to time cause to be made, from funds legally available therefor, all necessary renewals, repairs, replacements and alterations.

Section 6.07. Concerning the Leases. It will not modify or amend or consent to modification or amendment of the provisions of the Leases without the consent and approval of the Trustee. The consent of the Trustee may be given, if in its judgment the Bondholders will not be prejudiced thereby. The Authority shall take such action or cause and permit the Trustee to take such action as may be necessary or advisable to enforce the covenants, terms and conditions of the Leases, including the exercise of any right of repossession of the Projects or termination of the Agency's rights as tenant under the Leases if such action shall, in its discretion, be deemed to be in the best interest of the Authority or the Bondholders. The Authority shall do or cause to be done all things on its part as lessor under the Leases so that the obligations of the Agency thereunder shall not be impaired or excused. If the Leases shall terminate, the Authority shall use its best efforts to again lease the Projects for the purposes and in accordance with the requirements of the Act subject to the rights of the Trustee.

Section 6.08. Not to Sell, Assign, Encumber or Pledge. Except as permitted by the terms of this Indenture, it will not sell, assign or encumber the Projects, or permit the same to be sold, assigned or encumbered except for Permitted Encumbrances; will not mortgage or encumber the Projects or pledge or assign any pledged revenues and income of the Projects or any part thereof, or permit an encumbrance of the Projects or the assignment or pledge of any pledged revenues thereof, if the mortgage, encumbrance, pledge or assignment might be or become a charge or lien on the Projects or any pledged revenues and income of the Projects prior or equal to the pledge and lien herein provided for the security of the Bonds or if such mortgage, pledge or assignment might interfere with the pledge and lien herein provided; or if such pledge, mortgage or lien would cause the Bonds to be an obligation of the State pursuant to the North Dakota Constitution, Article X, Section 13.

Section 6.09. To Observe Lawful Regulations. It will well and truly keep, observe and perform all obligations and regulations lawfully imposed upon it by law, contract or otherwise as a condition of continued enjoyment of its rights, privileges and franchises, leasehold interest in or title to the Projects.

Section 6.10. Fire and Extended Coverage Insurance on the Projects. The Authority will cause the Agency to procure and maintain, so long as any Bonds are Outstanding hereunder, insurance pursuant to the requirements of Article IV of the Leases.

Section 6.11. Concerning the Insurance Policies. In case of any default by the Agency in fulfilling the covenants with respect to maintaining any of the insurance policies required under Section 4.3 of the Leases and Section 6.10 hereof, the Trustee may, and at the direction of the Authority upon indemnification of the Trustee satisfactory to the Trustee shall, effect such insurance in the name of the Authority or the Agency or in the name of the Trustee. All money paid by the Trustee as premiums upon such insurance shall be repaid to it by the Agency, upon demand, with interest at the rate equal to the base rate of the Bank of North Dakota and, if not so repaid, shall be secured by the lien of this Indenture subordinate to the indebtedness evidenced by the Bonds issued hereunder.

Upon the happening of any loss or damage covered by any such policies from one or more of the causes to which reference is made in Section 6.10 hereof, the Authority shall make or cause the Agency to make due proof of loss containing a power of attorney in favor of the Trustee to endorse all drafts drawn for the payment thereof to the order of the Trustee, and to sign receipts therefor, and shall do all things necessary or desirable to cause the insuring companies to make payments in full directly to the Trustee.

Section 6.12. Repairs and Reconstruction. Unless the Agency exercises its option to prepay Rent for the purpose of redeeming a portion of the Bonds pursuant to Section 4.4 of the Leases, in the event of any loss or damage to or destruction or Condemnation of the Projects, the Authority will promptly cause to be repaired, reconstructed or restored the damaged or destroyed portion thereof or portion of the Projects taken by Condemnation, and will apply the Net Proceeds of the insurance policies or Condemnation awards solely for that purpose as provided in Section 4.4 of the Leases, by deposit to the Repair and Replacement Fund to be disbursed pursuant to Section 5.09 hereof.

In the event the Net Proceeds, together with all other moneys legally available or previously paid by the Agency for such purpose, are insufficient to complete the repair, reconstruction or restoration of the Projects the Agency will nonetheless complete the same and will pay that portion of the cost thereof in excess of the amount of the Net Proceeds, but only from legally available money.

Any amounts held by the Trustee or by the Authority and remaining in the Repair and Replacement Fund at the completion of, and payment for, such repair, reconstruction or restoration, shall be deposited in the Bond Fund and applied to the reduction of the principal of the Bonds, including redemptions of Term Bonds, in accordance with the provisions of this Indenture.

In the event the Agency pursuant to its rights under the Lease, or the Authority, shall not elect to repair, reconstruct or restore the damaged, destroyed or condemned property as above provided, the Trustee shall deposit the Net Proceeds in the Bond Fund and retire a portion of the Outstanding Bonds. Upon the deposit of Net Proceeds under this Section to the Bond Fund the Bonds shall be subject to redemption, and redemption shall be effected pursuant to the provisions of, in the manner, and with the effect provided in Article III of this Indenture.

Section 6.13. Further Assurances. The Authority will execute or cause to be executed any and all further instruments that may reasonably be requested by the Trustee and be authorized by law to perfect the pledge of and lien on the revenues and income of the Projects granted in this Indenture, or intended so to be, or to vest in the Trustee the right to receive and apply the same to the payment or protection and security of the Bonds.

Section 6.14. Proper Books and Records. So long as any of the Bonds issued hereunder shall remain Outstanding and unpaid, the Authority shall cause to be kept proper books of account and records, in which full, true and correct entries will be made of all dealings and transactions relating to the leasing of the Projects. Such books and records shall be open to inspection by the Trustee, the Bondholders, the Original Purchaser of the Bonds, and their agents and representatives. The Authority shall cause:

- (a) To be furnished to the Trustee, from time to time, such data regarding the income, expense and property relating to the Projects and the Agency as the Trustee shall reasonably request.
- (b) To be furnished on or before 120 days after the end of each Fiscal Year the Authority's books of account which are to be audited by an Independent Accountant or firm of Independent Accountants as shall be reasonably acceptable to the Trustee, with a copy of each audit report, annual balance sheet and income and expense statement showing in reasonable detail the financial condition of the Authority, at the close of such Fiscal Year, and summarizing in reasonable detail the income and expenses for such year, including the transactions relating to the Funds, to be filed promptly with the Trustee, and shall be available for inspection by any Bondholder.

Section 6.15. To Observe All Covenants and Terms -- Limitations on Authority's Obligations. It will not issue or permit to be issued any Bonds hereunder in any manner other than in accordance with the provisions of this Indenture and the Act and the agreements in that behalf herein contained, and will not suffer or permit any Default to occur under this Indenture, but will faithfully observe and perform all the conditions, covenants and requirements hereof under the Act. The Authority may issue other bonds or evidences of indebtedness for refunding the Bonds under the terms of this Indenture or issue evidences of indebtedness as may be from time to time authorized by the Legislative Assembly of the State pursuant to NDCC §54-17.2-13. Under the Act, and it is expressly agreed that, the Authority has no obligation to levy taxes for, or make any advance or payment or incur any expense or liability from its general funds in performing or causing performance of, any of the conditions, covenants or requirements of the Bonds or this Indenture or from any funds other than revenues and income of the Projects, moneys in the Funds provided for herein or any other funds authorized by law.

Section 6.16. Change in Project Use. The Authority shall not use the Projects and the Sites nor cause or consent to the use of the Projects and the Sites by the Agency or any subsequent tenant or sublessee in a manner other than as stated in the Leases without first obtaining an Opinion of Bond Counsel stating that such action or consent when taken or given by the Authority will not result in actions or the use of the Projects and the Sites in a manner which would cause the interest payable on the Bonds to be includable in the gross income of the Owners for federal income tax purposes.

## ARTICLE VII EVENTS OF DEFAULT; REMEDIES

Section 7.01. Events of Default. Each of the following events is hereby defined as, and is declared to be and to constitute an "Event of Default":

- (a) If Default shall be made in the due and punctual payment of any interest on any Bond or in the due and punctual payment of the principal, or redemption premium, if any, of any Bond, whether at the Stated Maturity thereof, or at the date fixed for redemption thereof (including, but not limited to, redemption of Term Bonds), or upon the Maturity thereof by declaration; or
- (b) If an "Event of Default" (as defined therein) occurs under Section 5.1(a) of a Lease; or
- (c) If Default shall be made in the due and punctual payment of any other moneys required to be paid to the Trustee under the provisions hereof and such Default shall have continued for a period of thirty (30) days without written waiver by the Trustee after written notice thereof, specifying such Default, shall have been given by the Trustee to the Authority and the Agency, or the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the then Outstanding Bonds to the Authority, the Agency and the Trustee; or
- (d) If Default shall be made in the performance or observance of any other of the covenants, agreements or conditions on the part of the Authority in this Indenture, or in the Bonds contained, and such Default shall have continued for a

period of thirty (30) days without written waiver by the Trustee after written notice thereof given in the manner provided in clause (c) above, provided that if the Default can be remedied but not within a period of 30 days after notice and if the Authority or the Agency has taken all action reasonably possible to remedy such Default within the 30 day period, the Default shall not become an Event of Default for so long as the Authority or the Agency shall diligently proceed to remedy the Default and in accordance with any directions or limitations of time made by the Trustee; or

- (e) If an Event of Nonappropriation has occurred and continues without cure until the following August 1, unless the Agency has certified to the Authority and the Trustee that it will pay the Rent when due from sources other than an appropriation by the Legislative Assembly of the State but, such certification can only be made if the Legislative Assembly of the State has not specifically terminated the Lease.

An Event of Default described in paragraph (a) or (e) of this Section is herein called a "Default in Payment".

Section 7.02. Acceleration of Maturity. Upon the occurrence of a Default in Payment, the Trustee may, by notice in writing delivered to the Authority and the Agency declare the principal of all then Outstanding Bonds immediately due and payable, and such principal shall thereupon become and be immediately due and payable. Upon the occurrence of any Event of Default other than a Default in Payment, the Trustee shall at the written request of the Owners of not less than twenty five percent (25%) in aggregate principal amount of Bonds then Outstanding, by similar notice declare the principal of all Bonds then Outstanding immediately due and payable, and such principal shall thereupon become and be immediately due and payable.

The Owners of a majority in aggregate principal amount of Bonds then Outstanding hereunder shall have the right, by written notice to the Authority and to the Trustee, to annul any such declaration and destroy its effect at any time if all Covenants with respect to which the Default shall have been made shall be fully performed or made good, and all arrears of principal of and interest on all Bonds then Outstanding hereunder and the reasonable expenses and charges of the Trustee, its agents and attorneys, and all other obligations secured hereby (except the principal of any Bonds which have not then attained their Stated Maturity and interest accrued on such Bonds since the last Interest Payment Date) shall be paid, or the amount thereof shall be paid to the Trustee for the benefit of those entitled thereto. Upon any such declaration of acceleration, the Trustee shall draw upon amounts as shall be necessary to pay the principal of and interest on the Bonds at the date fixed for the payment thereof, pursuant to Sections 7.05 and 7.12 hereof, and moneys from other sources which have been deposited with the Trustee.

Section 7.03. Enforcement of Covenants and Conditions. In any case of Default or breach of any of the covenants and conditions of this Indenture, or to protect the Trust Estate, the Trustee, anything herein contained to the contrary notwithstanding, and without any request from any Bondholder (subject, however, to the provisions of Section 8.06 hereof), may take such action or actions for the enforcement of its rights, the rights of the Bondholders, and the rights of the Authority under the Leases as due diligence, prudence and care would require and to pursue the same with like diligence, prudence and care.

Upon the happening and continuance of an Event of Default, the Trustee may, and the Trustee shall upon the written request of the Owners of not less than twenty-five percent (25%) in aggregate principal amount of then Outstanding Bonds, proceed forthwith by suit or suits at law or in equity or by any other appropriate remedy to enforce payment of the Bonds, to enforce application to such payment of the funds, revenues and income appropriated thereto by this Indenture and by the Bonds, to exercise the remedies of the Authority under the Leases, and to enforce any such other appropriate legal or equitable remedy as the Trustee, being advised by Counsel, shall deem most effectual to protect and enforce any of its rights or any of the rights of the Bondholders. The Trustee need not proceed upon any such written request of the Bondholders, as aforesaid, unless such Bondholders shall have offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby.

Section 7.04. Right of Trustee to Enter the Projects. If one or more of the Events of Default shall have occurred, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Owners of the Bonds under the Leases or the Indenture, the Trustee may, with the consent of the Authority, and shall pursuant to the request in writing by the Owners of at least twenty-five percent (25%) of the aggregate principal amount of Bonds then Outstanding hereunder, enter into and upon and take and hold possession of the Trust Estate, including the defaulted Project, but not any Project as to which no Event of Default has occurred, or appoint a receiver therefor to use, manage and control the Trust Estate or any portion thereof and conduct the business thereof with respect thereto in such manner as in its discretion it shall deem to be the best advantage of the Owners of the Bonds. Upon every such entry the Trustee, from time to time and at the expense of the Trust Estate, may maintain and restore and insure the Trust Estate or any portion thereof and make all necessary repairs, renewals, replacements, alterations, additions, betterments and improvements, as it may deem judicious. The Trustee, in case of such entry, shall have the right to manage the Trust Estate and to carry on any business which may be conducted with respect thereto and to exercise all the rights and powers of the Authority either in the name of the Authority or otherwise, as the Trustee shall deem best, and shall be entitled to collect, take and receive all fees, earnings, income, rents, issues and profits of the Trust Estate including proceeds from the sale or assignment of the Authority's interest in the Projects.

Section 7.05. Application of Moneys. In the event that at any time the moneys held by the Trustee shall be insufficient for the payment of the principal of, premium, if any, and interest then due on the Bonds, such moneys (other than moneys held for the payment or redemption of particular Bonds) and all revenues of the Authority and other of its moneys received or collected for the benefit or for the account of Owners of the Bonds by the Trustee shall be applied first to the payment of any rebate owed to the United States Treasury and thereafter as follows:

- (a) Unless the principal of all of the Bonds shall have become due and payable, by declaration or otherwise, such moneys shall be applied first, to the payment to the persons entitled thereto of all installments of interest then due (including any interest on overdue principal) in order of the maturity of such installments, earliest maturities first, and, if the amounts available shall not be sufficient to pay in full any installments of interest maturing on the same date, then to the payment thereof ratably, according to the amount due thereon, to the persons entitled thereto, without any discrimination or preference; and, second, to the payment of the principal and premium of the Bonds then due and

payable (if any) in the order of the Maturity thereof; such payments to be made ratably and proportionately to the persons entitled thereto without discrimination or preference and without regard to the series designation.

- (b) In case the principal of all of the Bonds shall have become due and payable, by declaration or otherwise and remain unpaid, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds without preference of principal over interest or 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.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it 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 deems 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. 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 unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Bonds and interest thereon have been paid under the provisions of this Section, and all expenses and charges of the Trustee have been paid, then the Balances in the Funds shall be paid to the Agency, or to the Authority as their interests may appear.

While in possession of the Projects, the Trustee shall render annually to the Authority, and the Bondholders, at their addresses as set forth on the list required by this Indenture, a summarized statement of income and expenditures in connection therewith.

Section 7.06. Appointment of a Receiver by Trustee. In case the Trustee shall enforce its rights and the rights of the Bondholders by a suit or suits in equity or at law, the Trustee shall be entitled, pending the outcome of such suit, subject to the approval of the court, to the appointment of a receiver of the Trust Estate, or any part thereof, including the Projects and any pledged income therefrom, to the end that the security provided by this Indenture shall not be reduced and for the purpose of preventing waste. The Trustee or such receiver may receive the rents, issues and profits of the Trust Estate, including the Projects and apply the proceeds to the payment of taxes, assessments, charges and encumbrances on the Trust Estate, due or to become due; to the payment of premiums and charges of any kind or nature upon insurance maintained or covenanted to be maintained on the Trust Estate, due or to become due; to the making of necessary repairs on the Trust Estate or the payment of the expenses or charges necessary to the preservation of the security of this Indenture or to the maintenance of the Trust Estate; and to the payment of interest, or principal and interest, due upon the Bonds as provided in Section 7.05.

Section 7.07. Right of Trustee to Act Without Possession of Bonds. All rights of action (including the right to file proof of claim) 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 hereby secured, and any recovery of judgment shall be for the equal benefit of the Owners of the Outstanding Bonds.

Section 7.08. Power of Majority of Bondholders. The Owners of a majority in aggregate principal amount of Bonds then Outstanding hereunder 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 hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and that the Trustee shall be indemnified as provided in Section 8.06 hereof.

Section 7.09. Limitation on Suit by Bondholders. No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for any other remedy hereunder, unless a Default has occurred of which the Trustee has been notified or of which it is deemed to have notice; nor unless also such Default shall have become an Event of Default and the Owners of twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding hereunder shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinabove granted or to institute such action, suit or proceeding in its own name; nor unless also they shall have offered to the Trustee indemnity as provided hereinafter, except as otherwise required by Section 7.02 hereof; and such notification, request and offer of indemnity are hereby declared in every such 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 enforcement or for any other remedy hereunder, except as otherwise required by Section 7.02 hereof; 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 his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds Outstanding hereunder. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondholder, which is absolute and unconditional, to enforce and bring suit for the payment of the principal of and interest on any Bond at and after the Maturity thereof or the obligations of the Authority to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time and place in said Bonds, in accordance with the terms of the Bonds.

Section 7.10. Waiver by Bondholders. The Trustee, upon the written request of the Owners of not less than a majority in principal amount of the Bonds at the time Outstanding hereunder, shall waive any Default hereunder and its consequences, except a Default in the payment of the principal of the Bonds at the date of Maturity specified therein; provided, however, that a Default in the payment of interest on the Bonds shall not be waived unless, prior to such waiver, all arrears of interest, and all expenses of the Trustee shall have been paid or shall have been provided for by deposit with the Trustee of a sum sufficient to pay the same. In case of any such waiver, the Authority, the Agency, the Trustee and the Owners of the Bonds shall be restored to their former positions and rights hereunder respectively. No such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.



Section 7.11. Remedies Cumulative, Delay Not to Constitute Waiver. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or the Bondholders) 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 hereunder or now or hereafter existing at law or in equity or by statute.

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

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

Section 7.12. Rights of Trustee. The Trustee shall upon the occurrence of any Event of Default or acceleration of the Bonds pursuant to Sections 7.01 or 7.02 hereof have the right to foreclose the mortgage granted by this Indenture in the manner permitted by law, enter and take possession of the defaulting Projects or any part thereof, with or without termination of the Leases, and have continuous access to the Sites for the use of the Projects, and may lease the Projects to the State or any of its boards and agencies including the Agency subject to the requirements of the Act and the Leases.

The Trustee shall be permitted to sell, convey or sublease its interest in the Projects subject to the requirements of this Indenture and the Act.

Section 7.13. Restoration of Rights Upon Discontinuance of Proceedings. In case the Trustee or Bondholders shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall not have been determined adversely to the Trustee or Bondholders, then and in every such case the Agency, the Authority, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder with respect to the Trust Estate, and all rights, remedies and powers of the Trustee and the Bondholders shall continue as if no such proceedings had been taken.

#### ARTICLE VIII THE TRUSTEE, PAYING AGENT AND REGISTRAR

Section 8.01. Acceptance of Trust and Prudent Performance Thereof. The Trustee, prior to the occurrence of an Event of Default as defined in Section 7.01 hereof and after the curing of all such Events of Default as may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. The Trustee shall during the existence of any such Event of Default (which has not been cured) exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

The Trustee shall not be required to take notice or be deemed to have notice of any Default hereunder or under the Leases, except Default in the deposits or payments specified in the Leases, unless the Trustee shall be specifically notified in writing of such Default by the Agency, by the Authority or by the Owners of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding hereunder, 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 office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume that there is no Default, except as aforesaid. The Trustee shall provide written notice to the Agency in the event any payment of Basic Rent is not made when due or within two Business Days after the due date of such payment, which shall be hand delivered or given by telephone (confirmation thereof being given by mail).

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

- (a) prior to such an Event of Default hereunder, and after the curing of all such Events of Default which may have occurred:
  - (1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee, and
  - (2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and to the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Trustee conforming to the requirements of this Indenture; but in the case of any such certificate or opinion which by any provision hereof is specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not it conforms to the requirements of this Indenture;
- (b) at all times, regardless of whether or not any such Event of Default shall exist:
  - (1) the Trustee shall not be liable for any error or judgment made in good faith by an officer or officers of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts, and
  - (2) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of all the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 8.02. Trustee May Rely Upon Certain Documents and Opinions. Except as otherwise provided in Section 8.01:

- (a) the Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (b) any request, direction, election, order, certification or demand of the Authority or the Agency shall be sufficiently evidenced by an instrument signed by an Authorized Officer or an Agent, as the case may be (unless otherwise in this Indenture specifically prescribed), and any resolution of the Authority may be evidenced to the Trustee by a certified resolution;
- (c) the Trustee may consult with Counsel (who may be Counsel for the Authority) and the opinion of such Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such Counsel;
- (d) whenever, in the administration of the trusts of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the Authority and such Certificate of the Authority shall, in the absence of negligence or bad faith on the part of the Trustee, be full warrant to the Trustee for any action taken or suffered by it under the provisions of this Indenture.

Section 8.03. Trustee Not Responsible for Indenture Statements, Validity. The Trustee (as such) shall not be responsible for any recital or statement herein, or in the Bonds (except in respect of the Certificate of the Trustee endorsed on such Bonds), or for the recording or re-recording, filing, or re-filing of this Indenture, or for insuring the Projects, or collecting any insurance moneys, or for the validity of the execution by the Authority or the Agency (as the case may be) of this Indenture, the Leases, the Bond Resolution or of any supplemental instrument, or for the sufficiency of the security of the Bonds issued hereunder or intended to be secured hereby, or for the value or title of any of the Trust Estate, or otherwise as to the maintenance of the security hereof; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, condition or agreement on the part of the Authority or the Agency except as herein set forth, but the Trustee may require of the Authority or the Agency full information and advice as to the performance of the covenants, conditions and agreements aforesaid and of the condition of the physical property included in the Trust Estate. The Trustee shall not be accountable for the use of any proceeds of the Bonds authenticated or delivered hereunder or of any of the proceeds of such Bonds except as specifically stated in this Indenture.

Section 8.04. Limits on Duties and Liabilities of Trustee. The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee and the Trustee shall be answerable only for its own negligence or willful misconduct. The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers or otherwise in respect of the premises. The Trustee shall not be liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in the possession of or managing the real and tangible personal property of the Trust Estate as in this Indenture provided, if such debts, damages, salaries, or contracts have been incurred, suffered, earned, or made in connection with the possession or management of such property.

Section 8.05. Money Held in Trust. Money held by the Trustee hereunder is held in trust and shall be segregated from other funds to the extent required by law.

Section 8.06. Obligation of Trustee. The Trustee shall be under no obligation to institute any suit, or to take any proceeding under this Indenture, or to enter any appearance or in any way defend in any suit which it may be defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder until it shall have reasonable grounds for believing that repayment of all costs and expenses, outlays and Counsel fees and other reasonable disbursements in connection therewith and adequate indemnity against all risk and liability is reasonably assured to it, except as required by Section 7.02 hereof. The Trustee may, nevertheless, begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as such Trustee, without assurance of reimbursement or indemnity, and in such case the Trustee shall be reimbursed for all costs and expenses, outlays and Counsel fees and other reasonable disbursements properly incurred in connection therewith. If the Authority shall fail to make such reimbursement, the Trustee may reimburse itself from any moneys in its possession under the provisions of this Indenture and shall be entitled to a preference therefor over any of the Bonds Outstanding hereunder.

Section 8.07. Intervention in Judicial Proceedings. In any judicial proceeding to which the Authority or the Agency is a party and which, in the opinion of the Trustee and its Counsel, has a substantial bearing on the interests of the Owners of Bonds issued hereunder, the Trustee may intervene on behalf of Bondholders and shall do so if requested in writing by the Owners of at least twenty-five percent (25%) in the aggregate principal amount of Bonds then Outstanding hereunder. The rights and obligations of the Trustee under this Section are subject to the approval of the court having jurisdiction in the premises.

Section 8.08. Further Investigation by Trustee. The resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be in full warrant, protection and authority to the Trustee for the release of property and the withdrawal of such hereunder; but the Trustee may, in its unrestricted discretion, and shall, if requested in writing to do so by the Owners of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding hereunder, cause to be made such independent investigation as it may see fit, and in that event may decline to release such property or pay over such cash unless satisfied by such investigation of the truth and accuracy of the

matters to be investigated. The expense of such investigation shall be paid by the Agency, or, if paid by the Trustee, shall be repaid by the Agency upon demand with interest at the rate equal to the Bank of North Dakota Base Rate.

Section 8.09. Right to Inspect Projects and Records of Authority. 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 the Projects, including all books, papers, and contracts of the Authority and the Agency relating solely thereto and to take such memoranda from and in regard thereto as may be desired.

Section 8.10. Right of Trustee to Perform Certain Acts. In case the Authority or the Agency shall fail reasonably to pay or to cause to be paid any tax, assessments, or governmental or other charge upon any part of the Trust Estate, to the extent, if any, that the Authority or the Agency may be liable for same, the Trustee may pay such tax, assessment or governmental charge, without prejudice, however, to any rights of the Trustee or the Bondholders arising hereunder in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate equal to the Bank of North Dakota Base Rate, shall be repaid by the Agency upon demand, and shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any of the Bonds, and shall be paid out of any pledged revenues of the Projects or other proceeds of the Trust Estate if not otherwise paid by the Authority or the Agency, but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of at least twenty five percent (25%) of the aggregate principal amount of Bonds then Outstanding hereunder, and shall have been provided with adequate funds for the purpose of such payment.

Section 8.11. Trustee to Retain Financial Records. The Trustee shall retain all current financial statements furnished by the Authority or the Agency in accordance with this Indenture.

Section 8.12. Fees, Charges and Expenses of the Trustee, the Registrar and Paying Agent. The Trustee, the Registrar and each Paying Agent shall be entitled to payment and/or reimbursement for reasonable fees for services rendered hereunder and under the other agreements which the Authority and the Trustee have entered into to facilitate the issuance and sale of the Bonds, all advances, legal fees and other expenses reasonably and necessarily made or incurred in and about the execution of the trusts created by this Indenture and under the other agreements which the Authority and the Trustee have entered into to facilitate the issuance and sale of the Bonds, and in and about the exercise and performance of the powers and duties of the Trustee, the Registrar and each Paying Agent hereunder and under the other agreements which the Authority and the Trustee have entered to facilitate the issuance and sale of the Bonds, and for the reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful misconduct of the Trustee, the Registrar or the Paying Agent).

Section 8.13. Notice to the Bondholders if Default Occurs. The Trustee shall give all Owners of all Bonds by first class mail, notice of all Defaults or Events of Default known to the Trustee, within thirty (30) days after the occurrence of a Default or Event of Default unless such Default or Event of Default shall have been cured before the giving of such notice; provided that, except in the case of a Default in Payment, or in the making of any payment required to be made by the Bond Fund, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the best interest of the Bondholders. The Registrar shall provide the Trustee with all information, which the Trustee reasonably requires in connection with the giving of such notices.

Section 8.14. Successor Trustee, Paying Agents and Registrar. Any corporation, association or Agency into which the Trustee, the Registrar or any Paying 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, ipso facto, shall be and become a successor trustee, paying agent or bond registrar hereunder and vested with all of 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 8.15. Resignation by Trustee, Paying Agents and Registrar. The Trustee, any Paying Agent, and the Registrar may at any time resign from the trusts and be discharged of the duties and obligations hereby created by giving sixty (60) days written notice to the Authority, the Trustee and all Bondholders by first class mail and such resignation shall take effect upon the appointment of a successor trustee, paying agent, or registrar. If any instrument of acceptance by a successor trustee, paying agent or registrar shall not have been delivered to the resigning Trustee, Paying Agent or Registrar within sixty (60) days after the giving of such notice of resignation, the resigning Trustee, Paying Agent or Registrar may petition any court of competent jurisdiction for the appointment of a successor. Notwithstanding any other provision of this Indenture, no removal, resignation or termination of the Trustee, Paying Agent or Registrar shall take effect until a successor shall be appointed.

Section 8.16. Removal of Trustee. The Trustee may be removed by the Authority at any time for any breach of the Trust set forth herein. Notwithstanding the foregoing, the Trustee may not be removed unless and until a successor trustee has been appointed pursuant to Section 8.17 hereof.

Section 8.17. Appointment of Successor Trustee. In case the Trustee shall resign or be removed, or be dissolved 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, the Authority, by an Authority Resolution, may remove the Trustee and shall promptly appoint a successor. If, within one year of such vacancy occurring, the Owners of a majority in aggregate principal amount of the then Outstanding Bonds, by an instrument or concurrent instruments in writing signed by such Owners, or by their attorney-in-fact, duly authorized appoint a successor, such successor shall supersede the successor appointed by the Authority. If no successor trustee has been appointed as herein provided after sixty (60) days from the mailing of notice of resignation by the Trustee under Section 8.15 hereof, or from the date the Trustee is removed or otherwise incapable of acting hereunder, any Bondholder may petition a court of competent jurisdiction to appoint a successor trustee. The Authority shall promptly notify the Paying Agent and the Registrar as to the appointment of any successor trustee.

Every successor trustee appointed pursuant to this Section shall be a trust company or bank in good standing located in or authorized to do business under the laws of the State, duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$75,000,000.

Section 8.18. Concerning Any Successor Trustee. Every successor trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor, and to the Authority, an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, assignment or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor as trustee; but such predecessor shall, nevertheless, on the written request of the Authority, or of its successor trustee, execute and deliver an instrument transferring to such successor trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor trustee shall deliver all securities and moneys and Balances held by it as Trustee hereunder to its successor together with an accounting of the Balances held by it hereunder. Should any instrument in writing from the Authority be required by any successor trustee for more fully and certainly vesting in such successor the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

Section 8.19. Trustee Protected in Relying Upon Resolutions, Etc.. The resolutions, orders, requisitions, opinions, certificates and other instruments conforming to the requirements of this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the withdrawal of cash hereunder.

Section 8.20. Successor Trustee as Custodian of Funds. In the event of a change in the office of the Trustee, the predecessor trustee which has resigned or been removed shall cease to be custodian of the Funds, and the successor trustee shall be and become such custodian.

Section 8.21. Co-Trustee. At any time or times, for the purpose of meeting any legal requirements of any state in which the Trustee determines it necessary to take any action hereunder, the Trustee shall have power to appoint one or more Persons approved by the Trustee either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Trust Estate, or to act as a separate trustee or separate trustees of all or any part of the Trust Estate, and to vest in such Person or Persons, in such capacity, such title to the Trust Estate or any part thereof, any such rights, powers, duties, trusts or obligations as the Trustee may consider necessary or desirable subject to the remaining provisions of this Section 8.21.

In the event the Trustee deems the appointment of a separate or co-trustee necessary, and before such appointment will be effective, the Trustee shall request and obtain the Authority's approval of such appointment, provided that the Authority's approval shall not be unreasonably withheld.

The Authority shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law but to such extent only, be appointed subject to the following terms, namely:

- (a) The Bonds shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control and management of moneys, papers, securities and other personal property shall be exercised solely by the Trustee or, to the extent otherwise respectively specified herein, and the Paying Agent.
- (b) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees or separate trustee or separate trustees jointly, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.
- (c) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.
- (d) Any co-trustee or separate trustee may delegate to the Trustee the exercise of any right, power, trust, duty or obligations, discretionary or otherwise.
- (e) The Trustee at anytime, by any instrument in writing, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 8.21. Upon the request of the Trustee, the Authority shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal.
- (f) No Trustee hereunder shall be personally liable by reason of any act or omission of any other trustee or co-trustee hereunder.
- (g) Any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing delivered to the Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee.

- (h) Any moneys, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he or she shall be vested with such title to the Trust Estate or any part thereof, and with such rights, powers, duties or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee. Any co-trustee or separate trustee may, at any time by an instrument in writing, constitute the Trustee, its or his attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its or his behalf and in its or his name.

In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate, and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the manner herein provided.

Section 8.22. Qualification of Trustee: Eligibility. There shall at all times be a Trustee hereunder which shall be a trust company or a bank having the powers of a trust company and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise corporate trust powers and shall be subject to supervision or examination by a federal or state authority. Any trust company or bank acting as Trustee hereunder, other than the Bank of North Dakota, shall have combined capital stock, capital surplus and undivided profits of at least \$75,000,000. If such trust company or bank publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 8.22, the combined capital stock, capital surplus and undivided profits of such trust company or bank shall be deemed to be its combined capital stock, capital surplus and undivided profits as set forth in its most recent report of condition so published.

Section 8.23. Statement by Trustee of Funds and Other Matters. Not more than ninety (90) days after the close of each Fiscal Year, or more frequently if requested by the Authority, the Trustee shall furnish the Authority a statement setting forth (to the extent applicable) in respect to such Fiscal Year, (a) all transactions relating to the receipt, disbursement and application of all moneys received by the Trustee pursuant to all terms of this Indenture, (b) the Balances held by the Trustee at the end of such Fiscal Year to the credit of each Fund, (c) a brief description of the Balances of all moneys and Permitted Investments (including an itemization of Permitted Investments) held by the Trustee as a part of the Balance of each Fund as of the end of such Fiscal Year, (d) the principal amount of Bonds purchased by the Trustee during such Fiscal Year from moneys available therefor in any Fund pursuant to the provisions of this Indenture and the respective purchase price of such Bonds, (e) the principal amount of Bonds retired during such Fiscal Year, and (f) any other information which the Authority may reasonably request.

Section 8.24. Trustee, Paying Agents, and Registrar May Buy, Hold, Sell or Deal in Bonds. The Trustee, the Registrar, or any Paying Agent and its directors, officers, employees or agents may, in good faith, buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Owner of a Bond may be entitled to take, with like effect as if such Trustee, Paying Agent, or Registrar were not the Trustee, a Paying Agent, or Registrar, as the case may be, under this Indenture.

Section 8.25. Paying Agent: Paying Agents to Hold Moneys in Trust. The Paying Agent shall hold in trust for the benefit of the Owners of the Bonds and the Trustee any sums held by such Paying Agent for the payment of the principal of and interest on the Bonds. Anything in this paragraph to the contrary notwithstanding, the Authority may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, cause to be paid to the Trustee all sums held in trust by any Paying Agent hereunder as required by this paragraph, such sums to be held by the Trustee upon the trusts herein contained, and such Paying Agents shall thereupon be released from all further liability with respect to such sums.

Each Paying Agent other than the Trustee shall designate its Principal Office and signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing and delivering to the Authority a written acceptance thereof under which the Paying Agent will agree particularly:

- (1) to hold all sums held by it pursuant to this Indenture in trust for the benefit of the Owners of the Bonds until such sums shall be paid to such Owners or otherwise disposed of as herein provided;
- (2) at any time during the continuance of any Event of Default, upon the written request of the Trustee, to forthwith pay to the Trustee all sums so held in trust by such Paying Agent; and
- (3) in the event of the resignation or removal of such Paying Agent, pay over, assign and deliver any moneys, records or securities held by it as Paying Agent to its successor or, if there be no successor, to the Trustee.

No Paying Agent shall be obligated to expend its own funds in paying Debt Service on the Bonds.

Section 8.26. Removal of Paying Agents; Successors. The Paying Agent may be removed at any time by an instrument filed with the Paying Agent and the Trustee, and signed by the Authority. Any successor paying agent shall be appointed by the Authority and shall be a commercial bank having trust powers or trust company duly organized under the laws of any state of the United States or a national banking association having trust powers, and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture and any supplemental indenture.

In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys, records or securities held by it as Paying Agent, as the case may be, to its successors or, if there be no successor, to the Trustee.

Section 8.27. Authority Administration. The Authority, in exercising its administrative responsibilities pursuant to this Indenture and the Act, may assess a reasonable fee (the "NDBA Fee"), which shall be collectable through the Trustee as part of the Additional Rent payable by the Agency under Section 3.5 of the Leases.

ARTICLE IX  
CONCERNING THE BONDHOLDERS

Section 9.01. Execution of Instruments by Bondholders. Any request, direction, consent or other instrument in writing required by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by their agent duly appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

- (a) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments of deeds to be recorded within such jurisdiction, to the effect that the Person signing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.
- (b) The ownership of Bonds shall be proved by the Register kept under the provisions of this Indenture.

Nothing in this Article shall be construed as limiting the Trustee to the proof above specified, it being intended that the Trustee may accept any other evidence of the matters herein stated which to it may seem sufficient. Any request or consent of the Owner of any Bond shall bind every future Owner of the same Bond in respect of anything done by the Trustee in pursuance of such request or consent.

Section 9.02. Waiver of Notice. Any notice or other communication required by this Indenture to be given by delivery, publication or otherwise to the Bondholders or any one or more thereof may be waived, at any time before such notice or communication is so required to be given, by a writing mailed or delivered to the Trustee by the Owner or Owners of all of the Bonds entitled to such notice or communication.

Section 9.03. Revocation by Bondholders. At any time prior to (but not after) the evidencing to the Trustee of the taking of any action by the Owners of the percentage in aggregate principal amount of the Bonds specified in this Indenture in connection with such action, any Owner of a Bond may, by filing written notice with the Trustee at its Principal Office revoke any consent given by such Owner or the predecessor Owner of such Bond. Except as aforesaid, any such consent given by the Owner of any Bond shall be conclusive and binding upon such Owner and upon all future Owners of such Bond and of any Bond issued in exchange therefor or in lieu thereof, irrespective of whether or not any notation in regard thereto is made upon such Bond. Any action taken by the Owners of the percentage in aggregate principal amount of the Bonds specified in this Indenture in connection with such action shall be conclusively binding upon the Authority, the Trustee and the Owners of all the Bonds.

ARTICLE X  
PAYMENT, DEFEASANCE AND RELEASE

Section 10.01. Payment and Discharge of Indenture. If the Authority shall pay or provide for the payment of the entire indebtedness on all Bonds in any one or more of the following ways:

- (a) pay or cause to be paid the principal of, premium, if any, and interest on the Bonds at the time and in the manner stipulated therein and herein, or
- (b) provide for the payment of principal and interest on the Bonds by depositing with the Trustee, at any time before Maturity, amounts sufficient, either in cash or in direct obligations of the United States of America (which do not permit the redemption thereof at the option of the issuer) and the principal and interest on which when due and payable and without consideration of any reinvestment thereof shall be sufficient, to pay the entire amount due or to become due thereon for principal and interest to Maturity of all the Bonds Outstanding, or
- (c) deliver to the Trustee (1) proof satisfactory to the Trustee that notice of redemption of all of the Outstanding callable Bonds not surrendered or to be surrendered to it for cancellation has been given or waived as provided in Article III hereof, or that arrangements satisfactory to the Trustee have been made insuring that such notice will be given or waived, or (2) an Authority Resolution under its official seal and expressed to be irrevocable, authorizing the Trustee to give such notice for and on behalf of the Authority, or (3) a waiver of such notice of redemption signed by the Owners of all such Outstanding Bonds, and in any such case, deposit with the Trustee before the date on which such notice is to be given as provided in Article III, cash or direct obligations of the United States of America (which do not permit the redemption thereof at the option of issuer) in such aggregate face amount, bearing interest at such rates and maturing at such dates as shall be sufficient to provide for the payment of such Redemption Price on the date such Bonds are to be redeemed, and on such prior dates when principal of and interest on the Outstanding Bonds is due and payable, or
- (d) surrender to the Trustee for cancellation all Bonds for which payment is not so provided, and shall also pay all other sums due and payable hereunder by the Authority, then and in that case, all the Trust Estate shall revert to the Authority and the Agency as their interest may appear, and the entire estate, right, title and interest of the Trustee and of the Owners of the Bonds in respect thereof shall thereupon cease, determine and become void; and the Trustee in such case, upon the cancellation of all Bonds for the payment of which cash or securities shall have been deposited in accordance with the provisions of this Indenture, shall, upon receipt of a written request of the Authority and of a Certificate of the Authority and an Opinion of Bond Counsel as to compliance with conditions precedent, and at its cost and expense, execute to the Authority, or its order, proper instruments acknowledging satisfaction of this Indenture and surrender to the Authority and the Agency, as their interests appear, all cash and

deposited securities, if any (other than cash or securities for the payment of the Bonds), which shall then be held hereunder as a part of the Trust Estate.

In case of any discharge of the lien of the Indenture pursuant to paragraph (b) or (c) above, there shall be submitted to the Trustee (i) an Opinion of Bond Counsel to the effect that the interest on the Bonds being discharged will not be includable in the gross income of the Owners for federal income tax purposes notwithstanding the discharge of the Indenture as a result of such discharge and (ii) an opinion of an Independent Accountant or firm of Independent Accountants acceptable to the Trustee stating in substance that the amounts held by the Trustee to discharge the Bonds will produce amounts necessary to provide for the timely payment of all Debt Service on the Bonds.

Section 10.02. Bonds Deemed Not Outstanding After Deposits. When there shall have been deposited at any time with the Trustee in trust cash or direct obligations of or obligations fully guaranteed by the United States of America the principal and interest on which shall be sufficient to pay the principal of any Bonds (and premium, if any) when the same become due, either at Maturity or otherwise, or at the date fixed for the redemption thereof and to pay all interest with respect thereto at the due dates for such interest or to the date fixed for redemption, for the use and benefit of the Owners thereof, then upon such deposit such Bonds shall cease to be entitled to any lien, benefit or security of this Indenture except the right to receive the funds so deposited, and such Bonds shall be deemed not to be Outstanding hereunder; and it shall be the duty of the Trustee to hold the cash and securities so deposited for the benefit of the Owners of such Bonds, as the case may be, and from and after such date, Redemption Date or Maturity, interest on such Bonds called for redemption shall cease to accrue.

Section 10.03. Unclaimed Money. Any moneys deposited with the Trustee or a Paying Agent pursuant to the terms of this Indenture, for the payment or redemption of Bonds and remaining unclaimed by the Owners of the Bonds at Maturity or on the date fixed for redemption as the case may be, and if any such moneys remain unclaimed for a period of three years after the due date, shall, without further authorization of the Authority, and if the Authority or any successor to the obligations of the Authority under the Indenture and the Bonds shall not at the time, to the knowledge of the Trustee, be in Default with respect to any of the terms and conditions contained in the Indenture or in the Bonds, be paid to the unclaimed property administrator of the State or applied in accordance with any applicable escheat or unclaimed property laws of the State. Provided, however, that within thirty (30) days prior to the expiration of the three year period mentioned above, the Trustee, before being required to make any such payment, may, at the expense of the Authority, send written notice by first class mail to the last known address of the Owners and cause to be published in a Financial Journal, a notice that after a date named therein the said moneys will be paid in accordance with this Section 10.03.

Section 10.04. Release of Property. If the Agency shall request the Authority or the Trustee to release property which is part of the Projects or the Trust Estate for any reason, it shall deliver to the Authority and the Trustee (i) a copy of the instrument of grant or release, (ii) an Opinion of Bond Counsel to the effect that such release of property will not cause the interest on the Bonds to be includable in the gross income of the Owners for federal income tax purposes, and (iii) a written application signed by the Agency certifying that such grant or release is not detrimental to the proper use or operation of the Projects and will not impair the character or significance of the Projects as a "project" under the Act. Upon such filing, the Authority and the Trustee are authorized to and shall release such property relating to the Projects from the lien of this Indenture only upon a determination by the Trustee, evidenced in writing, that the requested release under this Section will not be prejudicial to the rights of the Owners of the Bonds and will not significantly reduce the value of the Projects or the security provided to the Owners of the Bonds by this Indenture.

Section 10.05. Partial Refunding - Allocation of Funds and Accounts. Notwithstanding any other provision of this Indenture, in the event the Authority elects to advance refund less than all of the Bonds Outstanding and defease such bonds in accordance with the provisions of Section 10.01 of this Indenture, in accordance with and upon direction of the Authority, the Trustee shall transfer such portions of such Funds and any accounts or subaccounts created by this Indenture, including but not limited to any moneys on deposit in any Reserve Funds as constitute, as nearly as practicable, a pro rata share of the principal amount of Bonds Outstanding as of the date of such proposed transfer. Provided however that no such transfers shall be made by the Trustee unless the Trustee is in receipt of an Opinion of Bond Counsel stating that such action when taken by the Trustee as directed by the Authority will not result in the interest payable on the Bonds to be includable in the gross income of the Owners for federal income tax purposes.

## ARTICLE XI SUPPLEMENTAL INDENTURES

Section 11.01. Purposes for which Supplemental Indentures may be Executed. The Authority, upon resolution, and the Trustee from time to time and at any time, subject to the conditions and restrictions in this Indenture, may enter into such indentures supplemental hereto as may or shall by them be deemed necessary or desirable without the consent of any Bondholder for any one or more of the following purposes:

- (a) To correct the description of any property hereby pledged or intended so to be, or to assign, convey, pledge or transfer and set over unto the Trustee, subject to such liens or other encumbrances as shall be therein specifically described, additional property or properties of the Authority or the Agency for the equal and proportionate benefit and security of the Owners of all Bonds at any time issued and Outstanding under this Indenture;
- (b) To add to the covenants and agreements of the Authority in this Indenture, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the Authority or to or upon any successor;
- (c) To evidence the succession or successive successions of any other department, Agency, body or corporation to the Authority and the assumption by such successor of the covenants, agreements and obligations of the Authority in the Bonds hereby secured and in this Indenture and in any and every supplemental indenture contained or the succession, removal or appointment of any Trustee or Paying Agent hereunder;

- (d) To cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indentures which may be defective or inconsistent with any other provision contained herein or in any supplemental indentures, or to make such other provisions in regard to matters or questions arising under this Indenture or any supplemental indentures as the Authority may deem necessary or desirable and which shall not be inconsistent with the provisions of this Indenture or any supplemental indentures and which shall not impair the security of the same;
- (e) To modify, eliminate and/or add to the provisions of this Indenture to such extent as shall be necessary to maintain the exempt status of this Indenture from the Trust Indenture Act of 1939, as then amended, or under any similar federal statute hereafter enacted; and
- (f) To make such other modifications or amendments which are determined by the Trustee not to be prejudicial to the rights of the Trustee or the Owners of the Bonds.

Section 11.02. Execution of Supplemental Indenture. The Trustee is authorized to join with the Authority in the execution of any such supplemental indentures, to make the further agreements and stipulations which may be therein contained, and accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indentures which affects its rights, duties or immunities under this Indenture.

Section 11.03. Discretion of Trustee. In each and every case provided for in this Article (other than a supplemental indentures approved by the Owners of a majority in aggregate principal amount of the Bonds pursuant to Section 11.04 hereof), the Trustee shall be entitled to exercise its unrestricted discretion in determining whether or not any proposed supplemental indentures or any term or provisions therein contained is necessary or desirable, having in view the needs of the Authority and the respective rights and interests of the Owners of Bonds theretofore issued hereunder; and the Trustee shall be under no responsibility or liability to the Authority or to the Agency or to any Owner of any Bond, or to anyone whatever, for any act or thing which it may do or decline to do in good faith subject to the provisions of this Article, in the exercise of such discretion.

Section 11.04. Modification of Indenture with Consent of Bondholders. Exclusive of supplemental indentures covered by Section 11.01 hereof and subject to the terms and provisions contained in this Section, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution by the Authority and the Trustee of such indentures or indentures supplemental hereto as shall be deemed necessary or desirable by the Authority 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 indentures; provided, however that nothing herein contained shall permit or be construed as permitting, without the consent of the Owners of each such Bond which would be affected thereby, (a) an extension of the Maturity of any Bond issued hereunder, or (b) a reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon, or (c) the creation of a lien upon or a pledge of revenues ranking prior to or on a parity with the lien or pledge created by this Indenture, or (d) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required to consent to supplemental indentures or amendments to the Leases or (f) a reduction in the aggregate principal amount of the Bonds required to waive an Event of Default.

Whenever the Authority shall deliver to the Trustee an instrument or instruments purporting to be executed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, which resolution or instrument or instruments shall refer to the proposed supplemental indentures and shall specifically consent to and approve the execution thereof, thereupon, the Authority and the Trustee may execute such supplemental indentures without liability or responsibility to any Owner of any Bond, whether or not such Owner shall have consented thereto.

If the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of such supplemental indentures shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to the execution of such supplemental indentures, or 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 Authority from executing the same or from taking any action pursuant to the provisions thereof.

Section 11.05. Supplemental Indentures to be Part of Indenture. Any supplemental indentures executed in accordance with any of the provisions of this Article shall thereafter form a part of this Indenture; and all the terms and conditions contained in any such supplemental indentures as to any provisions authorized to be contained therein shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee and all Owners of Bonds then Outstanding shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments. If deemed necessary or desirable by the Trustee, reference to any such supplemental indentures or any of such terms or conditions thereof may be set forth in reasonable and customary manner in the text of the Bonds or in a legend stamped on the Bonds.

Section 11.06. Rights of Agency Unaffected. Anything herein to the contrary notwithstanding, a supplemental indentures under this Article XI which adversely affects the rights of the Agency under the Leases or this Indenture, so long as the Leases and Indentures are in effect and the Agency is not in Default under any terms or conditions of the Leases, shall not become effective unless and until the Agency shall consent to the execution and delivery of such supplemental indentures. The Authority shall cause notice of the proposed execution and delivery of any such supplemental indentures of which the Agency has not already consented, together with a copy of the proposed supplemental indentures, to be mailed to the Agency at least thirty (30) days prior to the proposed date of execution and delivery of any such supplemental indentures.

## ARTICLE XII AMENDMENTS TO LEASES



Section 12.01. Amendments to Leases Not Requiring Consent of Bondholders. The Authority, the Agency, and the Trustee may without the consent of or notice to the Bondholders consent to any amendment, change or modification of the Leases as may be deemed necessary or desirable (i) by the provisions of the Leases and this Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission, or (iii) 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 the Bonds including an amendment necessitated by the application of a release of property under Section 10.04 hereof.

Section 12.02. Amendments to Leases Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 12.01 hereof, neither the Authority nor the Trustee shall consent to any other amendment, change or modification of the Leases, without the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, subject to the provisions of Section 12.03 hereof. If the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding hereunder at the time of the execution of any such amendment, change or modification 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 in the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee, the Authority or the Agency from executing the same or from taking any action pursuant to the provisions thereof.

Section 12.03. No Amendment May Reduce Basic Rent. Under no circumstances shall any amendment to the Leases reduce the Basic Rent payable under the Leases to an amount which together with the credits against Basic Rent provided for in Section 3.10 of the Leases is less than the amount necessary to pay principal and interest on the Bonds without the consent of the Owners of all the Bonds then Outstanding.

#### ARTICLE XIII

(RESERVED)

#### ARTICLE XIV MISCELLANEOUS

Section 14.01. Covenants of Authority Bind Successors and Assigns. All the covenants, stipulations, promises and agreements in this Indenture contained, by or in behalf of the Authority, shall bind and inure to the benefit of its successors and assigns, whether so expressed or not.

Section 14.02. Immunity of Officers. No recourse for the payment of any part of the principal of or interest on any Bond or for the satisfaction of any liability arising from, founded upon or existing by reason of the issue, purchase or ownership of the Bonds shall be had against any officer, member or agent of the Authority, the Commission, the State or the Agency, as such, all such liability being hereby expressly released and waived as a condition of and as a part of the consideration for the execution of this Indenture and the issuance of the Bonds.

Section 14.03. No Benefits to Outside Parties. Nothing in this Indenture, express or implied, is intended or shall be construed to confer upon or to give to any Person, other than the Agency, the parties hereto and the Owners of the Bonds issued hereunder, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Indenture contained are and shall be for the sole and exclusive benefit of the Agency, the parties hereto, their successors and assigns, and the Owners of the Bonds.

Section 14.04. Separability of Indenture Provisions. In case any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture, but this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 14.05. Execution of Indenture in Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which, when so executed, shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

Section 14.06. Headings Not Controlling. The headings of the several Articles and Sections hereof are inserted for the convenience of reference only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 14.07. Notices to Trustee, Authority, and Agency. Any request, demand, authorization, direction, notice, consent of Bondholders or other document provided or permitted by this Indenture shall be sufficient for any purpose under this Indenture or the Leases, when mailed registered or certified mail, return receipt requested, postage prepaid (except as otherwise provided in this Indenture) (with a copy to the other parties) at the following addresses (or such other address as may be provided by any party by notice) and shall be deemed to be effective upon receipt:

To the Authority: North Dakota Building Authority  
State Capitol, 14th Floor  
600 East Boulevard Avenue  
Bismarck, ND 58505-0840  
Attn: Executive Director, Industrial Commission

To the Trustee: Bank of North Dakota  
700 East Main Avenue  
P.O. Box 5509

Bismarck, ND 58506-5509  
Attn: Trust Department

To the Agency: State Board of Higher Education  
State Capitol, 10th Floor  
600 East Boulevard Avenue  
Bismarck, ND 58505  
Attn: Chancellor

North Dakota Department of Corrections and Rehabilitation  
3100 Railroad Avenue  
P.O. Box 1898  
Bismarck, ND 58502-1898  
Attn: Director

North Dakota Veterans Home  
P.O. Box 673  
Lisbon, ND 58054  
Attn: Commandant

Section 14.08. Indenture Constitutes a Valid Pledge. An executed counterpart or certified copy of this Indenture delivered to and accepted by the Trustee shall constitute a valid pledge pursuant to and for all purposes of NDCC §54-17.2-17(2).

Section 14.09. Payments Due on Saturdays, Sundays and Other Non-Business Days. In any case where the principal of or interest on the Bonds shall be due on a Saturday, Sunday or other day which is not a Business Day, then payment of such principal and interest may be made on the next succeeding Business Day with the same force and effect as if made on the date due and no interest shall accrue for the intervening period.

Section 14.10. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

Section 14.11. Notices to Moody's and S & P. So long as any Bonds are rated by Moody's and S & P, the Trustee and the Authority agree to give Moody's and S & P prompt written notice of the appointment of any successor Trustee, any material amendments to this Indenture and the Leases, and the redemption or defeasance of any of the Bonds. All such notices shall be addressed as follows: (i) for Moody's, Moody's Investors Service, 99 Church Street, New York, New York 10007, Attention: Public Finance Department, State Ratings Group, and (ii) for S & P, Standard & Poor's Corporation, 55 Water Street, New York, New York 10041, Attention: Municipal Finance Group.

Section 14.12. Bondholder Consent when Bonds Held by Depository. The consent of the Holder of any Bond held by a third party depository shall be deemed to be binding upon the Holder and any successor Holder of such Bond when the consent is given by the registered Holder of the Bond as shown on the records of the depository or a depository participant at the time of the mailing of the request for such consent to the registered Holder (the "Holder of Record"); provided, however, that to be binding on successor Holders, the consent of the Holder of Record must be executed within forty-five (45) days of the date of mailing the request for consent to the Holder of Record.

Section 14.13. Reserve Fund Surety Bond. The Authority may elect while any of the Bonds are outstanding to substitute or replace all or part of the amounts held pursuant to any Reserve Fund Requirement with a comparable credit facility rated "A1" or better by Moody's or "A+ " by S & P providing security for the payment of principal and interest on the Bonds from the Reserve Fund, including but not limited to letters of credit, policies of insurance or lines of credit, to the extent that such substitution is, in the opinion of Bond Counsel, permitted by the then prevailing law and consistent with the requirements for tax exemption under federal income tax laws and regulations in effect on the date of such substitution. A comparable credit facility for an issue of bonds must be (i) equal in amount to any Reserve Fund balance, (ii) replenishable in the event the facility is drawn upon, and (iii) of a term equal to the longest maturity of the Bonds.

Section 14.14. Municipal Bond Insurance. Notwithstanding anything in this Indenture to the contrary, all of the provisions set out in Exhibit F hereto are incorporated into and made a part of this Indenture.

IN WITNESS WHEREOF, the parties hereto have caused this TRUST INDENTURE AND ASSIGNMENT OF LEASE RENTALS to be duly executed, and the INDUSTRIAL COMMISSION OF NORTH DAKOTA acting as the NORTH DAKOTA BUILDING AUTHORITY has caused its seal to be hereunto affixed and attested, all the date and year first above written.

INDUSTRIAL COMMISSION OF NORTH  
DAKOTA, Acting in its capacity as the  
NORTH DAKOTA BUILDING AUTHORITY

By \_\_\_\_\_  
John Hoeven, Governor  
Chairman

ATTEST:

\_\_\_\_\_  
Karlene Fine

Executive Director and Secretary

( S E A L )

BANK OF NORTH DAKOTA  
Bismarck, North Dakota, as Trustee

By \_\_\_\_\_

Title \_\_\_\_\_

APPENDIX A

**Definitions**

Defined Terms. Unless the context otherwise requires, the terms herein defined shall, for all purposes of this Indenture and of any indenture supplemental hereto, have the meanings herein specified. Any terms defined in the Leases, but not defined herein shall have the same meaning herein as defined in the Leases. Unless the context clearly requires otherwise such definitions to be equally applicable to both the singular and plural forms of any of the terms defined:

"**Accountant**" means a certified public accountant or accountants licensed by the State and employed or retained by the Authority.

"**Act**" means NDCC Chapter 54-17.2, as amended by the Legislative Assembly of the State.

"**Additional Rent**" means the rent to be paid pursuant to Section 3.5 of the Leases.

"**Additional Security**" means any right, title, or interest in property, real, personal or mixed, not acquired by the Authority by the expenditure of the proceeds from the sale of the Bonds, that is pledged to the security of the Bonds and made a part of the Trust Estate in lieu of or in addition to the security interest in the Project or Projects as described in the Leases.

"**Administration Fund**" means the Administration Fund established by Section 5.06 hereof.

"**Administrative Expenses**" means the Authority's expenses of carrying out and administering its powers, duties and functions under the Leases and this Indenture. Such expenses shall not include (i) Debt Service on the Bonds or on any other bonds, notes or other evidences of indebtedness of the State, or (ii) the Costs of Issuance, (iii) Bond Fees, or (iv) the fees, costs or expenses of the Authority, the Commission or the State with respect to any other bonds, notes or indebtedness of the Authority, the Commission or the State.

"**Agency**" means, whether one or more, the State Board of Higher Education, the North Dakota Department of Corrections and Rehabilitation, and the Administrative Committee on Veterans' Affairs, or any other body or agency of the State which succeeds to the respective rights, responsibilities and duties of any Agency.

"**Agent**" means, whether one or more, the person at any time designated to act on behalf of the Agency by written certificate furnished to the Authority and the Trustee, containing the specimen signature of such person. Such certificate may designate an alternate or alternates.

"**Authority**" means the Industrial Commission of North Dakota acting in its capacity as the North Dakota Building Authority created under and pursuant to the provisions of the Act or anybody succeeding to its rights or duties under this Indenture.

"**Authority Bonds**" means (i) Bonds owned or held by the Authority or held by the Trustee, or their agents, for the account of the Authority or (ii) Bonds which the Authority has notified the Trustee, or which the Trustee knows, were purchased by another Person for the account of the Authority with moneys furnished by the Authority.

**"Authority Certificate" or "Authority Consent"** means, respectively, a written request, order, certificate or consent signed in the name of the Authority by an Authorized Officer and delivered to the Trustee.

**"Authorized Officer"** means the person or persons at any time designated to act on behalf of the Authority in the Bond Resolution.

**"Balance"** when used with reference to any Fund, means the aggregate sum of all assets deposited in and standing to the credit of such Fund, including, without limitation, Permitted Investments computed at the value of Permitted Investments; and lawful money of the United States; provided, however, that the Balance of the Bond Fund shall not include amounts standing to the credit thereof which are being held therein for: (a) the payment of past due and unpaid interest on and principal of Bonds and (b) the payment of interest on and principal of Bonds that are deemed no longer Outstanding as a result of the defeasance thereof pursuant to Section 10.01.

**"Bank of North Dakota"** means the State doing business as the Bank of North Dakota pursuant to Chapter 6-09 of the NDCC and any other board, body, commission or agency succeeding to the functions thereof under this Indenture.

**"Bank of North Dakota Base Rate"** means the interest rate established by the Bank of North Dakota Investment Committee on a weekly basis.

**"Basic Rent"** means the rent to be paid pursuant to Section 3.3 of the Leases.

**"Bond Counsel"** means any Counsel of nationally recognized standing in the field of law relating to exemption from federal income taxation with respect to municipal bonds.

**"Bond Fees"** means the fees, costs and expenses of the Trustee and Paying Agent, Independent Accountants, Bond Counsel or Registrar incurred by the Authority including the NDBA Fee in carrying out and administering its powers, duties and functions under this Indenture and the Leases.

**"Bond Fund"** means the Bond Fund created under Section 5.01 hereof.

**"Bond Purchase Agreement"** means that Forward Delivery Bond Purchase Agreement dated October 31, 2002, and entered into between the Authority and the Original Purchaser.

**"Bond Resolution"** means the General Authorization Resolution of the Authority adopted by the Authority on October 17, 2002, authorizing the issuance and sale of the Bonds, as the same may be amended, modified or supplemented by any amendments or modifications thereof.

**"Bond Year"** means a one (1) year period beginning on June 1 and ending on May 31 of the next succeeding calendar year, or such other dates as designated by the Authority.

**"Bonds"** means the "North Dakota Building Authority Lease Revenue Refunding Bonds, 2003 Series A" described in this Indenture, and any additional bonds authorized to be issued hereunder and any bonds issued to refund the Bonds in whole or in part.

**"Building Authority Fund"** means the Building Authority Fund established pursuant to Section 5.07 hereof.

**"Business Day"** means any day other than a Saturday or Sunday or legal holiday, or a day on which the Trustee is required or authorized by law to remain closed or a day on which the New York Stock Exchange is closed.

**"Certificate"** means a certification in writing required or permitted by the provisions of the Leases or this Indenture, signed and delivered to the Trustee or other proper person or persons. If and to the extent required by the provisions of Section 1.02 hereof, each Certificate shall include the statements provided for in Section 1.02.

**"Certified Resolution"** means a copy of a resolution of the Authority, certified by the Secretary to the Commission to have been duly adopted by the Authority.

**"Commission"** means the Industrial Commission of North Dakota created by NDCC §54-17-01, and any other board, body, commission, agency or officer succeeding to the functions thereof to which the powers and duties granted or imposed by this Indenture shall be given by law.

**"Condemnation"** means the taking or requisition by governmental authority or by a person, firm or corporation acting under governmental authority and a conveyance made under threat of condemnation provided such conveyance is made with the approval of the Trustee, and condemnation award shall include payment for property taken or requisitioned or conveyed under threat of condemnation.

**"Costs of Issuance"** means all items of expense directly or indirectly payable by or reimbursable to the Authority and related to the authorization, sale and issuance of the Bonds and including, but not limited to printing costs, costs of preparation and reproduction of documents, filing fees, initial fees and charges of the Trustee, Registrar and Paying Agents, legal fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, fees and charges for preparation, execution, transportation and safekeeping of the Bonds, any bond insurance premiums, any costs associated with obtaining title opinions or title insurance with respect to the Projects, and any accrued interest paid in connection with or with respect to the initial investment of Bond proceeds, other costs incurred by the Authority in anticipation of the issuance of the Bonds and any other cost, charge or fee in connection with the issuance of the Bonds.

**"Counsel"** means an attorney duly admitted to practice law before the highest court of any state.

**"Debt Service"** means, as of any particular date and with respect to any particular period, the aggregate of the moneys to be paid or set aside on such date or during such period for the payment of the principal of, including any sinking fund redemptions of Term Bonds, premium, if any, and interest on the Bonds.

**"Default"** means default by the Authority in the performance or observance of any of the covenants, agreements or conditions on its part contained in this Indenture, exclusive of any notice or period of grace required to constitute a default as an "Event of Default" as described in Section 7.01 hereof.

**"Default in Payment"** means an Event of Default described in paragraph (a) or (e) of Section 7.01 hereof.

**"Event of Default"** means an event of default described in Section 7.01 of this Indenture, which has not been cured.

**"Event of Nonappropriation"** means the failure, for whatever reason, of the Legislative Assembly of the State to appropriate sufficient moneys for the payment of Basic and Additional Rent under a Lease during any Renewal Term of a Lease, wherein Basic and Additional Rent are payable, on or before the commencement of such Renewal Term.

**"Excess Earnings"** means (a) investment earnings on obligations purchased with amounts deposited in any Fund created pursuant to this Indenture (other than the Bond Fund and Rebate Fund) in an amount equal to the difference between the excess of the aggregate amount earned during the Bond Year less the amount of investment earnings that would have been generated if the Yield on the investment of such amount during the Bond Year had been equal to the Bond Yield plus (b) any income attributable to the excess described in (a). The foregoing shall be interpreted and applied consistent with Section 148 of the Internal Revenue Code and Section 1.148 of the Treasury Regulations.

**"Financial Newspaper"** or **"Financial Journal"** means any newspaper or journal of general circulation carrying financial news circulated in the English language in New York, New York.

**"Fiscal Year"** means the Agency's fiscal year, and shall initially mean the 12-month period commencing on the first day of July in each year.

**"Fund"** means any of the Funds and their respective subaccounts, if any, established by this Indenture.

**"Indenture"** means this Trust Indenture and Assignment of Lease Rentals, constituting a trust agreement between the Authority and the Bank of North Dakota, as Trustee, and including any indenture which amends or is supplemental hereto entered into in accordance with the provisions hereof.

**"Independent"** when used with respect to any specified Person, means a Person who (1) is in fact independent; (2) does not have direct financial interest or any material indirect financial interest in the Authority or State, other than the payment to be received under a contract for services to be performed by such Person; and (3) is not connected with the Authority or State as an official, officer, employee, promoter, underwriter, trustee, partner, affiliate, subsidiary, director or Person performing similar functions. Whenever it is herein provided that any Independent Person's opinion or certificate shall be furnished to the Trustee, such Person shall be appointed by the Authority or the Trustee, as the case may be, and such opinion or certificate shall state that the signer had read the definition and that the signer is Independent within the meaning hereof.

**"Interest Payment Date"** means a date on which interest is payable on any Bond including any date upon which interest is payable under an acceleration of maturity pursuant to Section 7.02 hereof.

**"Interest Period"** means any semiannual period prior to each Interest Payment Date.

**"Internal Revenue Code"** means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder or applicable to the Bonds.

**"Investment Agreement"** means an agreement by and between the Authority and a bank, trust company, national banking association, insurance company or other financial institution, providing for the investment of moneys in any of the Funds.

**"Lease"** or **"Leases"** means the Lease Agreement I, dated as of March 5, 2003, between the Authority and the State Board of Higher Education for various projects, the Lease Agreement II, dated as of March 5, 2003, between the Authority and the North Dakota Department of Corrections and Rehabilitation for the State Penitentiary – Phase III Improvements project, and the Lease Agreement III, dated as of March 5, 2003, between the Authority and the Administrative Committee on Veterans' Affairs for the Veterans Home Improvements project.

**"Lease Term"** means the duration of the leasehold estate created in the Leases as specified under Article III thereof to the date of termination including early termination provided for therein.

**"Leased Equipment"** means any items of machinery, equipment, fixtures and related property required herein to be acquired and installed in the Projects or elsewhere on the Sites, and acquired, financed or refinanced with the proceeds from the sale of the Bonds or the proceeds of any payment by the Agency pursuant to Section 4.1 of the Leases.

**"Maturity"** means, when used with respect to any Bond, the date on which the principal of such Bond becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

**"Moody's"** means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, 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, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, at the written direction of the Authority.

"**NDBA Fee**" means the administration fee payable to the Authority, as described in Section 8.27 hereof.

"**NDCC**" means the North Dakota Century Code, as amended.

"**Net Proceeds**" when used with respect to any insurance or Condemnation award, means the proceeds from the insurance or Condemnation award remaining after payment of all expenses (including attorney's fees and any extraordinary expenses of the Trustee) incurred in the collection of such proceeds.

"**Opinion of Counsel**" means a written opinion of Counsel appointed by the Agency or Authority and acceptable to the Trustee or appointed by the Trustee. If, and to the extent required by the provisions of Section 1.02 of this Indenture, each Opinion of Counsel shall include the statements provided for in said Section 1.02.

"**Original Purchaser**" means the original purchaser or purchasers of the Bonds as set out in Exhibit C hereto.

"**Outstanding**" when used as of any particular time with reference to Bonds, means all Bonds theretofore authenticated and delivered by the Trustee under the Indenture except:

- (i) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;
- (ii) Bonds for the payment or redemption of which cash or direct obligations of or obligations fully guaranteed by the United States of America (which do not permit the redemption thereof at the option of the issuer) in the necessary amount shall have theretofore been deposited with the Trustee (whether upon or prior to the Stated Maturity or the Redemption Date of such Bonds), provided that if such Bonds are to be redeemed prior to the Stated Maturity thereof, notice of such redemption shall have been given pursuant to Article III of the Indenture, or provision satisfactory to the Trustee shall have been made for the giving of such notice; and
- (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the terms of Section 2.07 of this Indenture pertaining to replacement of Bonds.

"**Owner**" or "**Bondholder**" or "**Holder**" whenever employed herein with respect to a Bond means the person or persons in whose name such Bond shall be registered.

"**Paying Agent**" means the Bank of North Dakota or any successor paying agent designated in accordance herewith as a place at which principal of or interest on any Bond is payable, and, in the absence of any such designation, the Trustee.

"**Permitted Encumbrances**" means, as of any particular time, (i) this Indenture, (ii) utility, access and other easements and rights-of-way, mineral rights, restrictions and that the Agency certifies will not interfere with or impair the use of or operations being conducted in the Projects or elsewhere on the Sites, and (iii) such minor defects, irregularities, encumbrances, easements, and rights-of-way as normally exist with respect to properties similar in character to the Projects and as do not in the Opinion of Counsel addressed to the Trustee, materially impair the property affected thereby for the purposes for which it was acquired or is held by the Authority.

"**Permitted Investments**" means,

(A) For all purposes, including defeasance investments in refunding escrow accounts:

- (1) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (2) below); or
- (2) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America.

(B) For all purposes other than defeasance investments in refunding escrow accounts:

- (1) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:
  - (a) Export-Import Bank
  - (b) Farm Credit System Financial Assistance Corporation
  - (c) Rural Economic Community Development Administration (formerly the Farmers Home Administration)
  - (d) General Services Administration
  - (e) U.S. Maritime Administration
  - (f) Small Business Administration
  - (g) Government National Mortgage Association (GNMA)
  - (h) U.S. Department of Housing & Urban Development (PHA's)

- (i) Federal Housing Administration
  - (j) Federal Financing Bank; or
- (2) Direct Obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:
- (a) Senior debt obligations rated "Aaa" by Moody's and "AAA" by S&P issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC)
  - (b) Obligations of the Resolution Funding Corporation (REFCORP)
  - (c) Senior debt obligations of the Federal Home Loan Bank System
  - (d) Senior debt obligations of other Government Sponsored Agencies approved by the Authority; or
- (3) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P and "P-1" by Moody's and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank.); or
- (4) Commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by S&P and "P-1" by Moody's and which matures not more than 270 days after the date of purchase; or
- (5) Investments in a money market fund rated "AAAm" or "AAAm-G" or better by S&P; or
- (6) Pre-refunded Municipal Obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local government unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and
- (a) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's or any successors thereto; or
  - (b)
    - (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph A(2) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and
    - (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and any redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate. (Pre-refunded Municipal Obligations meeting the requirements of subsection (B) hereof may not be used as Permitted Investments for annual appropriation lease transactions without the prior written approval of S&P); or
- (7) General obligations of states with a rating of at least "A2 and A+" or higher by both Moody's and S&P; or
- (8) Investment agreements or other forms of investments approved in writing by the Authority (supported by appropriate opinions of counsel) with notice to S&P and Moody's; and
- (9) Deposits of the Bank of North Dakota, which as provided by NDCC §6-09-10, are guaranteed by the State.
- (C) The value of the above investments shall be determined as follows: "Value", which shall be determined as of each Interest Payment Date, means that the value of any investments shall be calculated as follows:
- (1) As to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;
  - (2) As to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;
  - (3) As to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and
  - (4) As to any investment not specified above: the value thereof established by prior agreement between the Authority and the Trustee.

"**Person**" means any individual, commission, partnership, joint venture, association, joint stock company, trust, incorporated organization or government or any agency or political subdivision thereof.

"**Principal Office**" means (i) when used with respect to the Trustee, the principal trust office of the Trustee, which office as of the date of execution of this Indenture is located at the address specified in Section 14.07 hereof, and (ii) when used with respect to any other Person, the office designated in writing to the Trustee and the Authority.

"**Principal Payment Date**" means the Stated Maturity of principal of any Bond and the Redemption Date of any Bonds.

"**Prior Bonds**" mean the bonds defined as Prior Bonds on page 1 of this Indenture.

"**Prior Bonds Bond Fund**" means the Bond Fund created under Section 5.01 of the Prior Bonds Indenture.

"**Prior Bonds Indenture**" means the Trust Indenture dated as of February 10, 1993, between the Authority and the Bank of North Dakota, as Trustee, relating to the Prior Bonds.

"**Project**" or "**Projects**" means the interests in real or personal property, or both, acquired, constructed, or improved with the bond proceeds from the bonds which were refunded by the Prior Bonds, and which interests are described in Exhibit A to the Leases between the Authority and the Agency.

"**Rebate Fund**" means the Rebate Fund created under Section 5.08 hereof.

"**Record Date**" means the fifteenth day of the month, whether or not a Business Day, immediately preceding each regular Interest Payment Date.

"**Redemption Date**" when used with respect to any Bond to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"**Redemption Price**" when used with respect to any Bond to be redeemed, means the price at which it is to be redeemed pursuant to Sections 3.01 or 3.02 of this Indenture.

"**Register**" means the Bond register maintained by the Registrar pursuant to Section 2.11 hereof.

"**Registrar**" means the Bank of North Dakota or any successor bank or banking association having trust powers or trust company serving in such capacity under the terms of this Indenture and its successor or successors and any other bank or banking association having trust powers or trust company which may at any time be substituted in its place pursuant to this Indenture.

"**Renewal Term**" means any two-year renewal period of the Leases as set out in the Leases.

"**Repair and Replacement Fund**" means the Repair and Replacement Fund established by Section 5.09 hereof.

"**Reserve Fund**" means the Reserve Fund established by Section 5.02 hereof.

"**Reserve Fund Requirement**" means that amount set out in Section 2.03(b) hereof which is not more than the maximum permitted by law and does not exceed the lesser of (i) the maximum annual Debt Service payments due on the Bonds; (ii) 125% of the average annual Debt Service on the Bonds; or (iii) 10% of the stated principal amount of the Bonds.

"**S & P**" means Standard and Poor's Corporation, a corporation organized and existing under the laws of the State of New York, 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, "S & P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, at the written direction of the Authority.

"**Serial Bonds**" means any Bonds designated as such in Exhibit D hereto payable in annual principal maturities as provided in Section 2.01 hereof.

"**Site**" or "**Sites**" means the real property as defined and described in the Leases and in Exhibit B attached hereto.

"**State**" means the State of North Dakota.

"**Stated Maturity**" when used with respect to any Bond, means the date specified in such Bond as the fixed date on which principal of such Bond is due and payable.

"**Tax Certificate**" means the certification of the Authority dated as of the date of delivery of the Bonds to the Original Purchaser regarding compliance with the requirements of the Internal Revenue Code.

"**Term Bonds**" means any Bonds designated as such in any Exhibit E attached hereto and payable through sinking fund redemption in amounts set out in Section 2.01 hereof and redeemed as provided in Section 3.02(a) hereof.

"**Trust Estate**" means interests in the Projects and any Additional Security assigned under the Granting Clauses hereof.

"**Trust Funds**" means, in the aggregate, all of the Funds.



"**Trustee**" means the Bank of North Dakota, Bismarck, North Dakota, and its successor or successors and any other bank, trust company or corporation which may at any time be substituted in its place, acting in its capacity as Trustee or Registrar pursuant to this Indenture.

"**Yield**" means that discount rate which when computing the present worth of all payments of principal and interest to be paid on an obligation produces an amount equal to the purchase price of the obligation. With respect to the Bonds, the Yield shall be the discount rate at which the present value of payments on such Bonds is equal to the purchase price at par, less original issue discount, plus accrued interest, less any Bond insurance premium.

NORTH DAKOTA BUILDING AUTHORITY  
LEASE REVENUE REFUNDING BONDS  
2003 Series A

Book Entry Bond

Principal Amount: \_\_\_\_\_ Dollars (\$\_\_\_\_,000.00)

Registered Holder: Cede & Co.

Dated Date                      Maturity Date                      Interest Rate                      CUSIP  
March \_\_, 200\_\_                      June 1, 200\_\_                      \_\_\_\_\_                      658906 \_\_\_\_

Interest Payment Dates                      Initial Interest Payment Date                      Registrar/Paying Agent  
June 1 and December 1                      December 1, 2003                      Bank of North Dakota

THE INDUSTRIAL COMMISSION OF NORTH DAKOTA (the "**Commission**") acting in its capacity as the North Dakota Building Authority (the "**Authority**"), acknowledges itself indebted and for value received hereby promises to pay to the Registered Holder on the Record Date (the fifteenth day of the month, whether or not a Business Day, immediately preceding each Interest Payment Date) the Principal Amount on the Maturity Date, unless redeemed prior thereto as provided in the Trust Indenture and Assignment of Lease Rentals dated as of the date of the sale of the 2003 Series A Bonds (the "**Indenture**") at which time interest shall cease to accrue provided money for such redemption is on deposit with the Trustee, and to pay interest on the Principal Amount at the Interest Rate specified above from the Dated Date hereof to the Initial Interest Payment Date and on each Interest Payment Date thereafter until paid in full. Interest will be payable by wire transfer to DTC.

This book-entry bond is one of a duly authorized series of bonds of the State (the "**2003 Series A Bonds**") issued by the Authority in the initial aggregate principal amount of \$15,145,000 under and pursuant to Chapter 54-17.2 of the North Dakota Century Code (the "**Act**") and the Indenture as authorized by the Bond Resolution duly adopted by the Authority on October 17, 2002. (Capitalized terms used herein, which are not specifically defined herein, shall have the same meanings given to such terms in the Indenture.) Copies of the Indenture are on file in the office of the Trustee and the office of the Commission in Bismarck, North Dakota.

The 2003 Series A Bonds:

- (i) are transferable, as provided in the Indenture;
- (ii) are subject to extraordinary optional redemption prior to maturity as a whole or in part at such time or times, under such circumstances and in such manner as is set forth in the Indenture, upon notice as provided in Article III of the Indenture, or the Blanket Issuer Letter of Representations entered into between the Authority and DTC;
- (iii) shall not be valid or obligatory for any purpose until the Trustee's Certificate of Authentication hereon shall have been signed by the Trustee; and
- (iv) shall, if a term bond, be subject to the payment of the sinking fund installments set out on the reverse hereof.


Notwithstanding any other provisions herein set out, so long as Cede & Co. is the registered owner hereof, the provisions of the Blanket Issuer Letter of Representations entered into by and between the Authority and DTC shall be controlling as to the matters addressed therein and all the terms and provisions therein are incorporated herein as though fully set out herein.

This Bond and the series of which it is one do not constitute a direct obligation of the State or any agency or political subdivision of the State within the meaning of any statutory or constitutional provision. The principal or redemption price of and interest on this Bond and the series of which it is one is payable solely from the revenues derived by the Authority pursuant to the Leases, as provided in the Indenture, and as provided in NDCC ch. 54-17.2.

IN WITNESS WHEREOF, the Authority has caused the 2003 Series A Bonds to be executed in the name of the State and on its behalf by the manual or facsimile signatures of the members of the Commission and the official seal of the Commission (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested to by the manual or facsimile signature of an Authorized Officer of the Commission.

INDUSTRIAL COMMISSION OF NORTH DAKOTA


  
Governor and Chairman

  
Agriculture Commissioner

**DRAFT**

ATTEST:

  
Attorney General

  
Executive Director of the Commission  
Authorized Officer



TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the 2003 Series A Bonds described in the within mentioned Indenture authorizing the issuance of the 2003 Series A Bonds of the Authority.

BANK OF NORTH DAKOTA  
BISMARCK, NORTH DAKOTA, AS TRUSTEE

By \_\_\_\_\_  
Authorized Signature

(To be printed on the bonds)

STATEMENT OF INSURANCE

Financial Guaranty Insurance Company ("Financial Guaranty") has issued a policy containing the following provisions with respect to the Bonds, such policy being on file at the principal office of the Bank of North Dakota, as paying agent (the "Paying Agent"):

Financial Guaranty hereby unconditionally and irrevocably agrees to pay for disbursement to the Bondholders that portion of the principal of and interest on the Bonds which is then due for payment and which the issuer of the Bonds (the "Issuer") shall have failed to provide. Due for payment means, with respect to principal, the stated maturity date thereof, or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which the payment of principal of the Bonds is due by reason of call for redemption (other than mandatory sinking fund redemption), acceleration or other advancement of maturity, and with respect to interest, the stated date for payment of such interest.

Upon receipt of telephonic or telegraphic notice, subsequently confirmed in writing, or written notice by registered or certified mail, from a Bondholder or the Paying Agent to Financial Guaranty that the required payment of principal or interest (as applicable) has not been made by the Issuer to the Paying Agent, Financial Guaranty on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with State Street Bank and Trust Company, N.A., or its successor as its agent (the "Fiscal Agent"), sufficient to make the portion of such payment not paid by the Issuer. Upon presentation to the Fiscal Agent of evidence satisfactory to it of the Bondholder's right to receive such payment and any appropriate instruments of assignment required to vest all of such Bondholder's right to such payment in Financial Guaranty, the Fiscal Agent will disburse such amount to the Bondholder.

As used herein the term "Bondholder" means the person other than the Issuer or the borrower(s) of bond proceeds who at the time of nonpayment of a Bond is entitled under the terms of such Bond to payment thereof.

The policy is non-cancellable for any reason.

FINANCIAL GUARANTY INSURANCE COMPANY

\$15,145,000  
STATE OF NORTH DAKOTA  
NORTH DAKOTA BUILDING AUTHORITY  
LEASE REVENUE REFUNDING BONDS  
2003 Series A

**Descriptions of Sites**

**STATE BOARD OF HIGHER EDUCATION:**

North Unit of United Hospital - UND:

Lot Three (3), in Block "A", a replat of portions of Blocks 1, 2, 4 and 5, University Place, Grand Forks County, North Dakota, according to the plat thereof on file in the Office of the Register of Deeds within and for Grand Forks County, North Dakota and recorded as Document No. 400260 and located in and a part of the NE¼SE¼ of Section 5, Township 151, Range 50.

Library Facility – MSU:

That portion of the N½SE¼ Section 14, Township 155 North, Range 83 West of the 5th P.M., described as follows: Beginning at a point 196.00 feet, N 90° 00' 00" E of the Northeast corner of Block 1, Subdivision of Block 14, North Minot, Ward County, North Dakota; thence S00° 00' 00" E, a distance of 255.00 feet; thence N90° 00' 00" W, a distance of 130.00 feet; thence S00° 00' 00" E, a distance of 110.00 feet, thence N90° 00' 00" E, a distance of 130 feet; thence N00° 00' 00" E, a distance of 75.00 feet; thence N90° 00' 00" E, a distance of 350.00 feet; thence N33° 00' 00" E, a distance of 165.00 feet; thence N00° 00' 00" E, a distance of 120.00 feet; thence N90° 00' 00" E, a distance of 130.00 feet; thence N00° 00' 00" E, a distance of 175.00 feet; thence N90° 00' 00" W, a distance of 290.00 feet; thence S65° 17' 21" W, a distance of 264.04 feet; thence S00° 00' 00" E, a distance of 33.00 feet; thence N90° 00' 00" W, a distance of 40.00 feet to the point of beginning.

Agriculture Mechanics Technology Facility – NDSCS-Wahpeton:

All that part of BLOCK 4 OF THE STATE SCHOOL OF SCIENCE ADDITION TO THE CITY OF WAHPETON, COUNTY OF RICHLAND, NORTH DAKOTA described as follows:

Commencing at the northeast corner of said Block 4; thence on an assumed bearing of South 1 degree 27 minutes 20 seconds East on and along the east line of said Block 4 a distance of 983.00 feet; thence South 89 degrees 28 minutes 08 seconds West a distance of 550.76 feet to the point of beginning; thence South 0 degrees 26 minutes 26 seconds West a distance of 383.42 feet to the northwest corner of the Mildred Johnson Library building face; thence North 89 degrees 33 minutes 34 seconds West a distance of 155.68 feet to the Barnard Hall building east wall face; thence North 0 degrees 26 minutes 26 seconds East on and along said east wall face a distance of 108.12 feet to the northeast corner thereof; thence North 89 degrees 33 minutes 34 seconds West on and along said Barnard Hall buildings north wall face a distance of 129.07 feet to the northwest corner thereof; thence North 0 degrees 26 minutes 26 seconds East a distance of 275.30 feet; thence South 89 degrees 33 minutes 34 seconds East a distance of 284.75 feet to the point of beginning.

The above described tract contains 95,224 square feet more or less and shall be subject to existing utility easements and also support, over-hang and similar rights for said Barnard Hall and Mildred Johnson Library buildings.

Abbott Hall - UND:

LAND DESCRIPTION FOR EXISTING ABBOTT HALL TRACT NO. 1:

That part of the Southeast Quarter of the southeast Quarter of Section 5, Township 151 North, Range 50 West of the 5th Principal Meridian, Grand Forks County, North Dakota described as follows:

Commencing at the Southeast corner of said Southeast Quarter of the Southeast Quarter of Section 5; thence on an assumed bearing of North 00 degrees 00 minutes 00 seconds East along the east line of said Section 5 a distance of 700.41 feet; thence South 89 degrees 54 minutes 00 seconds West a distance of 543.56 feet to the point of beginning; thence North 00 degrees 06 minutes 00 seconds West a distance of 230.00 feet; thence North 89 degrees 54 minutes 00 seconds East a distance of 110.00 feet; thence South 00 degrees 06 minutes 00 seconds East a distance of 230.00 feet; thence South 89 degrees 54 minutes 00 seconds West a distance of 110.00 feet to the point of beginning. Containing .581 acres more or less.

LAND DESCRIPTION FOR ABBOTT HALL ADDITION TRACT NO. 2:

That part of the Southeast Quarter of the Southeast Quarter of Section 5, Township 151 North, Range 50 West of the 5th Principal Meridian, Grand Forks County, North Dakota described as follows:

Commencing at the Southeast corner of said Southeast Quarter of the Southeast Quarter of Section 5; thence on an assumed bearing of North 00 degrees 00 minutes 00 seconds East along the east line of said Section 5 a distance of 700.41 feet; thence South 89 degrees 54 minutes 00 seconds West a distance of 543.56 feet to the point of beginning; thence continuing South 89

degrees 54 minutes 00 seconds West a distance of 200.00 feet; thence North 00 degrees 06 minutes 00 seconds West a distance of 115.00 feet; thence North 89 degrees 54 minutes 00 seconds East a distance of 200.00 feet; thence South 00 degrees 06 minutes 00 seconds East a distance of 115.00 feet to the point of beginning. Containing .528 acres more or less.

Computer Technology Transfer Center - NDSU:

That part of the SE¼ of Section 36, Township 140 N, Range 49 W of the 5th principal meridian; Cass County, North Dakota described as follows:

That part of the North Dakota State University campus property described as follows: Commencing at the centerline intersection of Centennial Boulevard and Bolley Drive, thence on an assumed bearing of South 00 degrees 00 minutes 00 seconds East along the centerline of Bolley Drive 50.11 feet; thence South 89 degrees 44 minutes 25 seconds East 27.30 feet to the intersection of the back of sidewalks paralleling Centennial Boulevard and Bolley Drive and being the point of beginning, thence South 89 degrees 44 minutes 25 seconds East along the back (property side) side of the existing sidewalk 280.27 feet to the intersection of sidewalks (property side) which parallel Centennial Boulevard and College Street, thence South 00 degrees 11 minutes 00 seconds East along the back (property side) of the sidewalk paralleling College Street for a distance of 231.01 feet; thence South 89 degrees 51 minutes 45 seconds West 280.66 feet to a point on the back side (property side) of the existing sidewalk (aforementioned property line being 20.00 feet north of the north side of Hultz Hall), thence North 00 degrees 05 minutes 09 seconds West along the back of sidewalk for a distance of 232.96 feet and the point of beginning. Said tract contains 1.49 acres more or less and is subject to all easements of sight or record.

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION:

North Dakota State Penitentiary:

FOOD SERVICE

All that Part of the West 1/2 of Section 2, Township 138 North, Range 80 West of the 5th Principal Meridian, Burleigh County, North Dakota that lies within the following described tract:

Beginning at a point 2131.11 feet north and 82.89 feet west (measured along and perpendicular to the east line of the West 1/2 of Section 2) from the south 1/4 corner (the bearing of said 1/4 line being North 00 degrees 50 minutes 57 seconds East); thence North 90 degrees 00 minutes 00 seconds West a distance of 11.00 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 1.20 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 81.50 feet; thence South 45 degrees 00 minutes 00 seconds West a distance of 9.00 feet; thence North 45 degrees 00 minutes 00 seconds west a distance of 9.00 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 59.30 feet; thence South 45 degrees 00 minutes 00 seconds West a distance of 12.70 feet; thence North 45 degrees 00 minutes 00 seconds West a distance of 8.00 feet; thence North 45 degrees 00 minutes 00 seconds East a distance of 7.50 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 3.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 44.80 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 60 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 5.00 feet; thence North 45 degrees 00 minutes 00 seconds East a distance of 25.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 5.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 42.50 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 85.50 feet; thence South 00 degrees 00 minutes 00 seconds East a distance of 14.30 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 8.30 feet; thence South 00 degrees 00 minutes 00 seconds East a distance of 63.00 feet; thence South 90 degrees 00 minutes 00 seconds East a distance of 11.00 feet; thence South 00 degrees 00 minutes 00 seconds East a distance of 33.50 feet to the point of beginning.

The above described tract contains 13,480 square feet, more or less.

EDUCATION AND LIBRARY

All that Part of the West 1/2 of Section 2, Township 138 North, Range 80 West of the 5th Principal Meridian, Burleigh County, North Dakota that lies within the following described tract:

Beginning at a point 1976.05 feet north and 228.22 feet west (measured along and perpendicular to the east line of the West 1/2 of Section 2) from the south 1/4 corner (the bearing of said 1/4 line being North 00 degrees 50 minutes 57 seconds East); thence South 00 degrees 00 minutes 00 seconds East along an existing east building wall a distance of 76.30 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 69.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 104.50 feet; thence North 45 degrees 00 minutes 00 seconds East a distance of 11.30 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 32.30 feet; thence South 38 degrees 27 minutes 00 seconds East, along the northeast building wall, a distance of 46.20 feet to the point of beginning.

The above described tract contains 7,211 square feet, more or less.

PROGRAMS

All that Part of the West 1/2 of Section 2, Township 138 North, Range 80 West of the 5th Principal Meridian, Burleigh County, North Dakota that lies within the following described tract:

Beginning at a point 2027.07 feet north and 147.86 feet west (measured along and perpendicular to the east line of the West 1/2 of Section 2) from the south 1/4 corner (the bearing of said 1/4 line being North 00 degrees 50 minutes 57 seconds East); thence North 90

degrees 00 minutes 00 seconds West a distance of 141.20 feet; thence North 00 degrees 00 minutes 00 seconds West a distance of 68.35 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 8.33 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 35.55 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 42.20 feet; thence South 45 degrees 00 minutes 00 seconds West a distance of 7.50 feet; thence South 45 Degrees 00 minutes 00 seconds East a distance of 8.00 feet; thence North 45 degrees 00 minutes 00 seconds East a distance of 12.70 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 59.30 feet; thence South 45 degrees 00 minutes 00 seconds East, a distance of 9.00 feet; thence North 45 degrees 00 minutes 00 seconds East a distance of 9.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 26.00 feet; thence South 00 degrees 00 minutes 00 seconds East a distance of 101.90 feet to the point of beginning.

The above described tract contains 14,643 square feet, more or less.

**ADMINISTRATIVE COMMITTEE ON VETERANS' AFFAIRS:**

South Half of the Southwest Quarter (S½ SW¼) of Section Twelve (12), Township One Hundred Thirty-four (134), Range Fifty-six (56), Ransom County, North Dakota, containing 80 acres more or less.

\$15,145,000  
NORTH DAKOTA BUILDING AUTHORITY  
LEASE REVENUE REFUNDING BONDS  
2003 Series A

**ORIGINAL PURCHASER**

DOUGHERTY & COMPANY LLC

**2003 Series A  
Serial Bond Interest Rate Schedule**

<u>Maturity</u> (June 1)	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2004	\$ 1,780,000	5.250%
2005	2,060,000	5.250%
2006	2,160,000	5.250%
2007	2,280,000	5.250%
2008	2,675,000	5.250%
2009	2,810,000	5.250%
2010	1,380,000	5.250%



**2003 Series A  
Term Bond Interest Rate Schedule**

None

### Municipal Bond Insurance Provisions

1. Definitions
  - (a) **"Bond Insurance Policy"** means the municipal bond new issue insurance policy issued by the Bond Insurer that guarantees payment of principal of and interest on the Bonds.
  - (b) **"Bond Insurer"** means Financial Guaranty Insurance Company, a New York stock insurance company, or any successor thereto.
2. Default-Related Provisions
  - (a) In determining whether payment default has occurred or whether a payment on the Bonds has been made under the Indenture, no effect shall be given to payments made under the Bond Insurance Policy.
  - (b) Any acceleration of the Bonds or any annulment thereof shall be subject to the prior written consent of the Bond Insurer (if it has not failed to comply with its payment obligations under the Bond Insurance Policy).
  - (c) The Bond Insurer shall receive immediate notice of any payment default and notice of any other default known to the Trustee within 30 days of the Trustee's knowledge thereof.
  - (d) For all purposes of the Indenture provisions governing events of default and remedies, except the giving of notice of default to Bondholders, the Bond Insurer shall be deemed to be the sole holder of the Bonds it has insured for so long as it has not failed to comply with its payment obligations under the Bond Insurance Policy.
  - (e) The Bond Insurer shall be included as a party in interest and as a party entitled to (i) notify the Authority, the Trustee, if any, or any applicable receiver of the occurrence of an event of default and (ii) request the Trustee or receiver to intervene in judicial proceedings that affect the Bonds or the security therefor. The Trustee or receiver shall be required to accept notice of default from the Bond Insurer.
3. Amendments and Supplements. Any amendment or supplement to the Indenture or any other principal financing documents shall be subject to the prior written consent of the Bond Insurer. Any rating agency rating the Bonds must receive notice of each amendment and a copy thereof at least 15 days in advance of its execution or adoption. The Bond Insurer shall be provided with a full transcript of all proceedings relating to the execution of any such amendment or supplement.
4. Successor Trustees, Etc. No resignation or removal of the Trustee, Paying Agent or Bond Registrar shall become effective until a successor has been appointed and has accepted the duties of Trustee, Paying Agent or Bond Registrar, as applicable. The Bond Insurer shall be furnished with written notice of the resignation or removal of the Trustee, Paying Agent or Bond Registrar and the appointment of any successor thereto.
5. Defeasance Provisions. Only cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated AAA by S&P or Aaa by Moody's (or any combination of the foregoing) shall be used to effect defeasance of the Bonds unless the Bond Insurer otherwise approves. In the event of an advance refunding, the Authority shall cause to be delivered a verification report of any independent nationally recognized certified public accountant. If a forward supply contract is employed in connection with the refunding, (i) such verification report shall expressly state that the adequacy of the escrow to accomplish the refunding relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement (or the authorizing document, if no separate escrow agreement is utilized), the terms of the escrow agreement or authorizing document, if applicable shall be controlling.
6. Reporting Requirements. The Bond Insurer shall be provided with the following information:
  - (a) Notice of any drawing upon or deficiency due to market fluctuation in the amount, if any, on deposit, in the debt service reserve fund;
  - (b) Notice of any material events pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934;
  - (c) Notice of the redemption, other than mandatory sinking fund redemption, of any of the Bonds, or of any advance refunding of the Bonds, including the principal amount, maturities and CUSIP numbers thereof; and
  - (d) Such additional information as the Bond Insurer may reasonably request from time to time.
7. Payments Unconditional. Except for an Event of Nonappropriation, the payment obligations under the lease, installment sale agreement or other document evidencing the Agencies' obligations shall be absolute and unconditional, free of deductions and

without any abatement, offset, recoupment, diminution or set-off whatsoever.

8. Notice Addresses. The notice addresses for the Bond Insurer and the fiscal agent are as follows:

Financial Guaranty Insurance Company  
125 Park Avenue  
New York, NY 10017  
Attn: Risk Management

State Street Bank and Trust Company, N.A.  
61 Broadway  
New York, NY 10006  
Attn: Corporate Trust Department



**APPENDIX C**

**Audited General Purpose Financial Statements  
of the State of North Dakota  
For the Fiscal Year Ended June 30, 2002**

**APPENDIX D**

**General Information Concerning the North Dakota State Board  
of Higher Education, Its Facilities and Programs**

## GENERAL INFORMATION

The North Dakota State Board of Higher Education was established by an initiated measure approved by the voters of North Dakota in 1938 which added Article 54 to the State Constitution. Annually, the Governor nominates a Board member from a list of three names which have been selected by action of four of the following five persons: the President of North Dakota Educational Association, the Chief Justice of the Supreme Court, the Superintendent of Public Instruction, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, and with the consent of a majority of members-elect of the Senate, serves a four-year term. Members can be reappointed and serve a maximum of two four-year terms. (This method of selecting members of the Board was amended by a vote of the people during the 1996 General Election.) Prior to 1997 a Board member served a seven-year term. The Board is made up of eight voting members and one non-voting faculty representative; seven voting members selected by the method outlined above and one student voting member. The student member is appointed by the Governor from a list of names recommended by the Executive Board of the North Dakota Student Association for a term of one year. The faculty representative is appointed annually by the Council of College Faculties. The State Constitution provides the Board with broad powers and specifies that the Board retains any powers it does not specifically delegate to the campuses. The Board discharges its constitutional responsibilities through policies adopted by the Board and administrative rules and regulations established at various levels.

The North Dakota State Board of Higher Education is the governing body for North Dakota's eleven publicly-supported colleges and universities, which include two research universities, four regional universities, five two-year institutions and related entities which include the Cooperative Extension Service, Research Stations, Medical School and the State Forest Service. The Commissioner of Higher Education serves as the chief executive officer of the Board. The Commissioner is the Chancellor and chief executive officer of the University System. The University System was implemented and the role of Chancellor was created to concentrate in the Commissioner more authority over the State supported institutions of higher education. The Chancellor chairs a cabinet consisting of the presidents and vice chancellors to advise him or her regarding matters affecting the University System. The Chancellor is assisted by three vice chancellors: the Vice Chancellor for Academic Affairs, the Vice Chancellor for Administrative Affairs and the Vice Chancellor for Strategic Planning. Following is a brief biographical sketch of each of these key administrators.

**Larry A. Isaak** was appointed as Chancellor of the North Dakota University System by the State Board of Higher Education in July 1994. Mr. Isaak was raised on a farm near Drake, North Dakota. He attended the University of North Dakota from 1969 to 1973 earning his B.S. in Business Administration, majoring in accounting. He also received his MBA through UND in 1996. In 1985 he also attended and completed the Stanford University Business Management Institute of the Western Association of College and University Business Officers. He is a certified public accountant. Mr. Isaak worked in a private CPA firm in Grand Forks from 1972 to 1974. In 1974 he began a steady progression of positions with the State of North Dakota. From 1974 to 1981 he was employed with the North Dakota Legislative Council as the Assistant Legislative Budget Analyst and Auditor. From 1981 to 1984 he was employed by the Office of Management and Budget, where he eventually became the State's Executive Budget Analyst. Mr. Isaak joined the University System in 1984 as the Assistant Commissioner for Administration and later as the Vice Chancellor for Administrative Affairs. In 1993, he was assigned the additional duties of student affairs and liaison with the System's Student Affairs Council and the North Dakota Student Association. Simultaneously, he also served as the Director of the Higher Education Computer Network, overseeing policy development and planning for the statewide computing network.

**Dr. Michel Hillman** was appointed Vice Chancellor for Academic Affairs for the North Dakota University System in June 1996. He previously was the Director of Academic Affairs for the South Dakota Board of Regents, a position he held since 1987. His other experience includes serving as a Research Officer in the South Dakota system of higher education, an Evaluation Specialist for the Division of Law Enforcement Assistance in Pierre, South Dakota, and an Adjunct Professor of Psychology at the University of South Dakota. He received his bachelor's degree in psychology from Slippery Rock State College in Pennsylvania, his master's degree in experimental psychology from

Indiana University of Pennsylvania, and his Ph.D. degree in experimental psychology from the University of South Dakota in Vermillion.

**Laura Glatt** was appointed the Vice Chancellor for Administrative Affairs in July 1995. A native of Bismarck, North Dakota, she earned a B.S. in accounting from the University of Mary in 1983 and a master's in Management from the University of Mary in 1996. She is a certified public accountant. Prior to joining the University staff in 1989, she served as a management and fiscal analyst in the North Dakota Office of Management and Budget, served as Controller for the State Treasurer's office and Cashier for the State Tax Department.

**Eddie Dunn** was named the Vice Chancellor for Strategic Planning in July 1999. A native of LaMoure, North Dakota, he obtained his Bachelor's and Master's degrees from North Dakota State University where he later became an associate professor of agricultural economics and was also Coordinator for the University's Faculty Development Institute. He later served as an economic development specialist with the Cooperative Extension Service and the Agricultural Experiment Station at North Dakota State University. In 1980-81, he served as Program Leader for Economic Development with the Federal Extension Service for the U.S. Department of Agriculture in Washington, D.C. Prior to joining the University System, Eddie was Vice President for Programs and Economic Development for the Greater North Dakota Association. In addition to serving as Vice Chancellor for Strategic Planning, Eddie is also the Executive Director of the College Technical Education Council, a position he has held since January of 1993.

### CAMPUSES AND FACILITIES

Below are brief descriptions of selected institutions of higher education in the state.

**Dickinson State University** (DSU) is a regional four-year institution, located in the western part of North Dakota offering majors and minors in both two- and four-year degree programs to 1,818 students in the Fall of 2002. The university, originally founded to educate teachers, has expanded its role to include the liberal arts, fine arts, business, sciences, health services, agriculture, computer science and pre-professional programs.

**Mayville State University** (MaSU) is a four-year institution located in the eastern part of the North Dakota offering majors and minors in most liberal arts, education, business and pre-professional fields to 616 students in the Fall of 2002. Popular programs include business administration, computer information systems, elementary and secondary education, sport science/athletic training, mathematics and physical education. Notable programs include a three-year business administration degree and the only elementary mathematics specialist certification available in North Dakota.

**Valley City State University** (VCSU) is a four-year institution located in southeastern North Dakota offering majors and minors in business, elementary and secondary education, computer information systems, communication arts, social science, human resources, physical education and variety of arts and sciences to 864 students in the Fall of 2002. VCSU is the only university in the state to offer a minor in corporate training and has developed a program in technology education that sets the standards for the state and nation..

### ACADEMIC INFORMATION

The North Dakota Board of Higher Education currently operates under an open door admission policy. Current requirements are: (1) the applicant must be a high school graduate or have successfully completed the GED test, and (2) for undergraduate admission, the applicant must submit the scores from either the ACT or SAT, with a limited number of exceptions. The institutions may limit admission to selected undergraduate and graduate programs based on considerations other than high school records, test scores, residence academic records and transfer records. Examples of such considerations may include, but are not limited to, the following: facility or instructional equipment limitations; number of qualified faculty or support staff; and financial resources. In April 1990, the State Board of Higher Education adopted new admission requirements for its four-year institutions. The new requirements became



effective the summer term of 1993. The following high school courses constitute the new minimum admission requirements:

- 4 units of English
- 3 units of mathematics, algebra I or above
- 3 units of lab science, including at least 2 in biology, chemistry, physics, or physical science
- 3 units of social studies, excluding consumer education, cooperative marketing, orientation to social science, and marriage/family.

In addition, two units of a single classical or modern language, including American Sign Language and Native American languages and the completion of algebra II (advanced algebra), are strongly recommended. Again, institutions may limit admission to selected undergraduate and graduate programs based on other criteria, including scholastic achievement.

**TUITION**

Academic Year	<u>DSU</u>	<u>MaSU</u>	<u>VCSU</u>
2002-03	\$2,202	\$2,202	\$2,202
2001-02	2,067	2,067	2,067
2000-01	1,982	1,982	1,982
1999-00	1,906	1,906	1,906
1998-99	1,832	1,832	1,832
1997-98	1,756	1,756	1,756
1996-97	1,680	1,680	1,680
1995-96	1,680	1,680	1,680
1994-95	1,680	1,680	1,680
1993-94	1,606	1,606	1,606

Note: Tuition for full-time undergraduate resident students.

**FALL FTE STUDENT ENROLLMENT**

Academic Year	<u>DSU</u>	<u>MaSU</u>	<u>VCSU</u>
2002-03	1,818	616	864
2001-02	1,637	620	841
2000-01	1,592	644	910
1999-00	1,535	651	896
1998-99	1,484	643	903
1997-98	1,470	635	879
1996-97	1,459	723	932
1995-96	1,373	739	929
1994-95	1,342	708	853
1993-94	1,383	676	902

*(The remainder of this page has been left blank intentionally.)*

**OUTSTANDING INDEBTEDNESS OF THE BOARD - FOR SELECTED CAMPUSES**

**Dickinson State University:**

	<u>Interest Rate</u>	<u>Maturity Date</u>	<u>06/30/02 Balance</u>
1999 Student Union Improvement	4.50-5.90%	2019	\$ 920,000
Technology Fee – 1996	4.30% -4.75%	2006	<u>174,199</u>
Total Bonds Payable			<u>\$1,094,199</u>

The principal of and interest on the bonds are payable only from the net income of specific auxiliary activities, from designated student fees, or from debt reserve funds.

**Mayville State University:**

	<u>Interest Rate</u>	<u>Maturity Date</u>	<u>06/30/02 Balance</u>
Agassiz Hall	3.00%	2007	\$165,000
Technology Fee – 1996	4.30% -4.75%	2006	83,179
1998 Refunding	4.30% -4.80%	2009	<u>475,000</u>
Total Bonds Payable			<u>\$723,179</u>

The principal of and interest on the bonds are payable only from the net income of specific auxiliary activities, from designated student fees, or from debt reserve funds.

**Valley City State University:**

	<u>Interest Rate</u>	<u>Maturity Date</u>	<u>06/30/02 Balance</u>
Dormitory Bonds of 1971	7.20-7.25%	2011	\$405,000
Technology Fee – 1961	4.30-4.75%	2006	<u>148,337</u>
Total Bonds Payable			<u>\$553,337</u>

The principal of and interest on the bonds are payable only from the net income of specific auxiliary activities, from designated student fees, or from debt reserve funds.

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**APPENDIX E**

**General Information Concerning the North Dakota Department of  
Corrections and Rehabilitation**

## GENERAL INFORMATION

Senate Bill No. 2212 passed by the 1989 Legislative Assembly created the Department of Corrections and Rehabilitation (the “Department”). The primary reason for creation of the Department was the need to bring all of the State’s corrections’ programs together under one direction and one philosophy for both juveniles and adults. Elaine Little has served as the Director of the Department since 1989.

The Mission for the Department is:

*To protect the public while providing a safe and humane environment for both adults and juveniles placed in the Department’s care and custody. The Department will carry out the judgments of the North Dakota courts to both incarcerate inmates for the protection of society and to provide rehabilitative programs in an effort to successfully reintegrate offenders back into society.*

In addition to the Central Office that has responsibility for the overall management of the Department, county correctional officer training and jail inspections, the Department has two major divisions:

- Division of Adult Services; and
- Division of Juvenile Services.

The Division of Adult Services includes the Field Services Division (adult parole and probation across the State) and the Prisons Division.

*The mission of the Field Services Division is to protect society by ensuring that the community-placed offenders are provided responsible supervision that requires them to be an active participant in their rehabilitation. The Division is equally committed to the compensation and restoration of crime victims.*

The Field Services Division has offices across the state staffed by highly trained parole and probation officers. It manages offenders sentenced to supervision by the Court, released to parole by the Parole Board, or sent to Community Placement by the Director. Over three thousand offenders are supervised in the community. Field Services also manages the Victim Services program to help mitigate the suffering of crime victims by providing fiscal support and services to crime victims.

Within the Prisons Division are the following facilities: North Dakota State Penitentiary; James River Correctional Center, Missouri River Correctional Center and Rough Rider Industries. The mission of this Division is *to protect the public by maintaining proper custody of the offenders sentenced by the courts; to provide a safe and healthy environment for staff and inmates; and to offer the best work, education, and treatment programs possible, encouraging inmates to make the needed changes to be law abiding and successful in society.*

The North Dakota State Penitentiary (NDSP) in east Bismarck is the main prison complex and houses maximum-security inmates as well as some medium security treatment inmates. NDSP is the original prison built in the State and consists of seven housing units. The maximum capacity at NDSP is 517.

The James River Correctional Center (JRCC) at Jamestown is designed to hold medium security male inmates and has the majority of the women inmates. The JRCC is located on the North Dakota State Hospital Grounds. It has three buildings that were renovated in 1998 to house inmates. The current capacity of the JRCC is approximately 350.

The Missouri River Correctional Center (MRCC) in southwest Bismarck houses minimum-security inmates (male and female). The facility has a single housing unit with ten male dormitories and two female dormitories. The current capacity at MRCC is 150.

Rough Rider Industries is a self-sufficient, state operated industrial program which puts inmates to work in the production of goods and services for sale to State agencies and other tax-supported entities.

The Division of Juvenile Services includes Community Services and the Youth Correctional Center (NDYCC). Across the State, the Division of Juvenile Services provides intensive supervision and case management services to delinquent youth placed under their care, custody and control.

*The mission of the Division of Juvenile Services/Community Services is to provide a continuum of services to juvenile delinquent and unruly youth in North Dakota and to protect society from those juveniles who are a danger to themselves and others. This will be accomplished through the development of a Treatment and Rehabilitation plan for each juvenile and through the provision of an array of services by a dedicated staff who will ensure that the juvenile receives these services in the least restrictive environment.*

Each case is assigned to a Corrections Specialist prior to or at the time of commitment and that worker follows the case for the duration of the court order. Within 60 days of commitment, an individualized plan for treatment and rehabilitation is drafted and submitted to the committing court. Placement may be made anywhere along a continuum that includes parental home, relative care, family foster care, treatment foster care, group home treatment, residential treatment, hospitalization and the Youth Correctional Center. Overall, the Community Services Division strives to provide effective, responsive services that insure that the treatment needs of youth are met while maintaining an acceptable level of community safety.

The NDYCC is the State's only secure juvenile correctional institution and is located in Mandan. Generally, the daily census is 90 and the capacity is 113 beds. The NDYCC provides long and short term programming, referred to as treatment, as well as detention and short term behavioral evaluation for delinquent adolescents who are committed by State district court order, Federal Bureau of Prisons or tribal court. NDYCC provides a full accredited (North Central Accreditation) middle school and high school educational program in a 12-month academic year. Overall, NDYCC strives to provide high quality treatment and educational services in a way that can be flexibly interfaced with other residential facilities, community based programs and schools.

*The basic mission of the NDYCC is to protect society while providing education and therapeutic services to troubled adolescents within a safe and secure environment. Juveniles at NDYCC are prepared to return to a less restrictive environment in their communities with the skills to choose more appropriate behavior and to find success in life. NDYCC accomplishes its mission with a dedicated staff that cares about young people by emphasizing the three rehabilitative factors of structure, accountability and relationship.*

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**APPENDIX F**

**General Information Concerning the North Dakota State Department of Health**

## GENERAL INFORMATION

The Department of Health is a diverse state agency, providing services from before birth to after death and covering a broad spectrum of public health issues from water quality to child passenger safety. The Department of Health employees about 316 people dedicated to making North Dakota a healthier place to live. The Department of Health's programs are administrated as four sections: Administrative Services; Preventive Health; Health Resources and Environmental Health.

The four sections of the Department are under the administrative supervision of the State Health Officer. The Governor appoints the State Health Officer; Governor John Hoeven appointed Dr. Terry Dwelle as the State Health Officer in October 2001. Previously, Dr. Dwelle served as chief medical officer for the department. Dr. Dwelle earned his medical degree from St. Louis University School of Medicine, graduating cum laude. He later received a master's degree in public health and tropical medicine from Tulane University. A Garrison, N.D. native, Dr. Dwelle has worked with the University of North Dakota School of Medicine, the Centers for Disease Control and Prevention and the Indian Health Service. In addition, he practiced pediatrics in Bismarck, N.D., for many years. Most recently, Dr. Dwelle headed development of the Community Health Evangelism Program in East Africa.

The State Health Council serves as the advisory council for the Department and consists of 11 members appointed by the Governor. Four members are appointed from the health care provider community, five from the public sector, one from the energy industry and one from the manufacturing and processing industry.

Within the Administrative Services Section are the Divisions of Accounting; Personnel; Vital Records; Crime Laboratory; and Food and Lodging. Within the Health Resources Section are the Divisions of Health Facilities and Emergency Health Services. Within the Preventive Health Section are the Divisions of Maternal and Child Health; Health Promotion; Disease Control; and Microbiology; and State Epidemiologist; and Local Health Coordinator. The Environmental Health Section includes the Divisions of Chemistry, Air Quality, Municipal Facilities, Waste Management, and Water Quality. In addition, North Dakota's public health system is made up of 28 single-and multi-county local public health units.

During years 1999-2000, the Department of Health contracted with architects and developed a Facilities Master Plan. Financing approved by the 2001 Legislature authorizes an initial phase of some aspects of the Plan – the construction of a building to house certain functions of the microbiology and chemistry laboratories – to meet critical life safety, code and space needs of the Department and to strengthen terrorism response.

The Department of Health budget for the 2003-2005 biennium totals \$119,582,748. The funding sources for the budget are:

General Fund	\$13,101,092
Federal Funds	\$92,793,771
Special Funds	\$13,687,885

**APPENDIX G**

**Form of Legal Opinion**



# Cook Wegner & Wike PLLP

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Maurice E. Cook  
Scott D. Wegner\*  
Jaclin M. Wike

Attorneys at Law

\*Also Licensed in South Dakota and Minnesota

June 30, 2003

Industrial Commission of North Dakota  
acting as the North Dakota Building Authority

Re:

\$ \_\_\_\_\_  
**NORTH DAKOTA BUILDING AUTHORITY  
LEASE REVENUE BONDS  
2003 SERIES B**

We have acted as bond counsel to the Industrial Commission of North Dakota, acting as the North Dakota Building Authority, (the "**Authority**") in connection with the issuance by the Authority of \$ \_\_\_\_\_ North Dakota Building Authority, Lease Revenue Bonds, 2003 Series B, dated June 15, 2003, (the "**Bonds**"). In such capacity, we have examined such law and such certified proceedings, certifications, and other documents as we have deemed necessary to render this opinion.

The Bonds are issued pursuant to Chapter 54-17.2 of the North Dakota Century Code (the "**Act**"), a General Authorization Resolution, dated June \_\_, 2003, of the Authority authorizing the issuance and sale of the Bonds, and a Trust Indenture and Assignment of Lease Revenue, dated as of the date of the sale of the Bonds, (the "**Indenture**") between the Authority and the Bank of North Dakota, as Trustee. The Authority and certain agencies of the State of North Dakota, as set out in paragraph 3 below, (the "**Agencies**") have entered into leases and lease back agreements, each dated as of \_\_\_\_\_, regarding the projects being financed by proceeds from the sale of the Bonds. Under the lease back agreements, the Agencies have covenanted, subject to biennial appropriation, to make payments to the Authority to be used to pay when due the principal of, premium, if any, and interest on the Bonds (the "**Lease Revenue**"). Under the Indenture, the Authority has pledged and assigned the Lease Revenue to the payment of debt service on the Bonds. The Bonds are payable solely from the Lease Revenue and all the (i) moneys, securities and investments in the Bond Fund, the Construction Fund, the Reserve Fund, the Repair and Replacement Fund, and the Administration Fund covenanted to be created and maintained under the Indenture, and (ii) accounts, contract rights, general intangibles, moneys and instruments arising therefrom or relating thereto and all proceeds and products of and accessions to any thereof.

Regarding questions of fact material to our opinion, we have relied upon representations of the Authority and the Agencies contained in the Indenture, the leases, and the lease back agreements, and the certified proceedings and other certifications of public officials and others furnished to us, including certifications furnished to us by or on the behalf of the Agencies, without undertaking to verify the same by independent investigation.

Based on the foregoing, we are of opinion that, under existing law:

1. The Authority is duly created and validly existing under the constitution and laws of the State of North Dakota with the power to adopt and to enter into and perform its obligations under the Indenture and the lease back agreements and to issue the Bonds.
2. The Indenture has been duly adopted, authorized, executed, and delivered by the Authority, and is a valid and binding obligation of the Authority enforceable against the Authority. The Indenture creates a valid lien on the Lease Revenue pledged by the Indenture to the payment of debt service on the Bonds and on the moneys and intangibles in the funds and accounts covenanted to be created and maintained under the Indenture.
3. The Bonds have been duly authorized and executed by the Issuer for the purpose of financing certain projects for the North Dakota State Board of Higher Education, the North Dakota State Department of Health and the North Dakota Department of Corrections and Rehabilitation (the "**Agencies**"), and are valid and binding limited obligations of the Authority, payable solely from the sources provided therefor in the Indenture.
4. Interest on the Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinion set forth in the preceding sentence is subject to the condition that the Authority and the Agencies comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The Authority and the Agencies have covenanted to comply with all such requirements. 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 retroactively to the date of issuance of the Bonds.
5. Interest on the Bonds is excludable from gross income for State of North Dakota income tax purposes (other than the tax imposed on financial institutions by North Dakota Century Code, Chapter 57-35.3).

The rights of the owners of the Bonds and the enforceability of the Bonds and the Indenture are limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

We express no opinion herein regarding the accuracy, adequacy, or completeness of the Official Statement or other offering material relating to the Bonds (except to the extent, if any, stated in the Official Statement including the section entitled "Tax Exemption"), or regarding the perfection or priority of the lien on the Lease Revenue or other funds created by the Indenture. Further, we express no opinion regarding the tax consequences arising with respect to the Bond other than as expressly set forth herein.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

Respectfully Submitted,

**COOK WEGNER & WIKE PLLP**

**APPENDIX H**

**Form of Undertaking to Provide  
Continuing Disclosure**

NORTH DAKOTA BUILDING AUTHORITY  
LEASE REVENUE BONDS  
2003 SERIES B -- \*\$12,925,000

**UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE**

Section 1. This constitutes the written undertaking (the **“Undertaking”**) of the Industrial Commission of North Dakota, acting as the North Dakota Building Authority (the **“Authority”**) for the benefit of a holder’s or holders’ beneficial interests in the captioned bonds (the **“Bonds”**) as issued pursuant to that Trust Indenture and Assignment of Lease Rentals effective as of \_\_\_\_\_, 2003 (the **“Indenture”**) 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”**). Capitalized terms used herein and not otherwise defined in the Indenture shall have the meanings assigned such terms in Section 4 hereof.

Section 2. To the extent there are appropriated or other legally available funds for these purposes, the Authority undertakes to provide the following information as provided in this Undertaking:

- A. Annual Financial Information;
- B. Audited Financial Statements; and
- C. Material Event Notices.

Section 3.

A. The Authority shall while any Bonds are Outstanding provide the Annual Financial Information for each fiscal year ending June 30th on or before December 15th of the same calendar year (the **“Report Date”**), beginning in 2003, to the Trustee and to each then existing NRMSIR and the SID, if any. The Authority shall include with each submission of Annual Financial Information to the Trustee a written representation addressed to the Trustee to the effect that the Annual Financial Information is the Annual Financial Information required hereby and that it complies with the applicable requirements hereof. It shall be sufficient if the Authority provides to each then existing NRMSIR, any SID and the Trustee the Annual Financial Information by specific reference to documents previously provided to each NRMSIR and any SID or filed with the Securities and Exchange Commission and, if such a document is a final official statement within the meaning of the Rule, available from the MSRB.

B. (i) If a Material Event occurs while any Bonds are Outstanding, the Authority shall provide a Material Event Notice in a timely manner to the Trustee and the MSRB and any SID. Each Material Event Notice shall be so captioned and shall prominently state the date, title and CUSIP numbers of the Bonds.

(ii) The Trustee shall promptly advise the Authority whenever, in the course of performing its duties as Trustee hereunder, the Trustee identifies an occurrence which, if material, would require the Authority to provide a Material Event Notice pursuant to Section 3(B)(i); provided that the failure of the Trustee so to advise the Authority shall not constitute a breach by the Trustee of any of its duties and responsibilities hereunder.

C. The Trustee shall, without further direction or instruction from the Authority, provide in a timely manner to the MSRB and to any SID notice of any failure by the Authority while any Bonds are Outstanding to provide the Trustee Annual Financial Information on or before the Report Date. For the purposes of determining whether information received from the Authority is Annual Financial Information, the Trustee shall be entitled conclusively to rely on the Authority's written representation made pursuant to Section 3(A) of this Undertaking.

Section 4. The following are the definitions of the capitalized terms used herein and not otherwise defined in this Undertaking.

**“Annual Financial Information”** means the financial information, which shall be based on financial statements prepared in accordance with generally accepted accounting principles (**“GAAP”**) for governmental units as prescribed by the Governmental Accounting Standards Board (**“GASB”**) or operating data with respect to the Authority, provided at least annually, of the type included in those sections of the final official statement with respect to the Bonds attached thereto as [Appendix C and Appendix A pages A-5 through A-12,] which Annual Financial Information may, but is not required to, include Audited Financial Statements.

**“Audited Financial Statements”** means the Authority's annual financial statements, prepared in accordance with GAAP for governmental units as prescribed by GASB, which financial statements shall have been audited by such auditor as shall be then required or permitted by the laws of the State.

**“Material Event”** means any of the following events, if material, with respect to the Bonds:

- (a) Principal and interest payment delinquencies;
- (b) Non-payment related defaults;

- (c) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (e) Substitution of credit or liquidity providers, or their failure to perform;
- (f) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (g) Modifications to rights of security holders;
- (h) Bond calls (other than sinking fund redemptions);
- (i) Defeasances;
- (j) Release, substitution, or sale of property securing repayment of the securities; and
- (k) Rating changes.

**“Material Event Notice”** means written or electronic notice of a Material Event.

**“MSRB”** means the Municipal Securities Rulemaking Board located at 1150 18th Street NW, Suite 400, Washington, DC 20036.

**“NRMSIR”** means a nationally recognized municipal securities information repository, as recognized from time to time by the Securities and Exchange Commission for the purposes referred to in the Rule, and which list is available on the Internet at [www.sec.gov/info/municipal/nrmsir.htm](http://www.sec.gov/info/municipal/nrmsir.htm).

**“SID”** means a state information depository as operated or designated by the State as such for the purposes referred to in the Rule. As of the date hereof there is no SID.

Section 5. Unless otherwise required by law and subject to technical and economic feasibility, the Authority and the Trustee shall employ such methods of information transmission as shall be requested or recommended by the designated recipients of the Authority's information.

Section 6. The continuing obligation hereunder of the Authority to provide Annual Financial Information, Audited Financial Statements, if any, and Material Event Notices shall terminate immediately once the Bonds no longer are Outstanding. Any provision hereof shall be null and void in the event that the Authority delivers to the Trustee an opinion

of nationally recognized bond counsel to the effect that those portions of the Rule which require this Undertaking, or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; provided that the Authority shall have provided notice of such delivery and the cancellation hereof to each then existing NRMSIR and the SID, if any.

#### Section 7.

A. In the event of a failure of the Authority to provide to the Repositories the Annual Financial Information as required by this Undertaking, the registered holder or holders of beneficial interest in any Bonds may take only such actions as may be necessary to cause the Authority to comply with its obligations to provide Annual Financial Information under this Undertaking.

B. Notwithstanding the foregoing, no registered holder or holders of a beneficial interest in the Bonds shall have the right to challenge the content or adequacy of the information provided hereto by mandamus, specific performance or other equitable proceedings unless the registered holder or holders of beneficial interest in the Bonds representing at least 25% aggregate principal amount of outstanding Bonds shall join in such proceedings.

C. A default under this Undertaking shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Undertaking in the event of any failure of the Authority to comply with this Undertaking shall be an action to compel performance.

D. Notwithstanding any other provision in this Undertaking, neither the State, the Authority, or any officer, director, employee, or agent thereof shall be liable for any claims for monetary damages or attorneys' fees whatsoever for any breach of this Undertaking.

Section 8. Information may be obtained from an Authorized Officer, as designated in the Indenture. Additionally, the Authority may, from time to time, appoint or engage a dissemination agent to assist it in carrying out its obligations under this Undertaking.

Section 9. The Trustee shall be entitled to the protections afforded to the Trustee in the Indenture with regard to the performance of any of the duties required of the Trustee by this Undertaking.

Section 10. Notwithstanding any other provision of this Undertaking, the Authority by resolution authorizing such amendment, may amend this Undertaking without the consent of the registered holders or holders of beneficial interests if an opinion of nationally recognized bond counsel is obtained by the Authority to the effect that such amendment, and giving effect thereto, will not adversely affect the compliance of this Undertaking with the Rule or materially impair the interest of registered holders or holders of beneficial interests; if:

A. The amendment is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the Authority or type of business conducted;

B. This Undertaking, as amended, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

C. The Annual Financial Information initially following the amendment containing the amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

Dated this \_\_\_\_ day of June, 2003.

North Dakota Building Authority

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

Bank of North Dakota, as Trustee

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



**APPENDIX I**

**Specimen of Financial Guaranty  
Insurance Policy**

Financial Guaranty Insurance  
 Company  
 125 Park Avenue  
 New York, NY 10017  
 (212) 312-3000  
 (800) 352-0001



A GE Capital Company

## Municipal Bond New Issue Insurance Policy

<b>Issuer:</b>	<b>Policy Number:</b>
	<b>Control Number:</b> 0010001
<b>Bonds:</b>	<b>Premium:</b>

Financial Guaranty Insurance Company ("Financial Guaranty"), a New York stock insurance company, in consideration of the payment of the premium and subject to the terms of this Policy, hereby unconditionally and irrevocably agrees to pay to State Street Bank and Trust Company, N.A., or its successor, as its agent (the "Fiscal Agent"), for the benefit of Bondholders, that portion of the principal and interest on the above-described debt obligations (the "Bonds") which shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer.

Financial Guaranty will make such payments to the Fiscal Agent on the date such principal or interest becomes Due for Payment or on the Business Day next following the day on which Financial Guaranty shall have received Notice of Nonpayment, whichever is later. The Fiscal Agent will disburse to the Bondholder the face amount of principal and interest which is then Due for Payment but is unpaid by reason of Nonpayment by the Issuer but only upon receipt by the Fiscal Agent, in form reasonably satisfactory to it, of (i) evidence of the Bondholder's right to receive payment of the principal or interest Due for Payment and (ii) evidence, including any appropriate instruments of assignment, that all of the Bondholder's rights to payment of such principal or interest Due for Payment shall thereupon vest in Financial Guaranty. Upon such disbursement, Financial Guaranty shall become the owner of the Bond, appurtenant coupon or right to payment of principal or interest on such Bond and shall be fully subrogated to all of the Bondholder's rights thereunder, including the Bondholder's right to payment thereof.

This Policy is non-cancellable for any reason. The premium on this Policy is not refundable for any reason, including the payment of the Bonds prior to their maturity. This Policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any Bond.

As used herein, the term "Bondholder" means, as to a particular Bond, the person other than the Issuer who, at the time of Nonpayment, is entitled under the terms of such Bond to payment thereof. "Due for Payment" means, when referring to the principal of a Bond, the stated maturity date thereof or the date on which the same shall have been duly called for mandatory sinking fund redemption and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by mandatory sinking fund redemption), acceleration or other advancement of maturity and means, when referring to interest on a Bond, the stated date

Financial Guaranty Insurance  
Company  
125 Park Avenue  
New York, NY 10017  
(212) 312-3000  
(800) 352-0001



*A GE Capital Company*

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## **Municipal Bond New Issue Insurance Policy**

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for payment of interest. "Nonpayment" in respect of a Bond means the failure of the Issuer to have provided sufficient funds to the paying agent for payment in full of all principal and interest Due for Payment on such Bond. "Notice" means telephonic or telegraphic notice, subsequently confirmed in writing, or written notice by registered or certified mail, from a Bondholder or a paying agent for the Bonds to Financial Guaranty. "Business Day" means any day other than a Saturday, Sunday or a day on which the Fiscal Agent is authorized by law to remain closed.

In Witness Whereof, Financial Guaranty has caused this Policy to be affixed with its corporate seal and to be signed by its duly authorized officer in facsimile to become effective and binding upon Financial Guaranty by virtue of the countersignature of its duly authorized representative.

*Deborah M. Reif*

**President**

**Effective Date:**

**Authorized Representative**

State Street Bank and Trust Company, N.A., acknowledges that it has agreed to perform the duties of Fiscal Agent under this Policy.

A handwritten signature in black ink, appearing to be "J. B. ...", written over a horizontal line.

**Authorized Officer**

Financial Guaranty Insurance  
Company  
125 Park Avenue  
New York, NY 10017  
(212) 312-3000  
(800) 352-0001



A GE Capital Company

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## Endorsement To Financial Guaranty Insurance Company Insurance Policy

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**Policy Number:**

**Control Number:** 0010001

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It is further understood that the term "Nonpayment" in respect of a Bond includes any payment of principal or interest made to a Bondholder by or on behalf of the issuer of such Bond which has been recovered from such Bondholder pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with a final, nonappealable order of a court having competent jurisdiction.

NOTHING HEREIN SHALL BE CONSTRUED TO WAIVE, ALTER, REDUCE OR AMEND COVERAGE IN ANY OTHER SECTION OF THE POLICY. IF FOUND CONTRARY TO THE POLICY LANGUAGE, THE TERMS OF THIS ENDORSEMENT SUPERSEDE THE POLICY LANGUAGE.

In Witness Whereof, Financial Guaranty has caused this Endorsement to be affixed with its corporate seal and to be signed by its duly authorized officer in facsimile to become effective and binding upon Financial Guaranty by virtue of the countersignature of its duly authorized representative.

**President**

**Effective Date:**

**Authorized Representative**

**Acknowledged as of the Effective Date written above:**

**Authorized Officer**  
**State Street Bank and Trust Company, N.A., as Fiscal Agent**

Financial Guaranty Insurance  
Company  
125 Park Avenue  
New York, NY 10017  
(212) 312-3000  
(800) 352-0001



A GE Capital Company

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## Endorsement To Financial Guaranty Insurance Company Insurance Policy

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**Policy Number:**

**Control Number:** 0010001

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Notwithstanding the terms and provisions contained in this Policy, it is further understood that the term "Bondholder" shall not include the \_\_\_\_\_ (as such term is defined in the bond documentation).

NOTHING HEREIN SHALL BE CONSTRUED TO WAIVE, ALTER, REDUCE OR AMEND COVERAGE IN ANY OTHER SECTION OF THE POLICY. IF FOUND CONTRARY TO THE POLICY LANGUAGE, THE TERMS OF THIS ENDORSEMENT SUPERSEDE THE POLICY LANGUAGE.

In Witness Whereof, Financial Guaranty has caused this Endorsement to be affixed with its corporate seal and to be signed by its duly authorized officer in facsimile to become effective and binding upon Financial Guaranty by virtue of the countersignature of its duly authorized representative.

**President**

**Effective Date:**

**Authorized Representative**

**Acknowledged as of the Effective Date written above:**

**Authorized Officer**  
**State Street Bank and Trust Company, N.A., as Fiscal Agent**