

SCHEDULE

to the

ISDA Master Agreement

dated as of October 21, 2003, between

MORGAN STANLEY CAPITAL SERVICES INC.,  
a Delaware corporation

("Party A")

and

NEW YORK STATE THRUWAY AUTHORITY,  
a body corporate and politic of the State of New York  
constituting a public corporation of the State of New York

("Party B")

**Part 1. Termination Provisions.**

In this Agreement:—

(a) **"Specified Entity"** means in relation to Party A for the purpose of:—

Section 5(a)(v) (Default under Specified Transaction),	Affiliates
Section 5(a)(vi) (Cross Default),	Not applicable.
Section 5(a)(vii) (Bankruptcy),	Not applicable.
Section 5(b)(ii) (Credit Event Upon Merger),	Not applicable.

and in relation to Party B for the purpose of:—

Section 5(a)(v)(Default under Specified Transaction)	Not applicable.
Section 5(a)(vi) (Cross Default),	Not applicable.
Section 5(a)(vii)(Bankruptcy),	Not applicable.
Section 5(b)(ii) (Credit Event Upon Merger)	Not applicable.

(b) **"Specified Transaction"** will have the meaning specified in Section 12 of this Agreement; provided that with respect to Party B, Specified Transaction shall include only those Specified Transactions that are payable from the source of payment specified in Section 4(d) of this Agreement.

(c) The **"Cross Default"** provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B.

The following provisions apply:

**“Specified Indebtedness”** with respect to Party A, will have the meaning specified in Section 12 of this Agreement and, with respect to Party B, will mean any bonds issued pursuant to the Resolution and any interest rate exchange agreement executed by Party B that is payable from the source of payment specified in Section 4(d) of this Agreement (the inclusion of interest rate exchange agreements as Specified Indebtedness shall not create any implication that an interest rate exchange agreement constitutes indebtedness).

**“Threshold Amount”** means the lesser of \$100,000,000 and 3% of Stockholders’ Equity of Party A’s Credit Support Provider for Party A and \$35,000,000 for Party B. For purposes hereof, “Stockholders’ Equity” shall be determined by reference to Party A’s Credit Support Provider’s most recent consolidated balance sheet and shall include legal capital, paid-in capital, retained earnings and cumulative translation adjustments.

- (d) The **“Credit Event Upon Merger”** provisions of Section 5(b)(ii) will apply to Party A and will not apply to Party B.
- (e) The **“Automatic Early Termination”** provisions of Section 6(a) will not apply to Party A or to Party B.
- (f) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:
  - (A) Market Quotation will apply.
  - (B) The Second Method will apply.
- (g) **Additional Termination Event will apply.** The following shall constitute Additional Termination Events:

(i) If the unenhanced, unsubordinated Specified Indebtedness of Party B or the outstanding long term unsecured, unsubordinated, unenhanced debt of Party A’s Credit Support Provider is not rated by at least one of Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. (or any successor) (“S&P”), Moody’s Investors Service, Inc. (or any successor) (“Moody’s”), or Fitch Ratings (or any successor) (“Fitch”) at least BBB, Baa2 or BBB, as applicable, or the unenhanced, unsubordinated Specified Indebtedness of Party B or the outstanding long term unsecured, unsubordinated, unenhanced debt of Party A’s Credit Support Provider is rated by any one of S&P, Moody’s or Fitch lower than BBB-, Baa3 or BBB-, as applicable, or any rating is withdrawn or suspended, then a “Ratings Event” shall be deemed to have occurred with respect to such party. The party for which the Ratings Event is deemed to have occurred (“X”) shall promptly notify the other party of the occurrence of such Ratings Event; provided that, the failure of such a party to provide such notice shall not constitute an Event of Default hereunder. A Ratings Event shall be deemed an Additional Termination Event for which all Transactions under this Agreement shall be Affected Transactions. For the purposes of Section 6(b) and Section 6(e), X shall be the sole Affected Party.

(ii) It shall be an Additional Termination Event if Party A has notified Party B that a Party B Downgrade Event (as defined below) has occurred and Party B has not, within 20 days of receiving such notice, at its sole election, either (a) provided a guarantee, letter of credit, surety bond, insurance policy or other credit support document with respect to the amounts payable by Party B under Sections 2 and 6 of this Agreement in a form and by a provider reasonably acceptable to Party A and, unless the Insurer has failed to pay under the Swap Insurance Policy,

the Insurer; (b) transferred this Agreement pursuant to Section 7(d) of this Agreement or otherwise transferred this Agreement to a counterparty reasonably acceptable to Party A pursuant to terms reasonably acceptable to Party A and unless the Insurer has failed to pay under the Swap Insurance Policy, the Insurer; or (c) executed a credit support annex with Party A in substantially the form executed by Party A upon the execution and delivery of this Agreement. For purposes of Section 6(e), Party B shall be the sole Affected Party. A "Party B Downgrade Event" shall occur if the unenhanced, unsubordinated Specified Indebtedness of Party B is not rated by at least one of S&P, Moody's or Fitch at least BBB+, Baa1 or BBB+, as applicable, or the unenhanced, unsubordinated Specified Indebtedness of Party B is rated by any one of S&P, Moody's or Fitch lower than BBB, Baa2 or BBB, as applicable. Party B shall promptly notify Party A of the occurrence of a Party B Downgrade Event; provided that, the failure of Party B to provide such notice shall not constitute an Event of Default hereunder. This Additional Termination Event shall be deemed to have been waived by Party A until such time as (i) the Insurer fails to make a payment due under its Swap Insurance Policy or (ii) the Insurer's financial strength rating from S&P is below A- and its claims paying ability rating from Moody's is below A3.

(h) ***Events of Default.***

(i) ***Cross Default.*** Section 5(a)(vi) of this Agreement is hereby amended to read in its entirety as follows:

"(vi) ***Cross Default.*** With respect to Party A shall mean the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period); provided, however, that notwithstanding the foregoing, an Event of Default shall not occur if, as demonstrated to the reasonable satisfaction of Party B, (a) the event or condition or the failure to pay is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to Party A to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of such failure to pay; and

With respect to Party B shall mean the occurrence or existence of a default on Specified Indebtedness of Party B with a principal or notional amount of not less than the Threshold Amount (as specified in the Schedule) either (1) when any amount on such Specified Indebtedness is due and payable or (2) which has resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments before it would otherwise have been due and payable; provided, however, that notwithstanding the foregoing, an Event of Default shall not occur if, as demonstrated to the reasonable satisfaction of Party A, (a) the event or condition or the failure to pay is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to Party B to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of

such failure to pay;”.

(ii) **Bankruptcy.** Section 5(a)(vii) is hereby amended by renumbering existing Clauses (8) and (9) to be Clauses (9) and (10), respectively and is further amended by replacing the reference to “clauses (1) to (7) (inclusive)” in what is now Clause (9), with a reference to “clauses (1) to (8) (inclusive)” and is further amended by adding a new clause (8) to read as follows:

“(8) is subject to a statute, rule or regulation which has been enacted and has the force of law and which establishes an agency, authority, body or oversight board to monitor, review or oversee a financial emergency with respect to such party”.

(iii) **Merger Without Assumption.** Section 5(a)(viii) of this Agreement is hereby amended to read in its entirety as follows:

“(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if such party is a Government Entity, an entity such as a board, commission, authority, agency, public corporation, public benefit corporation or political subdivision succeeds to the principal functions of, or powers and duties granted to, such party or any Credit Support Provider of such party) and, at the time of such consolidation, amalgamation, merger, transfer or succession:

(1) the resulting, surviving, transferee, or successor entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement;

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement; or

(3) in the case of Party B, the benefits of the Financing Agreement fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement.”

(i) **Early Termination.**

Section 6 is hereby amended by adding the following new subsections (f) and (g):

“(f) **Set-off.** Neither party hereto shall have a right of set-off with respect to amounts due hereunder; provided, however, that this provision shall not affect the rights of Party B to exercise remedies including any right of set-off under the credit support annex executed in connection herewith.”

“(g) **Optional Termination by Party B.** Party B may, upon at least five (5) Business Days’ written notice to Party A and the Insurer, terminate any Transactions under this Agreement by designating to Party A the termination date for such Transactions. In the event Party B exercises its right of optional termination hereunder, the provisions of Section 6(e)(ii)(1) shall apply as though Party B is the sole Affected Party. Party B may not optionally terminate any Transactions pursuant to this section unless Party B also provides evidence

reasonably satisfactory to Party A and the Insurer that Party B has or will have on the termination date available funds without regard to any swap insurance policy with which to pay any amount due to Party A as a result of such optional termination. Notwithstanding anything herein to the contrary, the parties will be obligated to pay any accrued and unpaid amounts that would otherwise be due on the date of such optional termination.”

**Part 2. Agreement to Deliver Documents.**

For the purpose of Section 4(a) of this Agreement, each party agrees to deliver the following documents, as applicable:

Party Required to Deliver Document	Form/Certificate Document	Date by Which to be Delivered	Covered by Section 3(d)
Party A and Party B	Certified copies of all documents evidencing necessary corporate and other authorizations and approvals with respect to the execution, delivery and performance by the party and any Credit Support Provider of this Agreement, any Credit Support Document and any Confirmation, including, where applicable, certified copies of the resolutions of its Board of Directors authorizing the execution and delivery of this Agreement, the relevant Credit Support Document or any Confirmation.	Upon execution of this Agreement and promptly at the request of the other party upon execution of a Confirmation.	Yes
Party A and Party B	A certificate of an authorized officer of the party and any Credit Support Provider as to the incumbency and authority of the officers of the party and any Credit Support Provider signing this Agreement, any Credit Support Document or any Confirmation.	Upon execution of this Agreement and promptly at the request of the other party upon execution of a Confirmation.	Yes
Party A	Guaranty of Morgan Stanley in the form of Exhibit B attached hereto.	As soon as practicable, but no later than upon execution of this Agreement.	
Party A and Party B	With respect to Party A, a copy of the most recent annual report (and each annual report thereafter) of Party A’s Credit Support Provider, and with respect to Party B, a copy of the most recent audited annual financial statements of Party B and Annual Information Statement of the State of New York and any updates thereto and the audited	Promptly after request by the other party.	Yes

	financial statements of the State of New York, in each case when available to Party B, containing in all cases audited consolidated financial statements for each fiscal year during which this Agreement is in effect certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the United States or in the country in which such party is organized.		
Party A	A copy of the unaudited consolidated financial statements of Party A, for each semiannual period in each fiscal year during which this Agreement is in effect prepared in accordance with generally accepted accounting principles in the United States or in the country in which such party is organized.	Promptly after request by the other party.	Yes
Party A	A copy of each regular financial or business reporting document that is (i) distributed or made generally available to respective shareholders or investors and made publicly available or (ii) filed in accordance with the disclosure requirements of any applicable statute, rule, regulation or judicial decree and made available for public inspection.	Promptly after request by the other party.	Yes
Party A and Party B	Such other documents as the other party may reasonably request.	Promptly after request by the other party.	Yes
Party A and Party B	With respect to Party A, an opinion of counsel to Party A (and any Credit Support Provider) in form and substance satisfactory to Party B and the Insurer; and with respect to Party B, an opinion of counsel substantially in the form set forth in Exhibit C attached hereto and covering such other matters as reasonably requested by Party A and the Insurer.	Upon execution of this Agreement and each Confirmation.	No

**Part 3. Miscellaneous.**

- (a) **Notices.** For the purpose of Section 10(a) to this Agreement:—

Address for notices or communications to Party A:—

Address: Morgan Stanley Capital Services Inc.  
Transaction Management Group  
1585 Broadway, 3rd Floor  
New York, New York 10036-8293

Attention: Fixed Income Derivatives – Transactions Management

Facsimile No: 212-761-0162

Telephone No.: 212-761-2533

Address for notices or communications to Party B:—

Address: New York State Thruway Authority  
200 Southern Boulevard  
Albany, NY 12209

Attention: Chief Financial Officer

Facsimile No.: 518-471-5050

Telephone No.: 518-436-2820

Each party agrees to send a copy of all notices or communications sent by such party to the other party to the Insurer at the address set forth in Part 4(j)(xxiii).

- (b) **Notices.** Section 10(a) is amended by adding in the third line thereof after the phrase “messaging system” and before the “)” the words “; provided, however, any such notice or other communication may be given by facsimile transmission if telex is unavailable, no telex number is supplied to the party providing notice, or if answer back confirmation is not received from the party to whom the telex is sent.”
- (c) **Calculation Agent.** The Calculation Agent is Party A unless Party A is the Defaulting Party, in which case the Calculation Agent means a leading dealer in the relevant market designated by Party B. Calculations by the Calculation Agent shall be binding and conclusive absent manifest error.
- (d) **Credit Support Document.** Details of any Credit Support Document: in relation to Party A means the Guarantee of Morgan Stanley attached as Exhibit B and the Credit Support Annex attached as Exhibit D and with respect to Party B means the Credit Support Annex attached as Exhibit D.
- (e) **Credit Support Provider.** Credit Support Provider means in relation to Party A, Morgan Stanley and in relation to Party B, not applicable.

- (f) **Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE.
- (g) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply to all Transactions entered into between Party A and Party B.
- (h) **"Affiliate"** will have the meaning specified in Section 12 of this Agreement, but with respect to Party B, will exclude the State of New York and, with respect to Party A, will exclude Morgan Stanley Derivative Products, Inc.
- (i) **"Government Entity"** means Party B.
- (j) **Account details.** Payments shall be made to the following accounts:

Payments to Party A:

For Cash:

Name of Bank: CITIBANK, New York

Account No.:4072-4601

For the Account of: Morgan Stanley Capital Services Inc.

Fed ABA No.:021 000 018

For Treasury Securities and Agency Notes:

Name of Bank: Bank of New York, New York

For the Account of: Morgan Stanley Capital Services Inc.

Fed ABA No.:021 000 089

Payments to Party B:

Name of Bank: JPMorgan Chase Bank

Account No.:507943635

For the Account of: Morgan Stanley CHIPS Swap Payment

Fed ABA No.:021 000 021



**Part 4. Other Provisions.**

**(a) Representations.**

(i) The introductory clause of Section 3 of this Agreement is hereby amended to read in its entirety as follows:

“Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(a), 3(e) and 3(f), at all times until the termination of this Agreement) that:—”.

(ii) Section 3(a) of this Agreement is hereby amended by adding the following subparagraph (vi):

“(vi) **Eligible Contract Participant.** It is an “eligible contract participant” within the meaning of Section 1(a)(12) of the Commodity Exchange Act.”.

(iii) Section 3 of this Agreement is hereby amended by adding the following subsections (e), (f), (g) and (h) thereto:

“(e) **Non-Speculation.** This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for purposes of managing its borrowings or investments and not for purposes of speculation.”

“(f) **No Immunity.** It is not immune from suit or judgment for amounts due and payable pursuant to this Agreement, it being understood that, with respect to Party B, payment of any judgment shall be solely from sources available under Section 4(d) “Source of Payments” hereof.”.

“(g) **Acting as Principal.** Each party hereto represents and warrants to the other party hereto that it is acting as a principal hereunder and not as an agent for any other party.”

“(h) **No Reliance.** In connection with the negotiation of, the entering into, and the confirming of the execution of, this Agreement, any Credit Support Document to which it is a party, and each Transaction: (i) the other party is not acting as a fiduciary or financial or investment advisor for it; (ii) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary; (iii) that Transaction has been the result of arm’s length negotiations between the parties; (iv) it is entering into this Agreement, such Credit Support Document and such Transaction with a full understanding of all of the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks; (v) it is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (vi) it is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction (it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction); and (vii) it has not received from the other party any assurance or guarantee as to the expected results of that Transaction.”

(b) *Agreements.*

(i) Section 4 of this Agreement is hereby amended by adding the following subsections (d), (e) and (f) thereto:

“(d) *Source of Payments.* This Agreement is a special limited obligation of Party B, and all amounts payable under this Agreement constitute Subordinate Obligations. The obligation of Party B to make such payments is secured solely by a pledge of and lien on Revenues on deposit in the Administrative Fund, subject and subordinate in all respects to the pledge of and lien on such Revenues created by Section 501 of the Resolution in favor of the payment of the Principal and Redemption Price of, and Sinking Fund Installments for, and interest on, the Bonds, and to the requirements of the Resolution for withdrawals from the Revenue Fund for deposit into the Bond Service Fund and any Bond Service Reserve Fund as provided therein.

This Agreement constitutes a Qualified Interest Rate Exchange Agreement pursuant to Section 207 of the Resolution.

Capitalized terms used in this Section 4(d) and not defined have the respective meanings ascribed to such terms in the Resolution.

(e) *No Recourse.* All covenants, stipulations, promises, agreements and obligations of Party B contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Party B and not of any member, officer or employee of Party B in his or her individual capacity, and no recourse shall be had for the payment of any amount due hereunder or for any claims based hereon against any member, officer or employee of Party B or any person executing this Agreement for Party B, all such liability, if any, being expressly waived and released by Party A.

(f) *Actions with Respect to Financing Agreement and Resolution.* Party B agrees to comply with all of its obligations under the Financing Agreement that are material to the performance of its obligations under this Agreement or the Resolution (including but not limited to the definition of Administrative Fund Requirement). Party B shall not enter into any amendment to, or waive any provision of, the Financing Agreement or the Resolution (including, but not limited to, the definition of Administrative Fund Requirement) if such amendment or waiver would materially adversely affect Party B's ability to perform its obligations hereunder without the prior written consent of Party A and the Insurer. Party B agrees to enforce all provisions of the Financing Agreement relating to the performance of its obligations hereunder.

Party B agrees to include all amounts payable hereunder by Party B in its calculation of the Administrative Fund Requirement, as such term is defined and determined pursuant to the Resolution.

(c) *Transfer.* Section 7 of this Agreement is hereby amended to read in its entirety as follows:

“Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:

(a) upon reasonable notice, a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or

substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement);

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e);

(c) Party A upon five (5) Business Days notice to Party B and the Insurer may transfer this Agreement and all of its interests and obligations in or under this Agreement to any Affiliates of Morgan Stanley; provided that the Guarantee of Morgan Stanley remains in full force and effect with only such amendments as may be required to reflect the fact of the transfer by Party A; and

(d) Party B may transfer all of its rights and obligations under any Transaction (the "Transferred Obligation") to another entity (the "Transferee"); provided that:

(1) the credit worthiness of the Transferee or its guarantor is reasonably acceptable to Party A;

(2) the Transferee and Party A shall have executed a master agreement in form and substance satisfactory to Party A with terms appropriate for counterparties with the Transferee's credit rating, as determined by Party A in good faith (including such Credit Support Documents as shall be required by Party A and appropriate for counterparties with the Transferee's (or its guarantor's) credit rating, as determined by Party A in good faith) under which the Transferred Obligations will be governed;

(3) at the time of such transfer, no Early Termination Date shall have been designated under this Agreement and no Event of Default, Potential Event of Default or Termination Event shall have occurred and be continuing under this Agreement with respect to Party B;

(4) such transfer will not result in the violation of any law, regulation, rule, judgment, order or other legal limitation or restriction applicable to Party A;

(5) such transfer will not result in a violation of Party A's counterparty eligibility or credit practices or policies or exposure limitations;

(6) at the time of such transfer, no event which would constitute a Termination Event, Event of Default or Potential Event of Default with respect to the Transferee if the Transferee were a party to this Agreement (or its guarantor were a Credit Support Provider under this Agreement) shall have occurred;

(7) such transfer does not result in any adverse tax consequences to Party A, including the obligation to deduct or withhold an amount with respect to any Tax from payments required to be made to the Transferee, the receipt of payments from the Transferee from which amounts with respect to any Tax may be deducted or withheld or the imposition of any tax, levy, impost, duty charge, or fee of any nature by any government or taxing authority which would not have been imposed but for such transfer;

(8) the Transferee is organized under the laws of the United States or a state

thereof; and

(9) the prior written consent of the Insurer is obtained.

Any purported transfer that is not in compliance with this Section will be void.”

- (d) ***Jurisdiction/Waiver of Immunities.*** Section 11(b) and Section 11(c) of this Agreement are hereby deleted in their entirety and replaced with the following:

“With respect to any suit, action or proceedings relating to this Agreement (“Proceedings”), each party irrevocably:

(i) submits to the exclusive jurisdiction of the Supreme Court of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.”

- (e) ***Waiver of Jury Trial.*** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT.

- (f) ***Definitions.*** Section 12 of this Agreement is hereby amended to add the following definitions in their appropriate alphabetical order:

“***‘Financing Agreement’*** means the Local Highway and Bridge Service Contract, dated as of August 15, 1991, as amended.”

“***‘Government Entity’*** means Party B.”

“***‘Incipient Illegality’*** means (i) any assertion by an officer of a party in his or her official capacity on behalf of such party in any legal proceeding or action in respect of such party, to the effect that performance by such party under this Agreement or similar agreements is unlawful and (ii) the enactment of legislation by the legislature (e.g., in the case of the State of New York, both the New York State Senate and the New York State Assembly and in the case of the United States, both the United States Senate and the U.S. House of Representatives) that is not vetoed and has not become law for 60 days which, if adopted as law, would render unlawful (a) the performance by a party of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by a party with any other material provisions of this Agreement relating to such Transaction or (b) the performance by a party or a Credit Support Provider of such party of any contingent or other obligation which such party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction.”

“***‘Resolution’*** means the Local Highway and Bridge Special Limited Obligation Service Contract Bond Resolution, adopted on August 23, 1991, as amended and supplemented, including, but not limited to, by a fourteenth supplemental resolution adopted September

17, 2003.”

- (g) **Accuracy of Specified Information.** Section 3(d) is hereby amended by adding at the end of the third line thereof after the word “respect” and before the period the words, “or, in the case of audited or unaudited financial statements, a fair presentation of the financial condition of it.” With respect to information concerning the State of New York provided by Party B, such representation is based solely upon the representation of the Division of the Budget of the State of New York or the Office of the State Comptroller of the State of New York, as applicable.
- (h) **Notice of Incipient Illegality.** If an Incipient Illegality occurs, Party B will, promptly upon becoming aware of it, notify Party A, specifying the nature of that Incipient Illegality; provided that, the failure of Party B to provide such notice shall not constitute an Event of Default hereunder. Party B will also give such other information about that Incipient Illegality as Party A reasonably requests.
- (i) **Deferral of Payments and Deliveries in Connection with Illegality and Incipient Illegality.** Section 2(a)(iii) is hereby amended to read in its entirety as follows:
- “(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Illegality, Potential Event of Default or Incipient Illegality with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.”
- (j) **Insurer Provisions.** The following provisions shall apply to any Transaction to which the Swap Insurance Policy issued by Ambac Assurance Corporation (together with any successor, the “Insurer”) to the account of Party B, as principal, and for the benefit of Party A, as beneficiary (the “Swap Insurance Policy”), relates (the “Insured Transactions”).

- (i) Notwithstanding anything to the contrary in Section 6 of this Agreement, if any:
- (A) Event of Default in respect of any Insured Transaction under Section 5(a) of this Agreement occurs with respect to Party B as the Defaulting Party; or
- (B) Termination Event in respect of any Insured Transaction under Section 5(b) of this Agreement occurs with respect to Party B as the Affected Party;

then, in either such case, Party A shall not designate an Early Termination Date in respect of any such Insured Transaction unless:

- (Y) an Additional Termination Event under Part 4(j)(x) has occurred and is continuing; or
- (Z) Insurer has otherwise consented in writing to such designation.

Amounts payable by Party B to Party A upon termination shall not be insured by the Swap Insurance Policy except as provided in Part 4(j)(ii).

- (ii) Notwithstanding anything in this Agreement, if any Event of Default under this Agreement occurs, with Party B as the Defaulting Party, then the Insurer (unless an Additional Termination Event described in Part 4(j)(x) has occurred and is continuing) shall have the right (but not the obligation) upon notice to Party A to designate an Early Termination Date with respect to Party B with the same effect as if such designation were made by Party A. For purposes of the foregoing sentence, an Event of Default with respect to Party B shall be considered to be continuing, notwithstanding any payment by the Insurer under the Swap Insurance Policy. Party A and Party B acknowledge that, except as the Swap Insurance Policy may be otherwise endorsed, unless the Insurer designates an Early Termination Date (as opposed to merely consenting to such designation by one of the parties) termination payments due from Party B because an Early Termination Date has been designated will not be insured.
- (iii) Party A and Party B hereby each acknowledge and agree that Insurer's obligation with respect to Insured Transactions shall be limited to the terms of the Swap Insurance Policy. Notwithstanding Section 2(e) or any other provision of this Agreement, Insurer shall not have any obligation to pay interest on any amount payable by Party B under this Agreement.
- (iv) The definition of "Reference Market Makers" set forth in Section 12 of this Agreement shall be amended in its entirety to read as follows:

*"Reference Market Makers"* means four (4) leading dealers in the relevant swap market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among dealers having an office in the greater New York Metropolitan area. The rating classification assigned to any outstanding long-term senior debt securities issued by such dealers shall be at least (1) Aa3 or higher as determined by Moody's Investors Service, Inc. (or any successor) ("Moody's") (2) AA- or higher as determined by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. (or any successor) ("S&P") or (3) an equivalent investment grade rating determined by a nationally-recognized rating service acceptable to both parties and Insurer, provided however, that, in any case, if Market Quotation cannot be determined by four (4) such dealers, the party making the determination of the Market Quotation may designate, with the consent of the other party and Insurer, one (1) or more leading dealers whose long-term senior debt bears a lower investment grade rating.
- (v) Section 8(b) of this Agreement is hereby amended by (A) adding the phrase "or any Credit Support Document" after the word "Agreement" in the first line thereof and (B) adding the phrase "and their respective Credit Support Providers" following after the word "parties" in the second line thereof.
- (vi) No amendment, modification, supplement or waiver of this Agreement will be effective unless in writing and signed by each of the parties hereto and unless the parties hereto shall have obtained the prior written consent of Insurer.
- (vii) Party A and Party B hereby each acknowledge and agree that Insurer shall be an express third-party beneficiary (and not merely an incidental third-party beneficiary) of this Agreement and the obligations of such party under any Insured

Transaction, and as such, entitled to enforce this Agreement and the terms of any such Insured Transaction against such party on its own behalf and otherwise shall be afforded all remedies available hereunder or otherwise afforded by law against the parties hereto to redress any damage or loss incurred by Insurer including, but not limited to, fees (including professional fees), costs and expenses incurred by Insurer which are related to, or resulting from any breach by such party of its obligations hereunder.

- (viii) So long as the Swap Insurance Policy shall remain in effect, no Insured Transaction may be assigned or transferred by Party B or Party A without the prior written consent of Insurer other than as provided in Section 7(a), (b) or (c).
- (ix) Party A and Party B hereby acknowledge that to the extent of payments made by Insurer to Party A under the Swap Insurance Policy, Insurer shall be fully subrogated to the rights of Party A against Party B under the Insured Transaction to which such payments relate, including, but not limited to, the right to receive payment from Party B and the enforcement of any remedies. Party A hereby agrees to assign to Insurer its right to receive payment from Party B under any Insured Transaction to the extent of any payment thereunder by Insurer to Party A and to execute all such instruments or agreements as Insurer deems reasonably necessary to effect such assignment. Party B hereby acknowledges and consents to the assignment by Party A to Insurer of any rights and remedies that Party A has under any Insured Transaction or any other document executed in connection herewith.
- (x) *Additional Termination Event will apply.* The following shall constitute Additional Termination Events in respect of Party B (and amounts payable by Party B to Party A upon such termination shall not be insured by the Swap Insurance Policy):
  - (a) The Insurer fails to meet its payment obligations under its Swap Insurance Policy and such failure is continuing with respect to the Insurer under the Swap Insurance Policy; provided, however, that, in any such case, either
    - (X) an Event of Default has occurred or is continuing with respect to Party B as the Defaulting Party; or
    - (Y) a Termination Event has occurred or is continuing with respect to Party B as the Affected Party.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

- (b) The Insurer's financial strength rating from S&P is below A- and the Insurer's claims paying ability rating from Moody's is below A3;
  - provided, however, that in any such case, either
    - (X) an Event of Default has occurred and is continuing with respect to Party B as the Defaulting Party; or
    - (Y) a Termination Event has occurred and is continuing with respect to

Party B as the Affected Party.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

- (c) (A) The Insurer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of the Insurer under the Swap Insurance Policy by operation of law or pursuant to an agreement reasonably satisfactory to Party A and (B) Party B fails, within 20 days of notice from Party A, to provide a replacement guarantee, letter of credit, surety bond, insurance policy or other credit enhancement instrument providing, in the reasonable opinion of Party A, support substantially the same as provided by the Swap Insurance Policy by a provider whose credit ratings are at least equal to those of the Insurer at the time of the replacement. For the purpose of this Termination Event, the Affected Party shall be Party B.
- (d) (A) The entry of a non-appealable order of a court of competent jurisdiction that the Swap Insurance Policy is invalid and (B) Party B fails, within 20 days of notice from Party A, to provide a replacement guarantee, letter of credit, surety bond, insurance policy or other credit enhancement instrument providing, in the reasonable opinion of Party A, support substantially the same as provided by the Swap Insurance Policy by a provider whose credit ratings are at least equal to those of the Insurer at the time of the replacement. For the purpose of this Termination Event, the Affected Party shall be Party B.
- (xi) Notwithstanding Section 6 of this Agreement, any designation of an Early Termination Date in respect of the Insured Transactions by the Insurer or by Party A with the consent of the Insurer pursuant to paragraph (i) above shall apply only to the Insured Transactions and not to any other Transaction under this Agreement, unless Party A shall designate an Early Termination Date in respect of such other Transaction. Nothing contained in this paragraph (xi) shall affect the rights of Party A under this Agreement to designate an Early Termination Date in respect of any Transaction other than the Insured Transactions, which designation shall not apply to the Insured Transactions unless expressly provided in such designation and unless the Insurer shall have designated, or consented to the designation by Party A of, an Early Termination Date in respect of the Insured Transactions in accordance with paragraph (i) above or such designation of an Early Termination Date is otherwise permitted under paragraph (i) or (x).
- (xii) Notwithstanding anything else in this Agreement, in no event shall either Party A or Party B be entitled to net or set off the payment obligations of the other party that are not with respect to Insured Transactions against the payment obligations of such party under Insured Transactions (whether by counterclaim or otherwise), it being the intention of the parties that their payment obligations under Insured Transactions be treated separate and apart from all other obligations. Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Transaction shall be determined without regard to any obligation other than those under the Insured Transactions, it being the intention of the parties that their payment obligations under the Insured Transactions be treated separate and apart from all



other obligations unless otherwise specified in such other obligation and agreed to in writing by the Insurer.

- (xiii) None of the rights and obligations of the Insurer with respect to the Insured Transactions shall affect the rights and obligations of the parties hereto pursuant to any Transaction that is not an Insured Transaction.
- (xiv) Notice of any Change of Account under Section 2(b) shall be delivered or given to the Insurer.
- (xv) *Reserved.*
- (xvi) Pursuant to Section 8(c) of this Agreement, all obligations of the parties will survive the termination of any Transaction or the term of this Agreement or the Resolution so long as amounts owed under the Swap Insurance Policy or under Part 4(j)(xxi) of this Agreement remain outstanding.
- (xvii) For the purpose of Section 10(a) of the Agreement, all notices and communications shall be delivered or given to Party A, Party B and the Insurer as set forth in Part 3(a) of this Schedule.
- (xviii) Notwithstanding Section 2(a)(iii) of this Agreement, Party A shall not suspend any payments due under an Insured Transaction under Section 2(a)(iii) unless the Insurer is in default in respect of any payment obligations due under the Swap Insurance Policy.
- (xix) No notice of an Event of Default or Termination Event shall be effective against Party B unless such notice is given to the Insurer.
- (xx) Party B agrees to reimburse the Insurer, solely from amounts available to Party B under the Financing Agreement, immediately and unconditionally upon demand for all reasonable expenses incurred by the Insurer in connection with the issuance of the Swap Insurance Policy and the enforcement by the Insurer of Party B's obligations under this Agreement and any other documents executed in connection with the execution and delivery of this Agreement, including, but not limited to, fees (including professional fees), costs and expenses incurred by the Insurer which are related to, or resulting from any breach by Party B of its obligations hereunder.
- (xxi) Party B hereby covenants and agrees that it shall reimburse Insurer, solely from amounts available to Party B under the Financing Agreement, for any amounts paid by the Insurer under the Swap Insurance Policy and all costs of collection thereof and enforcement of this Agreement at the Insurer Payment Rate (as hereinafter defined). For purposes of the foregoing, "Insurer Payment Rate" shall mean the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, ("Chase") at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by Chase) plus 3 percent and (ii) the then highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Insurer Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event that Chase ceases to announce its Prime Rate publicly, the Prime Rate shall be the publicly announced

prime or base lending rate of such national bank as the Insurer shall specify.

- (xxii) Each party agrees that each of its representations and agreements in this Agreement is expressly made to and for the benefit of the Insurer.
- (xxiii) Each party agrees to send a copy of all notices or communications sent by such party to the other party, to the Insurer at the following address:

Ambac Assurance Corporation  
One State Street Plaza  
New York, New York 10004  
Attn: Public Finance & Risk Management  
Telecopy: (212) 480-3682

- (k) **Consent to Recording.** Each party (i) consents to the recording of all telephone conversations between trading and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction; (ii) agrees to give notice to its own personnel and the personnel of its Affiliates that their calls will be recorded; and (iii) agrees that, in any Proceedings, such recordings may be introduced into evidence and it will not object to the introduction of such recordings into evidence on grounds that consent was not properly given.
- (l) **Appendix A.** Notwithstanding any other provisions of this Agreement, Party A and Party B agree that Party A shall be bound by the provisions of Appendix A (Standard Clauses for New York State Thruway Authority and New York State Canal Corporation Procurement Contracts) annexed hereto, which shall be deemed an integral part of this Agreement. Notwithstanding Section 12 of Appendix A, if there exists a conflict between a provision in Appendix A and this Agreement, this Agreement shall govern to the extent permitted by law.

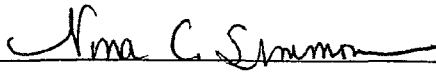
In addition, the following changes are made to Appendix A:

- (i) The last sentence of Section 3 shall not apply.
  - (ii) Notwithstanding the first sentence of Section 9 of Appendix A, Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter.
  - (iii) The following shall be added to Section 9: The Authority shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the State's Public Officer's Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate Authority official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Authority's right to discovery in any pending or future litigation.
  - (iv) The last sentence of Section 21 shall not apply.
- (m) **Liability; No Indemnification.** Each party will be responsible for all damage to life and properties due to negligent or otherwise tortious acts, errors or omissions of such party in connection with its obligations under this Agreement to the extent provided by law. Party B shall not indemnify Party A, and Party A shall not indemnify Party B, for any claims, suits, actions,

damages, and costs resulting from the performance of its obligations under this Agreement.

The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

MORGAN STANLEY CAPITAL SERVICES  
INC.

By: 

Title: NINA C. SIMMONS  
VICE PRESIDENT

NEW YORK STATE THRUWAY  
AUTHORITY

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

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

damages, and costs resulting from the performance of its obligations under this Agreement.

The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

MORGAN STANLEY CAPITAL SERVICES  
INC.

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

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

NEW YORK STATE THRUWAY  
AUTHORITY

By: 

Title: Treasurer

**APPENDIX A**  
**STANDARD CLAUSES FOR NEW YORK STATE THRUWAY AUTHORITY AND**  
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The parties to the attached contract, license, lease, amendment or other agreement of any kind ("the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party and its agents, successors and assigns, other than the Thruway Authority ("Authority") or Canal Corporation ("Corporation"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. NON-ASSIGNMENT CLAUSE.** This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority/Corporation and any attempts to assign the contract without the Authority's/Corporation's written consent are null and void.

**2. COMPTROLLER APPROVAL.** Unless otherwise provided by resolution of the Authority or Corporation Board, if this contract involves the expenditure of funds for goods or services in excess of \$25,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this contract, the Authority/Corporation agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, this contract shall not be valid, effective or binding upon the Authority/Corporation until it has been approved by the State Comptroller and filed in his office.

**3. WORKERS' COMPENSATION AND DISABILITY BENEFITS.**

This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the State Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

**4. NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in

accordance with State Labor Law §220-e, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in State Labor Law §230, then, in accordance with §239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of any moneys due hereunder for a second or subsequent violation.

**5. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the State Labor Law.

**6. NON-COLLUSIVE BIDDING REQUIREMENT.**

In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and

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delivered to the Authority/Corporation a non-collusive bidding certification on Contractor's behalf.

**7. INTERNATIONAL BOYCOTT PROHIBITION.**

In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Authority/Corporation within five (5) business days of such conviction, determination or disposition of appeal.

**8. SET-OFF RIGHTS.** The Authority/Corporation shall have rights of set-off. These rights shall include, but not be limited to, the Authority's/Corporation's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing by the Contractor to the Authority/Corporation with regard to this contract, or any other contract with the Authority/Corporation, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority/Corporation for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority/Corporation and third parties in connection therewith.

**9. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority/Corporation, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and

reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contract or the end date of the term stated in the contract.

**10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Authority/Corporation must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in State Tax Law §5. Disclosure of this information by the seller or lessor to the Authority/Corporation is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority/Canal Corporation, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

**11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority/Corporation is committed to

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expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Authority/Corporation; or (ii) a written agreement in excess of \$100,000 whereby the Authority/Corporation is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.

(b) At the request of the Authority/Corporation, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance this contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such work is for the

beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities.

12. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

13. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

14. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880, and 21 NYCRR Part 109.

15. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

16. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the Authority's/Corporation's receipt of the return thereof by the United State Postal Service as refused or undeliverable. Contractor must promptly notify the Authority/Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Authority/Corporation to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

17. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless

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specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the Authority/Corporation.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in State Finance Law §165. Any such use must meet with the approval of the Authority/Corporation; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the Authority/Corporation.

**18. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in State Finance Law §165), and shall permit independent monitoring of compliance with such principles.

**19. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl Street  
Albany, NY 12245  
Phone: (518) 292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Minority and Women's Business Development  
Division  
30 South Pearl Street  
Albany, NY 12245  
<http://www.empire.state.ny.us/>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, the Contractor certifies that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the Authority/Corporation;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the NYS Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the Authority/Corporation upon request; and

(d) The Contractor acknowledges that the Authority/Corporation may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the Authority/Corporation in these efforts.

**20. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapters 684 and 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact



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the Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

21. **LIABILITY.** The Contractor shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of the Contractor in connection with its services under this contract. Further, it is expressly understood that the Contractor shall indemnify and save harmless the Authority/Corporation and/or the State of New York, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of the Contractor or the quality of goods provided under this contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. The provisions of this clause shall survive the expiration or termination of this contract.

22. **OBSERVANCE OF LAWS.** The Contractor agrees to observe all Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

23. **INDEPENDENT CONTRACTOR.** The Contractor is and shall be, in all respects, an independent contractor in performing services pursuant to this contract. In accordance with its status as an independent contractor, the Contractor covenants and agrees that neither it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of the Authority/Corporation, and that neither the Contractor nor its agents and employees shall make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Authority/Corporation, including but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

24. **NO WAIVER OF PROVISIONS.** The Authority's/Corporation's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority/Corporation of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority/Corporation, and such waiver shall be limited

to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

25. **ENTIRE AGREEMENT.** This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

EXHIBIT A to Schedule

Form of Confirmation

October \_\_, 2003

Ambac Assurance Corporation INSURED CONFIRMATION

New York State Thruway Authority  
200 Southern Boulevard  
Albany, NY 12209  
Attention: Chief Financial Officer  
Facsimile No.: 518-471-5050  
Telephone No.: 518-436-2820  
Tax ID:

Ladies and Gentlemen:

The purpose of this letter agreement (the "Confirmation") is to set forth the terms and conditions of the Transaction entered into between COUNTERPARTY X ("Party A") and the NEW YORK STATE THRUWAY AUTHORITY ("Party B") on the Trade Date specified below (the "Transaction"). This Transaction constitutes an "Insured Transaction" as referred to in the Agreement specified below.

The definitions and provisions contained in the 2000 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc.) (the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between those Definitions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms part of, and is subject to the Master Agreement and Schedule thereto dated as of October \_\_, 2003 (the "Agreement") between you and us. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:—

Party A: COUNTERPARTY X

Party B: NEW YORK STATE THRUWAY AUTHORITY

[Notional Amount:]

Trade Date:

Effective Date:

Termination Date:

FIXED AMOUNTS:

EXHIBIT A

Page 1

Fixed Rate Payer:	[Party A/B]
Fixed Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment of Early Payment applies]:	[ _____ ], subject to adjustment in accordance with the [Following/Modified Payment or [Following/Preceding] Business convention, with respect to a _____ Banking Day and a _____ Banking Day [with No Adjustment of Period End Dates].
[Fixed Amount:]	
Fixed Rate:	
Fixed Rate Day Count Fraction:	
FLOATING AMOUNTS:	
Floating Rate Payer:	[Party B/A]
[Floating Rate Payer Currency Amount:]	
Floating Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment or Early Payment applies]:	[ _____ ], subject to adjustment in accordance with the [Following/Modified Payment or [Following/Preceding] Business convention, with respect to a _____ Banking Day and a _____ Banking Day [with No Adjustment of Period End Dates].
Floating Rate for initial Calculation Period:	
Floating Rate Option:	
Designated Maturity:	
Floating Rate Spread:	[plus/minus] % p.a.
Floating Rate Day Count Fraction:	
Floating Rate Reset Dates:	
[Rate Cut-off Dates:]	
[Floating Rate Method of Averaging:	Unweighted/Weighted Average Rate]
Compounding:	Applicable/Inapplicable

[Compounding Dates:]

[Initial Exchange:

Initial Exchange Date:

Party A Initial Exchange  
Amount:

Party B Initial Exchange  
Amount:

Final Exchange:

Final Exchange Date:

Party A Final Exchange  
Amount:

Party B Final Exchange  
Amount:]

Calculation Agent:

3. Account Details

Payments to Party A

Account for payments in [first currency]: [ ]

Account for payments in [second currency]: [ ]

Payments to Party B

Account for payments in [second currency]: [ ]

Account for payments in [first currency]: [ ]

4. Offices

The Office of Party B for the Transaction is [ .]

5. [Broker/Arranger: ]

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,

COUNTERPARTY X

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

Name: \_\_\_\_\_

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

Accepted and confirmed as of the  
Trade Date

NEW YORK STATE THRUWAY AUTHORITY

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

Name: \_\_\_\_\_

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

ANNEX I  
to Confirmation, dated October \_\_, 2003  
between Morgan Stanley Capital Services Inc. and  
New York State Thruway Authority

<u>Reduction Date</u>	<u>Notional Reduction Amount</u>	<u>Outstanding Motional Amount</u>
3/15/2010		
3/15/2011		
3/15/2012		
3/15/2013		
3/15/2014		
3/15/2015		
3/15/2016		
3/15/2017		
3/15/2018		
3/15/2019		
3/15/2020		
3/15/2021		

EXHIBIT B

[FORM OF GUARANTEE OF MORGAN STANLEY]

Morgan Stanley

MORGAN STANLEY  
1585 BROADWAY  
NEW YORK, NY 10036-8293

Date

[Address]

Ladies and Gentlemen:

In consideration of that certain ISDA Master Agreement dated as of [date] between Morgan Stanley Capital Services Inc., a Delaware corporation (hereinafter "MSCS") and [counterparty] (hereinafter "Counterparty") (such ISDA Master Agreement, together with each Confirmation exchanged between the parties pursuant thereto, hereinafter the "Agreement"), Morgan Stanley, a Delaware corporation (hereinafter "MS"), hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date of the Agreement, the due and punctual payment of all amounts payable by MSCS under the Agreement when the same shall become due and payable, whether on Scheduled Payment Dates, upon demand, upon declaration of termination or otherwise, in accordance with the terms of the Agreement and giving effect to any applicable grace period. Upon failure of MSCS punctually to pay any such amounts, and upon written demand by Counterparty to MS at its address set forth in the signature block of this Guarantee (or to such other address as MS may specify in writing), MS agrees to pay or cause to be paid such amounts; provided that delay by Counterparty in giving such demand shall in no event affect MS's obligations under this Guarantee.

MS hereby agrees that its obligations hereunder shall be unconditional and will not be discharged except by complete payment of the amounts payable under the Agreement, irrespective of any claim as to the Agreement's validity, regularity or enforceability or the lack of authority of MSCS to execute or deliver the Agreement; or any change in or amendment to the Agreement; or any waiver or consent by Counterparty with respect to any provisions thereof; or the absence of any action to enforce the Agreement or the recovery of any judgment against MSCS or of any action to enforce a judgment against MSCS under the Agreement; or any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally. MS hereby waives diligence, presentment, demand on MSCS for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against MSCS and protest or notice, except as provided for in the Agreement with respect to amounts payable by MSCS. If at any time payment under the Agreement is rescinded or must be otherwise restored or returned by Counterparty upon the insolvency, bankruptcy or reorganization of MSCS or MS or otherwise, MS's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by Counterparty.

MS represents to Counterparty as of the date hereof, which representations will be deemed to be repeated by MS on each date on which a Transaction is entered into, that:

EXHIBIT B

Page 1

(1) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;

(2) its execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

(3) all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

(4) this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

By accepting this Guarantee and entering into the Agreement, Counterparty agrees that MS shall be subrogated to all rights of Counterparty against MSCS in respect of any amounts paid by MS pursuant to this Guarantee, provided that MS shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by MSCS under the Agreement.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York. All capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Agreement.

MORGAN STANLEY

By: \_\_\_\_\_  
Name:  
Title:  
Address: 1585 Broadway  
3rd Floor  
New York, NY 10036  
Attention: Derivative Products Group  
Fax No.: (212) 761-0162



EXHIBIT C to Schedule

[Form of Opinion of Counsel to Party B]

October \_\_, 2003

Morgan Stanley Capital Services Inc.  
New York, New York

Morgan Stanley  
New York, New York

Ambac Assurance Corporation  
One State Street Plaza  
New York, New York 10004

Ladies and Gentlemen:

We have acted as counsel to New York State Thruway Authority, a body corporate and politic constituting a public corporation of the State of New York ("Party B") in connection with the execution and delivery of the Master Agreement, Schedule and Credit Support Annex thereto (the "Master Agreement") dated as of October \_\_, 2003 between Counterparty X ("Party A") and Party B and the Confirmation(s), dated \_\_\_\_\_, 2003 (the "Initial Confirmation(s)"), each between Party A and Party B. The Master Agreement together with the Initial Confirmation(s) shall constitute one agreement and hereinafter is referred to as the "Agreement".

In connection with this opinion, we have examined executed copies of the Master Agreement and such documents and records of Party B, certificates of public officials and officers of Party B and such other documents as we have deemed necessary or appropriate for the purposes of this opinion. In this opinion, we have assumed the genuineness of all the signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed or photostatic copies.

Party B has authorized the Agreement by and pursuant to Resolution No. 5316 adopted by the Board of Party B on September 17, 2003. In addition, pursuant to the Guidelines for Interest Rate Exchange Agreements, adopted by Party B pursuant to said Article 5-D on December 5, 2002 (the "Guidelines"), Public Financial Management, Inc., has issued a letter dated October \_\_, 2003, to Party B finding that the terms and conditions of the Agreement reflect a fair market value. We have relied on such letter, without further investigation, in rendering this opinion.

Based upon the foregoing, we are of the opinion that:

1. Party B is a body corporate and politic constituting a public corporation of the State of New York duly organized and validly existing under the laws of the State of New York.
2. Party B is authorized under the New York State Thruway Authority Act, Title 9 of Article 2 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended, Article 5-D of the State Finance Law, the Guidelines, the Financing Agreement (as

defined in the Agreement) and the Resolution (as defined in the Agreement), to enter into the Agreement and to perform its obligations thereunder.

3. Party B has taken all necessary action required to be taken to ensure that the Agreement complies in all respects with the New York State Thruway Authority Act, Article 5-D of the State Finance Law, the Guidelines and the Resolution.

4. The Agreement has been duly executed and delivered by Party B and constitutes a legally valid and binding obligation of Party B enforceable against Party B in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law); provided, however, that this opinion is subject to the qualification that in connection with any early termination on the grounds of default, a court might limit the non-Defaulting Party's recovery to its actual damages in the circumstances, imposing its own settlement procedures in lieu of the provisions of Section 6(e) of the Agreement.

5. To the best of our knowledge, no consent, authorization, license or approval of, or registration or declaration with, any governmental authority is required in connection with the execution, delivery and performance of the Agreement by Party B.

6. The Agreement is a special limited obligation of Party B, and all amounts payable under the Agreement constitute Subordinate Obligations. The obligation of Party B to make such payments is secured solely by a pledge of and lien on Revenues on deposit in the Administrative Fund, subject and subordinate in all respects to the pledge of and lien on such Revenues created by Section 501 of the Resolution in favor of the payment of the Principal and Redemption Price of, and Sinking Fund Installments for, and interest on, the Bonds, and to the requirements of the Resolution for withdrawals from the Revenue Fund for deposit into the Bond Service Fund and any Bond Service Reserve Fund as provided therein. Capitalized terms used in this paragraph and not defined have the respective meanings ascribed to such terms in the Resolution.

Our opinion is rendered only with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or any other material of any kind not specifically opined on above. No other opinions are intended nor should they be inferred. This opinion is issued as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law, or in interpretations thereof, that may hereinafter occur, or for any other reason whatsoever.

This opinion is solely for your information and assistance and may not be relied upon by any other person.

Very truly yours,

SCHEDULE

to the

ISDA Master Agreement

dated as of October 21, 2003, between

MORGAN STANLEY CAPITAL SERVICES INC.,  
a Delaware corporation

("Party A")

and

NEW YORK STATE THRUWAY AUTHORITY,  
a body corporate and politic of the State of New York  
constituting a public corporation of the State of New York

("Party B")

**Part 1. Termination Provisions.**

In this Agreement:—

(a) "**Specified Entity**" means in relation to Party A for the purpose of:—

Section 5(a)(v) (Default under Specified Transaction),	Affiliates
Section 5(a)(vi) (Cross Default),	Not applicable.
Section 5(a)(vii) (Bankruptcy),	Not applicable.
Section 5(b)(ii) (Credit Event Upon Merger),	Not applicable.

and in relation to Party B for the purpose of:—

Section 5(a)(v)(Default under Specified Transaction)	Not applicable.
Section 5(a)(vi) (Cross Default),	Not applicable.
Section 5(a)(vii)(Bankruptcy),	Not applicable.
Section 5(b)(ii) (Credit Event Upon Merger)	Not applicable.

(b) "**Specified Transaction**" will have the meaning specified in Section 12 of this Agreement; provided that with respect to Party B, Specified Transaction shall include only those Specified Transactions that are payable from the source of payment specified in Section 4(d) of this Agreement.

(c) The "**Cross Default**" provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B.

The following provisions apply:

**“Specified Indebtedness”** with respect to Party A, will have the meaning specified in Section 12 of this Agreement and, with respect to Party B, will mean any bonds issued pursuant to the Resolution and any interest rate exchange agreement executed by Party B that is payable from the source of payment specified in Section 4(d) of this Agreement (the inclusion of interest rate exchange agreements as Specified Indebtedness shall not create any implication that an interest rate exchange agreement constitutes indebtedness).

**“Threshold Amount”** means the lesser of \$100,000,000 and 3% of Stockholders’ Equity of Party A’s Credit Support Provider for Party A and \$35,000,000 for Party B. For purposes hereof, “Stockholders’ Equity” shall be determined by reference to Party A’s Credit Support Provider’s most recent consolidated balance sheet and shall include legal capital, paid-in capital, retained earnings and cumulative translation adjustments.

- (d) The **“Credit Event Upon Merger”** provisions of Section 5(b)(ii) will apply to Party A and will not apply to Party B.
- (e) The **“Automatic Early Termination”** provisions of Section 6(a) will not apply to Party A or to Party B.
- (f) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:
  - (A) Market Quotation will apply.
  - (B) The Second Method will apply.
- (g) **Additional Termination Event will apply.** The following shall constitute Additional Termination Events:

(i) If the unenhanced, unsubordinated Specified Indebtedness of Party B or the outstanding long term unsecured, unsubordinated, unenhanced debt of Party A’s Credit Support Provider is not rated by at least one of Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. (or any successor) (“S&P”), Moody’s Investors Service, Inc. (or any successor) (“Moody’s”), or Fitch Ratings (or any successor) (“Fitch”) at least BBB, Baa2 or BBB, as applicable, or the unenhanced, unsubordinated Specified Indebtedness of Party B or the outstanding long term unsecured, unsubordinated, unenhanced debt of Party A’s Credit Support Provider is rated by any one of S&P, Moody’s or Fitch lower than BBB-, Baa3 or BBB-, as applicable, or any rating is withdrawn or suspended, then a “Ratings Event” shall be deemed to have occurred with respect to such party. The party for which the Ratings Event is deemed to have occurred (“X”) shall promptly notify the other party of the occurrence of such Ratings Event; provided that, the failure of such a party to provide such notice shall not constitute an Event of Default hereunder. A Ratings Event shall be deemed an Additional Termination Event for which all Transactions under this Agreement shall be Affected Transactions. For the purposes of Section 6(b) and Section 6(e), X shall be the sole Affected Party.

(ii) It shall be an Additional Termination Event if Party A has notified Party B that a Party B Downgrade Event (as defined below) has occurred and Party B has not, within 20 days of receiving such notice, at its sole election, either (a) provided a guarantee, letter of credit, surety bond, insurance policy or other credit support document with respect to the amounts payable by Party B under Sections 2 and 6 of this Agreement in a form and by a provider reasonably acceptable to Party A and, unless the Insurer has failed to pay under the Swap Insurance Policy,

the Insurer; (b) transferred this Agreement pursuant to Section 7(d) of this Agreement or otherwise transferred this Agreement to a counterparty reasonably acceptable to Party A pursuant to terms reasonably acceptable to Party A and unless the Insurer has failed to pay under the Swap Insurance Policy, the Insurer; or (c) executed a credit support annex with Party A in substantially the form executed by Party A upon the execution and delivery of this Agreement. For purposes of Section 6(e), Party B shall be the sole Affected Party. A "Party B Downgrade Event" shall occur if the unenhanced, unsubordinated Specified Indebtedness of Party B is not rated by at least one of S&P, Moody's or Fitch at least BBB+, Baa1 or BBB+, as applicable, or the unenhanced, unsubordinated Specified Indebtedness of Party B is rated by any one of S&P, Moody's or Fitch lower than BBB, Baa2 or BBB, as applicable. Party B shall promptly notify Party A of the occurrence of a Party B Downgrade Event; provided that, the failure of Party B to provide such notice shall not constitute an Event of Default hereunder. This Additional Termination Event shall be deemed to have been waived by Party A until such time as (i) the Insurer fails to make a payment due under its Swap Insurance Policy or (ii) the Insurer's financial strength rating from S&P is below A- and its claims paying ability rating from Moody's is below A3.

(h) ***Events of Default.***

(i) ***Cross Default.*** Section 5(a)(vi) of this Agreement is hereby amended to read in its entirety as follows:

"(vi) ***Cross Default.*** With respect to Party A shall mean the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period); provided, however, that notwithstanding the foregoing, an Event of Default shall not occur if, as demonstrated to the reasonable satisfaction of Party B, (a) the event or condition or the failure to pay is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to Party A to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of such failure to pay; and

With respect to Party B shall mean the occurrence or existence of a default on Specified Indebtedness of Party B with a principal or notional amount of not less than the Threshold Amount (as specified in the Schedule) either (1) when any amount on such Specified Indebtedness is due and payable or (2) which has resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments before it would otherwise have been due and payable; provided, however, that notwithstanding the foregoing, an Event of Default shall not occur if, as demonstrated to the reasonable satisfaction of Party A, (a) the event or condition or the failure to pay is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to Party B to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of

such failure to pay;”.

(ii) **Bankruptcy.** Section 5(a)(vii) is hereby amended by renumbering existing Clauses (8) and (9) to be Clauses (9) and (10), respectively and is further amended by replacing the reference to “clauses (1) to (7) (inclusive)” in what is now Clause (9), with a reference to “clauses (1) to (8) (inclusive)” and is further amended by adding a new clause (8) to read as follows:

“(8) is subject to a statute, rule or regulation which has been enacted and has the force of law and which establishes an agency, authority, body or oversight board to monitor, review or oversee a financial emergency with respect to such party”.

(iii) **Merger Without Assumption.** Section 5(a)(viii) of this Agreement is hereby amended to read in its entirety as follows:

“(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if such party is a Government Entity, an entity such as a board, commission, authority, agency, public corporation, public benefit corporation or political subdivision succeeds to the principal functions of, or powers and duties granted to, such party or any Credit Support Provider of such party) and, at the time of such consolidation, amalgamation, merger, transfer or succession:

(1) the resulting, surviving, transferee, or successor entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement;

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement; or

(3) in the case of Party B, the benefits of the Financing Agreement fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement.”

(i) **Early Termination.**

Section 6 is hereby amended by adding the following new subsections (f) and (g):

“(f) **Set-off.** Neither party hereto shall have a right of set-off with respect to amounts due hereunder; provided, however, that this provision shall not affect the rights of Party B to exercise remedies including any right of set-off under the credit support annex executed in connection herewith.”

“(g) **Optional Termination by Party B.** Party B may, upon at least five (5) Business Days’ written notice to Party A and the Insurer, terminate any Transactions under this Agreement by designating to Party A the termination date for such Transactions. In the event Party B exercises its right of optional termination hereunder, the provisions of Section 6(e)(ii)(1) shall apply as though Party B is the sole Affected Party. Party B may not optionally terminate any Transactions pursuant to this section unless Party B also provides evidence

reasonably satisfactory to Party A and the Insurer that Party B has or will have on the termination date available funds without regard to any swap insurance policy with which to pay any amount due to Party A as a result of such optional termination. Notwithstanding anything herein to the contrary, the parties will be obligated to pay any accrued and unpaid amounts that would otherwise be due on the date of such optional termination.”

**Part 2. Agreement to Deliver Documents.**

For the purpose of Section 4(a) of this Agreement, each party agrees to deliver the following documents, as applicable:

Party Required to Deliver Document	Form/Certificate Document	Date by Which to be Delivered	Covered by Section 3(d)
Party A and Party B	Certified copies of all documents evidencing necessary corporate and other authorizations and approvals with respect to the execution, delivery and performance by the party and any Credit Support Provider of this Agreement, any Credit Support Document and any Confirmation, including, where applicable, certified copies of the resolutions of its Board of Directors authorizing the execution and delivery of this Agreement, the relevant Credit Support Document or any Confirmation.	Upon execution of this Agreement and promptly at the request of the other party upon execution of a Confirmation.	Yes
Party A and Party B	A certificate of an authorized officer of the party and any Credit Support Provider as to the incumbency and authority of the officers of the party and any Credit Support Provider signing this Agreement, any Credit Support Document or any Confirmation.	Upon execution of this Agreement and promptly at the request of the other party upon execution of a Confirmation.	Yes
Party A	Guaranty of Morgan Stanley in the form of Exhibit B attached hereto.	As soon as practicable, but no later than upon execution of this Agreement.	
Party A and Party B	With respect to Party A, a copy of the most recent annual report (and each annual report thereafter) of Party A's Credit Support Provider, and with respect to Party B, a copy of the most recent audited annual financial statements of Party B and Annual Information Statement of the State of New York and any updates thereto and the audited	Promptly after request by the other party.	Yes

	financial statements of the State of New York, in each case when available to Party B, containing in all cases audited consolidated financial statements for each fiscal year during which this Agreement is in effect certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the United States or in the country in which such party is organized.		
Party A	A copy of the unaudited consolidated financial statements of Party A, for each semiannual period in each fiscal year during which this Agreement is in effect prepared in accordance with generally accepted accounting principles in the United States or in the country in which such party is organized.	Promptly after request by the other party.	Yes
Party A	A copy of each regular financial or business reporting document that is (i) distributed or made generally available to respective shareholders or investors and made publicly available or (ii) filed in accordance with the disclosure requirements of any applicable statute, rule, regulation or judicial decree and made available for public inspection.	Promptly after request by the other party.	Yes
Party A and Party B	Such other documents as the other party may reasonably request.	Promptly after request by the other party.	Yes
Party A and Party B	With respect to Party A, an opinion of counsel to Party A (and any Credit Support Provider) in form and substance satisfactory to Party B and the Insurer; and with respect to Party B, an opinion of counsel substantially in the form set forth in Exhibit C attached hereto and covering such other matters as reasonably requested by Party A and the Insurer.	Upon execution of this Agreement and each Confirmation.	No



**Part 3. Miscellaneous.**

- (a)
- Notices.**
- For the purpose of Section 10(a) to this Agreement:—

Address for notices or communications to Party A:—

Address: Morgan Stanley Capital Services Inc.  
Transaction Management Group  
1585 Broadway, 3rd Floor  
New York, New York 10036-8293

Attention: Fixed Income Derivatives – Transactions Management

Facsimile No: 212-761-0162

Telephone No.: 212-761-2533

Address for notices or communications to Party B:—

Address: New York State Thruway Authority  
200 Southern Boulevard  
Albany, NY 12209

Attention: Chief Financial Officer

Facsimile No.: 518-471-5050

Telephone No.: 518-436-2820

Each party agrees to send a copy of all notices or communications sent by such party to the other party to the Insurer at the address set forth in Part 4(j)(xxiii).

- (b) **Notices.** Section 10(a) is amended by adding in the third line thereof after the phrase “messaging system” and before the “)” the words “; provided, however, any such notice or other communication may be given by facsimile transmission if telex is unavailable, no telex number is supplied to the party providing notice, or if answer back confirmation is not received from the party to whom the telex is sent.”
- (c) **Calculation Agent.** The Calculation Agent is Party A unless Party A is the Defaulting Party, in which case the Calculation Agent means a leading dealer in the relevant market designated by Party B. Calculations by the Calculation Agent shall be binding and conclusive absent manifest error.
- (d) **Credit Support Document.** Details of any Credit Support Document: in relation to Party A means the Guarantee of Morgan Stanley attached as Exhibit B and the Credit Support Annex attached as Exhibit D and with respect to Party B means the Credit Support Annex attached as Exhibit D.
- (e) **Credit Support Provider.** Credit Support Provider means in relation to Party A, Morgan Stanley and in relation to Party B, not applicable.

- (f) **Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE.
- (g) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply to all Transactions entered into between Party A and Party B.
- (h) **"Affiliate"** will have the meaning specified in Section 12 of this Agreement, but with respect to Party B, will exclude the State of New York and, with respect to Party A, will exclude Morgan Stanley Derivative Products, Inc.
- (i) **"Government Entity"** means Party B.
- (j) **Account details.** Payments shall be made to the following accounts:

Payments to Party A:

For Cash:

Name of Bank: CITIBANK, New York

Account No.:4072-4601

For the Account of: Morgan Stanley Capital Services Inc.

Fed ABA No.:021 000 018

For Treasury Securities and Agency Notes:

Name of Bank: Bank of New York, New York

For the Account of: Morgan Stanley Capital Services Inc.

Fed ABA No.:021 000 089

Payments to Party B:

Name of Bank: JPMorgan Chase Bank

Account No.:507943635

For the Account of: Morgan Stanley CHIPS Swap Payment

Fed ABA No.:021 000 021

**Part 4. Other Provisions.****(a) Representations.**

(i) The introductory clause of Section 3 of this Agreement is hereby amended to read in its entirety as follows:

“Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(a), 3(e) and 3(f), at all times until the termination of this Agreement) that:—”.

(ii) Section 3(a) of this Agreement is hereby amended by adding the following subparagraph (vi):

“(vi) **Eligible Contract Participant.** It is an “eligible contract participant” within the meaning of Section 1(a)(12) of the Commodity Exchange Act.”.

(iii) Section 3 of this Agreement is hereby amended by adding the following subsections (e), (f), (g) and (h) thereto:

“(e) **Non-Speculation.** This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for purposes of managing its borrowings or investments and not for purposes of speculation.”

“(f) **No Immunity.** It is not immune from suit or judgment for amounts due and payable pursuant to this Agreement, it being understood that, with respect to Party B, payment of any judgment shall be solely from sources available under Section 4(d) “Source of Payments” hereof.”.

“(g) **Acting as Principal.** Each party hereto represents and warrants to the other party hereto that it is acting as a principal hereunder and not as an agent for any other party.”

“(h) **No Reliance.** In connection with the negotiation of, the entering into, and the confirming of the execution of, this Agreement, any Credit Support Document to which it is a party, and each Transaction: (i) the other party is not acting as a fiduciary or financial or investment advisor for it; (ii) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary; (iii) that Transaction has been the result of arm’s length negotiations between the parties; (iv) it is entering into this Agreement, such Credit Support Document and such Transaction with a full understanding of all of the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks; (v) it is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (vi) it is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction (it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction); and (vii) it has not received from the other party any assurance or guarantee as to the expected results of that Transaction.”

(b) *Agreements.*

(i) Section 4 of this Agreement is hereby amended by adding the following subsections (d), (e) and (f) thereto:

“(d) *Source of Payments.* This Agreement is a special limited obligation of Party B, and all amounts payable under this Agreement constitute Subordinate Obligations. The obligation of Party B to make such payments is secured solely by a pledge of and lien on Revenues on deposit in the Administrative Fund, subject and subordinate in all respects to the pledge of and lien on such Revenues created by Section 501 of the Resolution in favor of the payment of the Principal and Redemption Price of, and Sinking Fund Installments for, and interest on, the Bonds, and to the requirements of the Resolution for withdrawals from the Revenue Fund for deposit into the Bond Service Fund and any Bond Service Reserve Fund as provided therein.

This Agreement constitutes a Qualified Interest Rate Exchange Agreement pursuant to Section 207 of the Resolution.

Capitalized terms used in this Section 4(d) and not defined have the respective meanings ascribed to such terms in the Resolution.

(e) *No Recourse.* All covenants, stipulations, promises, agreements and obligations of Party B contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Party B and not of any member, officer or employee of Party B in his or her individual capacity, and no recourse shall be had for the payment of any amount due hereunder or for any claims based hereon against any member, officer or employee of Party B or any person executing this Agreement for Party B, all such liability, if any, being expressly waived and released by Party A.

(f) *Actions with Respect to Financing Agreement and Resolution.* Party B agrees to comply with all of its obligations under the Financing Agreement that are material to the performance of its obligations under this Agreement or the Resolution (including but not limited to the definition of Administrative Fund Requirement). Party B shall not enter into any amendment to, or waive any provision of, the Financing Agreement or the Resolution (including, but not limited to, the definition of Administrative Fund Requirement) if such amendment or waiver would materially adversely affect Party B’s ability to perform its obligations hereunder without the prior written consent of Party A and the Insurer. Party B agrees to enforce all provisions of the Financing Agreement relating to the performance of its obligations hereunder.

Party B agrees to include all amounts payable hereunder by Party B in its calculation of the Administrative Fund Requirement, as such term is defined and determined pursuant to the Resolution.

(c) *Transfer.* Section 7 of this Agreement is hereby amended to read in its entirety as follows:

“Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:

(a) upon reasonable notice, a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or

substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement);

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e);

(c) Party A upon five (5) Business Days notice to Party B and the Insurer may transfer this Agreement and all of its interests and obligations in or under this Agreement to any Affiliates of Morgan Stanley; provided that the Guarantee of Morgan Stanley remains in full force and effect with only such amendments as may be required to reflect the fact of the transfer by Party A; and

(d) Party B may transfer all of its rights and obligations under any Transaction (the "Transferred Obligation") to another entity (the "Transferee"); provided that:

(1) the credit worthiness of the Transferee or its guarantor is reasonably acceptable to Party A;

(2) the Transferee and Party A shall have executed a master agreement in form and substance satisfactory to Party A with terms appropriate for counterparties with the Transferee's credit rating, as determined by Party A in good faith (including such Credit Support Documents as shall be required by Party A and appropriate for counterparties with the Transferee's (or its guarantor's) credit rating, as determined by Party A in good faith) under which the Transferred Obligations will be governed;

(3) at the time of such transfer, no Early Termination Date shall have been designated under this Agreement and no Event of Default, Potential Event of Default or Termination Event shall have occurred and be continuing under this Agreement with respect to Party B;

(4) such transfer will not result in the violation of any law, regulation, rule, judgment, order or other legal limitation or restriction applicable to Party A;

(5) such transfer will not result in a violation of Party A's counterparty eligibility or credit practices or policies or exposure limitations;

(6) at the time of such transfer, no event which would constitute a Termination Event, Event of Default or Potential Event of Default with respect to the Transferee if the Transferee were a party to this Agreement (or its guarantor were a Credit Support Provider under this Agreement) shall have occurred;

(7) such transfer does not result in any adverse tax consequences to Party A, including the obligation to deduct or withhold an amount with respect to any Tax from payments required to be made to the Transferee, the receipt of payments from the Transferee from which amounts with respect to any Tax may be deducted or withheld or the imposition of any tax, levy, impost, duty charge, or fee of any nature by any government or taxing authority which would not have been imposed but for such transfer;

(8) the Transferee is organized under the laws of the United States or a state

thereof; and

(9) the prior written consent of the Insurer is obtained.

Any purported transfer that is not in compliance with this Section will be void.”

- (d) ***Jurisdiction/Waiver of Immunities.*** Section 11(b) and Section 11(c) of this Agreement are hereby deleted in their entirety and replaced with the following:

“With respect to any suit, action or proceedings relating to this Agreement (“Proceedings”), each party irrevocably:

(i) submits to the exclusive jurisdiction of the Supreme Court of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.”

- (e) ***Waiver of Jury Trial.*** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT.

- (f) ***Definitions.*** Section 12 of this Agreement is hereby amended to add the following definitions in their appropriate alphabetical order:

“***Financing Agreement***’ means the Local Highway and Bridge Service Contract, dated as of August 15, 1991, as amended.”

“***Government Entity***’ means Party B.”

“***Incipient Illegality***’ means (i) any assertion by an officer of a party in his or her official capacity on behalf of such party in any legal proceeding or action in respect of such party, to the effect that performance by such party under this Agreement or similar agreements is unlawful and (ii) the enactment of legislation by the legislature (e.g., in the case of the State of New York, both the New York State Senate and the New York State Assembly and in the case of the United States, both the United States Senate and the U.S. House of Representatives) that is not vetoed and has not become law for 60 days which, if adopted as law, would render unlawful (a) the performance by a party of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by a party with any other material provisions of this Agreement relating to such Transaction or (b) the performance by a party or a Credit Support Provider of such party of any contingent or other obligation which such party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction.”

“***Resolution***’ means the Local Highway and Bridge Special Limited Obligation Service Contract Bond Resolution, adopted on August 23, 1991, as amended and supplemented, including, but not limited to, by a fourteenth supplemental resolution adopted September

17, 2003.”

- (g) ***Accuracy of Specified Information.*** Section 3(d) is hereby amended by adding at the end of the third line thereof after the word “respect” and before the period the words, “or, in the case of audited or unaudited financial statements, a fair presentation of the financial condition of it.” With respect to information concerning the State of New York provided by Party B, such representation is based solely upon the representation of the Division of the Budget of the State of New York or the Office of the State Comptroller of the State of New York, as applicable.
- (h) ***Notice of Incipient Illegality.*** If an Incipient Illegality occurs, Party B will, promptly upon becoming aware of it, notify Party A, specifying the nature of that Incipient Illegality; provided that, the failure of Party B to provide such notice shall not constitute an Event of Default hereunder. Party B will also give such other information about that Incipient Illegality as Party A reasonably requests.
- (i) ***Deferral of Payments and Deliveries in Connection with Illegality and Incipient Illegality.*** Section 2(a)(iii) is hereby amended to read in its entirety as follows:

“(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Illegality, Potential Event of Default or Incipient Illegality with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.”

- (j) ***Insurer Provisions.*** The following provisions shall apply to any Transaction to which the Swap Insurance Policy issued by Financial Security Assurance Inc. (together with any successor, the “Insurer”) to the account of Party B, as principal, and for the benefit of Party A, as beneficiary (the “Swap Insurance Policy”), relates (the “Insured Transactions”).

- (i) Notwithstanding anything to the contrary in Section 6 of this Agreement, if any:
- (A) Event of Default in respect of any Insured Transaction under Section 5(a) of this Agreement occurs with respect to Party B as the Defaulting Party; or
- (B) Termination Event in respect of any Insured Transaction under Section 5(b) of this Agreement occurs with respect to Party B as the Affected Party;

then, in either such case, Party A shall not designate an Early Termination Date in respect of any such Insured Transaction unless:

- (Y) an Additional Termination Event under Part 4(j)(x) has occurred and is continuing; or
- (Z) Insurer has otherwise consented in writing to such designation.

Amounts payable by Party B to Party A upon termination shall not be insured by the Swap Insurance Policy except as provided in Part 4(j)(ii).

- (ii) Notwithstanding anything in this Agreement, if any Event of Default under this Agreement occurs, with Party B as the Defaulting Party, then the Insurer (unless an Additional Termination Event described in Part 4(j)(x) has occurred and is continuing) shall have the right (but not the obligation) upon notice to Party A to designate an Early Termination Date with respect to Party B with the same effect as if such designation were made by Party A. For purposes of the foregoing sentence, an Event of Default with respect to Party B shall be considered to be continuing, notwithstanding any payment by the Insurer under the Swap Insurance Policy. Party A and Party B acknowledge that, except as the Swap Insurance Policy may be otherwise endorsed, unless the Insurer designates an Early Termination Date (as opposed to merely consenting to such designation by one of the parties) termination payments due from Party B because an Early Termination Date has been designated will not be insured.
- (iii) Party A and Party B hereby each acknowledge and agree that Insurer's obligation with respect to Insured Transactions shall be limited to the terms of the Swap Insurance Policy. Notwithstanding Section 2(e) or any other provision of this Agreement, Insurer shall not have any obligation to pay interest on any amount payable by Party B under this Agreement.
- (iv) The definition of "Reference Market Makers" set forth in Section 12 of this Agreement shall be amended in its entirety to read as follows:

*"Reference Market Makers"* means four (4) leading dealers in the relevant swap market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among dealers having an office in the greater New York Metropolitan area. The rating classification assigned to any outstanding long-term senior debt securities issued by such dealers shall be at least (1) Aa3 or higher as determined by Moody's Investors Service, Inc. (or any successor) ("Moody's") (2) AA- or higher as determined by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. (or any successor) ("S&P") or (3) an equivalent investment grade rating determined by a nationally-recognized rating service acceptable to both parties and Insurer, provided however, that, in any case, if Market Quotation cannot be determined by four (4) such dealers, the party making the determination of the Market Quotation may designate, with the consent of the other party and Insurer, one (1) or more leading dealers whose long-term senior debt bears a lower investment grade rating.
- (v) Section 8(b) of this Agreement is hereby amended by (A) adding the phrase "or any Credit Support Document" after the word "Agreement" in the first line thereof and (B) adding the phrase "and their respective Credit Support Providers" following after the word "parties" in the second line thereof.
- (vi) No amendment, modification, supplement or waiver of this Agreement will be effective unless in writing and signed by each of the parties hereto and unless the parties hereto shall have obtained the prior written consent of Insurer.
- (vii) Party A and Party B hereby each acknowledge and agree that Insurer shall be an express third-party beneficiary (and not merely an incidental third-party beneficiary) of this Agreement and the obligations of such party under any Insured



Transaction, and as such, entitled to enforce this Agreement and the terms of any such Insured Transaction against such party on its own behalf and otherwise shall be afforded all remedies available hereunder or otherwise afforded by law against the parties hereto to redress any damage or loss incurred by Insurer including, but not limited to, fees (including professional fees), costs and expenses incurred by Insurer which are related to, or resulting from any breach by such party of its obligations hereunder.

- (viii) So long as the Swap Insurance Policy shall remain in effect, no Insured Transaction may be assigned or transferred by Party B or Party A without the prior written consent of Insurer other than as provided in Section 7(a), (b) or (c).
- (ix) Party A and Party B hereby acknowledge that to the extent of payments made by Insurer to Party A under the Swap Insurance Policy, Insurer shall be fully subrogated to the rights of Party A against Party B under the Insured Transaction to which such payments relate, including, but not limited to, the right to receive payment from Party B and the enforcement of any remedies. Party A hereby agrees to assign to Insurer its right to receive payment from Party B under any Insured Transaction to the extent of any payment thereunder by Insurer to Party A and to execute all such instruments or agreements as Insurer deems reasonably necessary to effect such assignment. Party B hereby acknowledges and consents to the assignment by Party A to Insurer of any rights and remedies that Party A has under any Insured Transaction or any other document executed in connection herewith.
- (x) *Additional Termination Event will apply.* The following shall constitute Additional Termination Events in respect of Party B (and amounts payable by Party B to Party A upon such termination shall not be insured by the Swap Insurance Policy):
  - (a) The Insurer fails to meet its payment obligations under its Swap Insurance Policy and such failure is continuing with respect to the Insurer under the Swap Insurance Policy; provided, however, that, in any such case, either
    - (X) an Event of Default has occurred or is continuing with respect to Party B as the Defaulting Party; or
    - (Y) a Termination Event has occurred or is continuing with respect to Party B as the Affected Party.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

- (b) The Insurer's financial strength rating from S&P is below A- and the Insurer's claims paying ability rating from Moody's is below A3;
 

provided, however, that in any such case, either

  - (X) an Event of Default has occurred and is continuing with respect to Party B as the Defaulting Party; or
  - (Y) a Termination Event has occurred and is continuing with respect to

## Party B as the Affected Party.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

- (c) (A) The Insurer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of the Insurer under the Swap Insurance Policy by operation of law or pursuant to an agreement reasonably satisfactory to Party A and (B) Party B fails, within 20 days of notice from Party A, to provide a replacement guarantee, letter of credit, surety bond, insurance policy or other credit enhancement instrument providing, in the reasonable opinion of Party A, support substantially the same as provided by the Swap Insurance Policy by a provider whose credit ratings are at least equal to those of the Insurer at the time of the replacement. For the purpose of this Termination Event, the Affected Party shall be Party B.
- (d) (A) The entry of a non-appealable order of a court of competent jurisdiction that the Swap Insurance Policy is invalid and (B) Party B fails, within 20 days of notice from Party A, to provide a replacement guarantee, letter of credit, surety bond, insurance policy or other credit enhancement instrument providing, in the reasonable opinion of Party A, support substantially the same as provided by the Swap Insurance Policy by a provider whose credit ratings are at least equal to those of the Insurer at the time of the replacement. For the purpose of this Termination Event, the Affected Party shall be Party B.
- (xi) Notwithstanding Section 6 of this Agreement, any designation of an Early Termination Date in respect of the Insured Transactions by the Insurer or by Party A with the consent of the Insurer pursuant to paragraph (i) above shall apply only to the Insured Transactions and not to any other Transaction under this Agreement, unless Party A shall designate an Early Termination Date in respect of such other Transaction. Nothing contained in this paragraph (xi) shall affect the rights of Party A under this Agreement to designate an Early Termination Date in respect of any Transaction other than the Insured Transactions, which designation shall not apply to the Insured Transactions unless expressly provided in such designation and unless the Insurer shall have designated, or consented to the designation by Party A of, an Early Termination Date in respect of the Insured Transactions in accordance with paragraph (i) above or such designation of an Early Termination Date is otherwise permitted under paragraph (i) or (x).
- (xii) Notwithstanding anything else in this Agreement, in no event shall either Party A or Party B be entitled to net or set off the payment obligations of the other party that are not with respect to Insured Transactions against the payment obligations of such party under Insured Transactions (whether by counterclaim or otherwise), it being the intention of the parties that their payment obligations under Insured Transactions be treated separate and apart from all other obligations. Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Transaction shall be determined without regard to any obligation other than those under the Insured Transactions, it being the intention of the parties that their payment obligations under the Insured Transactions be treated separate and apart from all

other obligations unless otherwise specified in such other obligation and agreed to in writing by the Insurer.

- (xiii) None of the rights and obligations of the Insurer with respect to the Insured Transactions shall affect the rights and obligations of the parties hereto pursuant to any Transaction that is not an Insured Transaction.
- (xiv) Notice of any Change of Account under Section 2(b) shall be delivered or given to the Insurer.
- (xv) *Reserved.*
- (xvi) Pursuant to Section 8(c) of this Agreement, all obligations of the parties will survive the termination of any Transaction or the term of this Agreement or the Resolution so long as amounts owed under the Swap Insurance Policy or under Part 4(j)(xxi) of this Agreement remain outstanding.
- (xvii) For the purpose of Section 10(a) of the Agreement, all notices and communications shall be delivered or given to Party A, Party B and the Insurer as set forth in Part 3(a) of this Schedule.
- (xviii) Notwithstanding Section 2(a)(iii) of this Agreement, Party A shall not suspend any payments due under an Insured Transaction under Section 2(a)(iii) unless the Insurer is in default in respect of any payment obligations due under the Swap Insurance Policy.
- (xix) No notice of an Event of Default or Termination Event shall be effective against Party B unless such notice is given to the Insurer.
- (xx) Party B agrees to reimburse the Insurer, solely from amounts available to Party B under the Financing Agreement, immediately and unconditionally upon demand for all reasonable expenses incurred by the Insurer in connection with the issuance of the Swap Insurance Policy and the enforcement by the Insurer of Party B's obligations under this Agreement and any other documents executed in connection with the execution and delivery of this Agreement, including, but not limited to, fees (including professional fees), costs and expenses incurred by the Insurer which are related to, or resulting from any breach by Party B of its obligations hereunder.
- (xxi) Party B hereby covenants and agrees that it shall reimburse Insurer, solely from amounts available to Party B under the Financing Agreement, for any amounts paid by the Insurer under the Swap Insurance Policy and all costs of collection thereof and enforcement of this Agreement at the Insurer Payment Rate (as hereinafter defined). For purposes of the foregoing, "Insurer Payment Rate" shall mean the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, ("Chase") at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by Chase) plus 3 percent and (ii) the then highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Insurer Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event that Chase ceases to announce its Prime Rate publicly, the Prime Rate shall be the publicly announced

prime or base lending rate of such national bank as the Insurer shall specify.

- (xxii) Each party agrees that each of its representations and agreements in this Agreement is expressly made to and for the benefit of the Insurer.
- (xxiii) Each party agrees to send a copy of all notices or communications sent by such party to the other party, to the Insurer at the following address:

Financial Security Assurance Inc.  
 350 Park Avenue  
 New York, New York 10022-6022  
 Attention: Managing Director -- Surveillance  
 Tel: (212) 826-0100  
 Fax: (212) 339-3556

- (k) **Consent to Recording.** Each party (i) consents to the recording of all telephone conversations between trading and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction; (ii) agrees to give notice to its own personnel and the personnel of its Affiliates that their calls will be recorded; and (iii) agrees that, in any Proceedings, such recordings may be introduced into evidence and it will not object to the introduction of such recordings into evidence on grounds that consent was not properly given.
- (l) **Appendix A.** Notwithstanding any other provisions of this Agreement, Party A and Party B agree that Party A shall be bound by the provisions of Appendix A (Standard Clauses for New York State Thruway Authority and New York State Canal Corporation Procurement Contracts) annexed hereto, which shall be deemed an integral part of this Agreement. Notwithstanding Section 12 of Appendix A, if there exists a conflict between a provision in Appendix A and this Agreement, this Agreement shall govern to the extent permitted by law.

In addition, the following changes are made to Appendix A:

- (i) The last sentence of Section 3 shall not apply.
- (ii) Notwithstanding the first sentence of Section 9 of Appendix A, Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter.
- (iii) The following shall be added to Section 9: The Authority shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the State's Public Officer's Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate Authority official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Authority's right to discovery in any pending or future litigation.
- (iv) The last sentence of Section 21 shall not apply.
- (m) **Liability; No Indemnification.** Each party will be responsible for all damage to life and properties due to negligent or otherwise tortious acts, errors or omissions of such party in connection with its obligations under this Agreement to the extent provided by law. Party B shall not indemnify Party A, and Party A shall not indemnify Party B, for any claims, suits, actions,

damages, and costs resulting from the performance of its obligations under this Agreement.

The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

MORGAN STANLEY CAPITAL SERVICES  
INC.

By: *Nina C. Simmons*

Title: NINA C. SIMMONS  
VICE PRESIDENT

NEW YORK STATE THRUWAY  
AUTHORITY

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

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

damages, and costs resulting from the performance of its obligations under this Agreement.

The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

MORGAN STANLEY CAPITAL SERVICES  
INC.

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

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

NEW YORK STATE THRUWAY  
AUTHORITY

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

Title: Treasurer

**APPENDIX A**  
**STANDARD CLAUSES FOR NEW YORK STATE THRUWAY AUTHORITY AND**  
**NEW YORK STATE CANAL CORPORATION PROCUREMENT CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind ("the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party and its agents, successors and assigns, other than the Thruway Authority ("Authority") or Canal Corporation ("Corporation"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. NON-ASSIGNMENT CLAUSE.** This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority/Corporation and any attempts to assign the contract without the Authority's/Corporation's written consent are null and void.

**2. COMPTROLLER APPROVAL.** Unless otherwise provided by resolution of the Authority or Corporation Board, if this contract involves the expenditure of funds for goods or services in excess of \$25,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this contract, the Authority/Corporation agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, this contract shall not be valid, effective or binding upon the Authority/Corporation until it has been approved by the State Comptroller and filed in his office.

**3. WORKERS' COMPENSATION AND DISABILITY BENEFITS.**

This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the State Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

**4. NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in

accordance with State Labor Law §220-e, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in State Labor Law §230, then, in accordance with §239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of any moneys due hereunder for a second or subsequent violation.

**5. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the State Labor Law.

**6. NON-COLLUSIVE BIDDING REQUIREMENT.**

In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and

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delivered to the Authority/Corporation a non-collusive bidding certification on Contractor's behalf.

**7. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Authority/Corporation within five (5) business days of such conviction, determination or disposition of appeal.

**8. SET-OFF RIGHTS.** The Authority/Corporation shall have rights of set-off. These rights shall include, but not be limited to, the Authority's/Corporation's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing by the Contractor to the Authority/Corporation with regard to this contract, or any other contract with the Authority/Corporation, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority/Corporation for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority/Corporation and third parties in connection therewith.

**9. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority/Corporation, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and

reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contract or the end date of the term stated in the contract.

**10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Authority/Corporation must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in State Tax Law §5. Disclosure of this information by the seller or lessor to the Authority/Corporation is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority/Canal Corporation, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

**11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority/Corporation is committed to



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expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Authority/Corporation; or (ii) a written agreement in excess of \$100,000 whereby the Authority/Corporation is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.

(b) At the request of the Authority/Corporation, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of this contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such work is for the

beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities.

**12. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**13. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**14. LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880, and 21 NYCRR Part 109.

**15. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**16. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the Authority's/Corporation's receipt of the return thereof by the United State Postal Service as refused or undeliverable. Contractor must promptly notify the Authority/Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Authority/Corporation to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless

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specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the Authority/Corporation.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in State Finance Law §165. Any such use must meet with the approval of the Authority/Corporation; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the Authority/Corporation.

**18. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in State Finance Law §165), and shall permit independent monitoring of compliance with such principles.

**19. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl Street  
Albany, NY 12245  
Phone: (518) 292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Minority and Women's Business Development  
Division  
30 South Pearl Street  
Albany, NY 12245  
<http://www.empire.state.ny.us/>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, the Contractor certifies that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the Authority/Corporation;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the NYS Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the Authority/Corporation upon request; and

(d) The Contractor acknowledges that the Authority/Corporation may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the Authority/Corporation in these efforts.

**20. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapters 684 and 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact

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the Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

21. **LIABILITY.** The Contractor shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of the Contractor in connection with its services under this contract. Further, it is expressly understood that the Contractor shall indemnify and save harmless the Authority/Corporation and/or the State of New York, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of the Contractor or the quality of goods provided under this contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. The provisions of this clause shall survive the expiration or termination of this contract.

22. **OBSERVANCE OF LAWS.** The Contractor agrees to observe all Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

23. **INDEPENDENT CONTRACTOR.** The Contractor is and shall be, in all respects, an independent contractor in performing services pursuant to this contract. In accordance with its status as an independent contractor, the Contractor covenants and agrees that neither it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of the Authority/Corporation, and that neither the Contractor nor its agents and employees shall make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Authority/Corporation, including but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

24. **NO WAIVER OF PROVISIONS.** The Authority's/Corporation's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority/Corporation of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority/Corporation, and such waiver shall be limited

to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

25. **ENTIRE AGREEMENT.** This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

EXHIBIT A to Schedule

Form of Confirmation

October \_\_, 2003

Financial Security Assurance Inc. INSURED CONFIRMATION

New York State Thruway Authority  
200 Southern Boulevard  
Albany, NY 12209  
Attention: Chief Financial Officer  
Facsimile No.: 518-471-5050  
Telephone No.: 518-436-2820  
Tax ID:

Ladies and Gentlemen:

The purpose of this letter agreement (the "Confirmation") is to set forth the terms and conditions of the Transaction entered into between COUNTERPARTY X ("Party A") and the NEW YORK STATE THRUWAY AUTHORITY ("Party B") on the Trade Date specified below (the "Transaction"). This Transaction constitutes an "Insured Transaction" as referred to in the Agreement specified below.

The definitions and provisions contained in the 2000 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc.) (the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between those Definitions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms part of, and is subject to the Master Agreement and Schedule thereto dated as of October \_\_, 2003 (the "Agreement") between you and us. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:—

Party A: COUNTERPARTY X

Party B: NEW YORK STATE THRUWAY AUTHORITY

[Notional Amount:]

Trade Date:

Effective Date:

Termination Date:

FIXED AMOUNTS:

EXHIBIT A

Page 1

Fixed Rate Payer:

[Party A/B]

Fixed Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment of Early Payment applies]:

[ \_\_\_\_\_ ], subject to adjustment in accordance with the [Following/Modified Payment or [Following/Preceding] Business convention, with respect to a \_\_\_\_\_ Banking Day and a \_\_\_\_\_ Banking Day [with No Adjustment of Period End Dates].

[Fixed Amount:]

Fixed Rate:

Fixed Rate Day Count Fraction:

FLOATING AMOUNTS:

Floating Rate Payer:

[Party B/A]

[Floating Rate Payer Currency Amount:]

Floating Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment or Early Payment applies]:

[ \_\_\_\_\_ ], subject to adjustment in accordance with the [Following/Modified Payment or [Following/Preceding] Business convention, with respect to a \_\_\_\_\_ Banking Day and a \_\_\_\_\_ Banking Day [with No Adjustment of Period End Dates].

Floating Rate for initial Calculation Period:

Floating Rate Option:

Designated Maturity:

Floating Rate Spread:

[plus/minus] % p.a.

Floating Rate Day Count Fraction:

Floating Rate Reset Dates:

[Rate Cut-off Dates:]

[Floating Rate Method of Averaging:

Unweighted/Weighted Average Rate]

Compounding:

Applicable/Inapplicable

[Compounding Dates:]

[Initial Exchange:

Initial Exchange Date:

Party A Initial Exchange  
Amount:

Party B Initial Exchange  
Amount:

Final Exchange:

Final Exchange Date:

Party A Final Exchange  
Amount:

Party B Final Exchange  
Amount:]

Calculation Agent:

3. Account Details

Payments to Party A

Account for payments in [first currency]: [ ]

Account for payments in [second currency]: [ ]

Payments to Party B

Account for payments in [second currency]: [ ]

Account for payments in [first currency]: [ ]

4. Offices

The Office of Party B for the Transaction is [ .]

5. [Broker/Arranger: ]

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,

COUNTERPARTY X

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

Name: \_\_\_\_\_

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

Accepted and confirmed as of the  
Trade Date

NEW YORK STATE THRUWAY AUTHORITY

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

Name: \_\_\_\_\_

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

ANNEX I  
to Confirmation, dated October \_\_, 2003  
between Morgan Stanley Capital Services Inc. and  
New York State Thruway Authority

<u>Reduction Date</u>	<u>Notional Reduction Amount</u>	<u>Outstanding Motional Amount</u>
3/15/2010		
3/15/2011		
3/15/2012		
3/15/2013		
3/15/2014		
3/15/2015		
3/15/2016		
3/15/2017		
3/15/2018		
3/15/2019		
3/15/2020		
3/15/2021		



EXHIBIT B

[FORM OF GUARANTEE OF MORGAN STANLEY]

Morgan Stanley

MORGAN STANLEY  
1585 BROADWAY  
NEW YORK, NY 10036-8293

Date

[Address]

Ladies and Gentlemen:

In consideration of that certain ISDA Master Agreement dated as of [date] between Morgan Stanley Capital Services Inc., a Delaware corporation (hereinafter "MSCS") and [counterparty] (hereinafter "Counterparty") (such ISDA Master Agreement, together with each Confirmation exchanged between the parties pursuant thereto, hereinafter the "Agreement"), Morgan Stanley, a Delaware corporation (hereinafter "MS"), hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date of the Agreement, the due and punctual payment of all amounts payable by MSCS under the Agreement when the same shall become due and payable, whether on Scheduled Payment Dates, upon demand, upon declaration of termination or otherwise, in accordance with the terms of the Agreement and giving effect to any applicable grace period. Upon failure of MSCS punctually to pay any such amounts, and upon written demand by Counterparty to MS at its address set forth in the signature block of this Guarantee (or to such other address as MS may specify in writing), MS agrees to pay or cause to be paid such amounts; provided that delay by Counterparty in giving such demand shall in no event affect MS's obligations under this Guarantee.

MS hereby agrees that its obligations hereunder shall be unconditional and will not be discharged except by complete payment of the amounts payable under the Agreement, irrespective of any claim as to the Agreement's validity, regularity or enforceability or the lack of authority of MSCS to execute or deliver the Agreement; or any change in or amendment to the Agreement; or any waiver or consent by Counterparty with respect to any provisions thereof; or the absence of any action to enforce the Agreement or the recovery of any judgment against MSCS or of any action to enforce a judgment against MSCS under the Agreement; or any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally. MS hereby waives diligence, presentment, demand on MSCS for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against MSCS and protest or notice, except as provided for in the Agreement with respect to amounts payable by MSCS. If at any time payment under the Agreement is rescinded or must be otherwise restored or returned by Counterparty upon the insolvency, bankruptcy or reorganization of MSCS or MS or otherwise, MS's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by Counterparty.

MS represents to Counterparty as of the date hereof, which representations will be deemed to be repeated by MS on each date on which a Transaction is entered into, that:

EXHIBIT B

Page 1

(1) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;

(2) its execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

(3) all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

(4) this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

By accepting this Guarantee and entering into the Agreement, Counterparty agrees that MS shall be subrogated to all rights of Counterparty against MSCS in respect of any amounts paid by MS pursuant to this Guarantee, provided that MS shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by MSCS under the Agreement.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York. All capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Agreement.

MORGAN STANLEY

By: \_\_\_\_\_  
Name:  
Title:  
Address: 1585 Broadway  
3rd Floor  
New York, NY 10036  
Attention: Derivative Products Group  
Fax No.: (212) 761-0162

EXHIBIT C to Schedule

[Form of Opinion of Counsel to Party B]

October \_\_, 2003

Morgan Stanley Capital Services Inc.  
New York, New York

Morgan Stanley  
New York, New York

Financial Security Assurance Inc.  
350 Park Avenue  
New York, New York 10022-6022

Ladies and Gentlemen:

We have acted as counsel to New York State Thruway Authority, a body corporate and politic constituting a public corporation of the State of New York ("Party B") in connection with the execution and delivery of the Master Agreement, Schedule and Credit Support Annex thereto (the "Master Agreement") dated as of October \_\_, 2003 between Counterparty X ("Party A") and Party B and the Confirmation(s), dated \_\_\_\_\_, 2003 (the "Initial Confirmation(s)"), each between Party A and Party B. The Master Agreement together with the Initial Confirmation(s) shall constitute one agreement and hereinafter is referred to as the "Agreement".

In connection with this opinion, we have examined executed copies of the Master Agreement and such documents and records of Party B, certificates of public officials and officers of Party B and such other documents as we have deemed necessary or appropriate for the purposes of this opinion. In this opinion, we have assumed the genuineness of all the signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed or photostatic copies.

Party B has authorized the Agreement by and pursuant to Resolution No. 5316 adopted by the Board of Party B on September 17, 2003. In addition, pursuant to the Guidelines for Interest Rate Exchange Agreements, adopted by Party B pursuant to said Article 5-D on December 5, 2002 (the "Guidelines"), Public Financial Management, Inc., has issued a letter dated October \_\_, 2003, to Party B finding that the terms and conditions of the Agreement reflect a fair market value. We have relied on such letter, without further investigation, in rendering this opinion.

Based upon the foregoing, we are of the opinion that:

1. Party B is a body corporate and politic constituting a public corporation of the State of New York duly organized and validly existing under the laws of the State of New York.
2. Party B is authorized under the New York State Thruway Authority Act, Title 9 of Article 2 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended, Article 5-D of the State Finance Law, the Guidelines, the Financing Agreement (as

defined in the Agreement) and the Resolution (as defined in the Agreement), to enter into the Agreement and to perform its obligations thereunder.

3. Party B has taken all necessary action required to be taken to ensure that the Agreement complies in all respects with the New York State Thruway Authority Act, Article 5-D of the State Finance Law, the Guidelines and the Resolution.

4. The Agreement has been duly executed and delivered by Party B and constitutes a legally valid and binding obligation of Party B enforceable against Party B in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law); provided, however, that this opinion is subject to the qualification that in connection with any early termination on the grounds of default, a court might limit the non-Defaulting Party's recovery to its actual damages in the circumstances, imposing its own settlement procedures in lieu of the provisions of Section 6(e) of the Agreement.

5. To the best of our knowledge, no consent, authorization, license or approval of, or registration or declaration with, any governmental authority is required in connection with the execution, delivery and performance of the Agreement by Party B.

6. The Agreement is a special limited obligation of Party B, and all amounts payable under the Agreement constitute Subordinate Obligations. The obligation of Party B to make such payments is secured solely by a pledge of and lien on Revenues on deposit in the Administrative Fund, subject and subordinate in all respects to the pledge of and lien on such Revenues created by Section 501 of the Resolution in favor of the payment of the Principal and Redemption Price of, and Sinking Fund Installments for, and interest on, the Bonds, and to the requirements of the Resolution for withdrawals from the Revenue Fund for deposit into the Bond Service Fund and any Bond Service Reserve Fund as provided therein. Capitalized terms used in this paragraph and not defined have the respective meanings ascribed to such terms in the Resolution.

Our opinion is rendered only with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or any other material of any kind not specifically opined on above. No other opinions are intended nor should they be inferred. This opinion is issued as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law, or in interpretations thereof, that may hereinafter occur, or for any other reason whatsoever.

This opinion is solely for your information and assistance and may not be relied upon by any other person.

Very truly yours,

SCHEDULE

to the

ISDA Master Agreement

dated as of October 21, 2003, between

MORGAN STANLEY CAPITAL SERVICES INC.,  
a Delaware corporation

("Party A")

and

NEW YORK STATE THRUWAY AUTHORITY,  
a body corporate and politic of the State of New York  
constituting a public corporation of the State of New York

("Party B")

**Part 1. Termination Provisions.**

In this Agreement:—

(a) **"Specified Entity"** means in relation to Party A for the purpose of:—

Section 5(a)(v) (Default under Specified Transaction),	Affiliates
Section 5(a)(vi) (Cross Default),	Not applicable.
Section 5(a)(vii) (Bankruptcy),	Not applicable.
Section 5(b)(ii) (Credit Event Upon Merger),	Not applicable.

and in relation to Party B for the purpose of:—

Section 5(a)(v)(Default under Specified Transaction)	Not applicable.
Section 5(a)(vi) (Cross Default),	Not applicable.
Section 5(a)(vii)(Bankruptcy),	Not applicable.
Section 5(b)(ii) (Credit Event Upon Merger)	Not applicable.

(b) **"Specified Transaction"** will have the meaning specified in Section 12 of this Agreement; provided that with respect to Party B, Specified Transaction shall include only those Specified Transactions that are payable from the source of payment specified in Section 4(d) of this Agreement.

(c) The **"Cross Default"** provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B.

The following provisions apply:

**“Specified Indebtedness”** with respect to Party A, will have the meaning specified in Section 12 of this Agreement and, with respect to Party B, will mean any bonds issued pursuant to the Resolution and any interest rate exchange agreement executed by Party B that is payable from the source of payment specified in Section 4(d) of this Agreement (the inclusion of interest rate exchange agreements as Specified Indebtedness shall not create any implication that an interest rate exchange agreement constitutes indebtedness).

**“Threshold Amount”** means the lesser of \$100,000,000 and 3% of Stockholders’ Equity of Party A’s Credit Support Provider for Party A and \$35,000,000 for Party B. For purposes hereof, “Stockholders’ Equity” shall be determined by reference to Party A’s Credit Support Provider’s most recent consolidated balance sheet and shall include legal capital, paid-in capital, retained earnings and cumulative translation adjustments.

- (d) The **“Credit Event Upon Merger”** provisions of Section 5(b)(ii) will apply to Party A and will not apply to Party B.
- (e) The **“Automatic Early Termination”** provisions of Section 6(a) will not apply to Party A or to Party B.

(f) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:

- (A) Market Quotation will apply.
- (B) The Second Method will apply.

(g) **Additional Termination Event will apply.** The following shall constitute Additional Termination Events:

(i) If the unenhanced, unsubordinated Specified Indebtedness of Party B or the outstanding long term unsecured, unsubordinated, unenhanced debt of Party A’s Credit Support Provider is not rated by at least one of Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. (or any successor) (“S&P”), Moody’s Investors Service, Inc. (or any successor) (“Moody’s”), or Fitch Ratings (or any successor) (“Fitch”) at least BBB, Baa2 or BBB, as applicable, or the unenhanced, unsubordinated Specified Indebtedness of Party B or the outstanding long term unsecured, unsubordinated, unenhanced debt of Party A’s Credit Support Provider is rated by any one of S&P, Moody’s or Fitch lower than BBB-, Baa3 or BBB-, as applicable, or any rating is withdrawn or suspended, then a “Ratings Event” shall be deemed to have occurred with respect to such party. The party for which the Ratings Event is deemed to have occurred (“X”) shall promptly notify the other party of the occurrence of such Ratings Event; provided that, the failure of such a party to provide such notice shall not constitute an Event of Default hereunder. A Ratings Event shall be deemed an Additional Termination Event for which all Transactions under this Agreement shall be Affected Transactions. For the purposes of Section 6(b) and Section 6(e), X shall be the sole Affected Party.

(ii) It shall be an Additional Termination Event if Party A has notified Party B that a Party B Downgrade Event (as defined below) has occurred and Party B has not, within 20 days of receiving such notice, at its sole election, either (a) provided a guarantee, letter of credit, surety bond, insurance policy or other credit support document with respect to the amounts payable by Party B under Sections 2 and 6 of this Agreement in a form and by a provider reasonably acceptable to Party A and, unless the Insurer has failed to pay under the Swap Insurance Policy,

the Insurer; (b) transferred this Agreement pursuant to Section 7(d) of this Agreement or otherwise transferred this Agreement to a counterparty reasonably acceptable to Party A pursuant to terms reasonably acceptable to Party A and unless the Insurer has failed to pay under the Swap Insurance Policy, the Insurer; or (c) executed a credit support annex with Party A in substantially the form executed by Party A upon the execution and delivery of this Agreement. For purposes of Section 6(e), Party B shall be the sole Affected Party. A "Party B Downgrade Event" shall occur if the unenhanced, unsubordinated Specified Indebtedness of Party B is not rated by at least one of S&P, Moody's or Fitch at least BBB+, Baa1 or BBB+, as applicable, or the unenhanced, unsubordinated Specified Indebtedness of Party B is rated by any one of S&P, Moody's or Fitch lower than BBB, Baa2 or BBB, as applicable. Party B shall promptly notify Party A of the occurrence of a Party B Downgrade Event; provided that, the failure of Party B to provide such notice shall not constitute an Event of Default hereunder. This Additional Termination Event shall be deemed to have been waived by Party A until such time as (i) the Insurer fails to make a payment due under its Swap Insurance Policy or (ii) the Insurer's financial strength rating from S&P is below A- and its claims paying ability rating from Moody's is below A3.

(h) ***Events of Default.***

(i) ***Cross Default.*** Section 5(a)(vi) of this Agreement is hereby amended to read in its entirety as follows:

"(vi) ***Cross Default.*** With respect to Party A shall mean the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period); provided, however, that notwithstanding the foregoing, an Event of Default shall not occur if, as demonstrated to the reasonable satisfaction of Party B, (a) the event or condition or the failure to pay is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to Party A to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of such failure to pay; and

With respect to Party B shall mean the occurrence or existence of a default on Specified Indebtedness of Party B with a principal or notional amount of not less than the Threshold Amount (as specified in the Schedule) either (1) when any amount on such Specified Indebtedness is due and payable or (2) which has resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments before it would otherwise have been due and payable; provided, however, that notwithstanding the foregoing, an Event of Default shall not occur if, as demonstrated to the reasonable satisfaction of Party A, (a) the event or condition or the failure to pay is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to Party B to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of

such failure to pay;”.

(ii) **Bankruptcy.** Section 5(a)(vii) is hereby amended by renumbering existing Clauses (8) and (9) to be Clauses (9) and (10), respectively and is further amended by replacing the reference to “clauses (1) to (7) (inclusive)” in what is now Clause (9), with a reference to “clauses (1) to (8) (inclusive)” and is further amended by adding a new clause (8) to read as follows:

“(8) is subject to a statute, rule or regulation which has been enacted and has the force of law and which establishes an agency, authority, body or oversight board to monitor, review or oversee a financial emergency with respect to such party”.

(iii) **Merger Without Assumption.** Section 5(a)(viii) of this Agreement is hereby amended to read in its entirety as follows:

“(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if such party is a Government Entity, an entity such as a board, commission, authority, agency, public corporation, public benefit corporation or political subdivision succeeds to the principal functions of, or powers and duties granted to, such party or any Credit Support Provider of such party) and, at the time of such consolidation, amalgamation, merger, transfer or succession:

(1) the resulting, surviving, transferee, or successor entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement;

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement; or

(3) in the case of Party B, the benefits of the Financing Agreement fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement.”

(i) **Early Termination.**

Section 6 is hereby amended by adding the following new subsections (f) and (g):

“(f) **Set-off.** Neither party hereto shall have a right of set-off with respect to amounts due hereunder; provided, however, that this provision shall not affect the rights of Party B to exercise remedies including any right of set-off under the credit support annex executed in connection herewith.”

“(g) **Optional Termination by Party B.** Party B may, upon at least five (5) Business Days’ written notice to Party A and the Insurer, terminate any Transactions under this Agreement by designating to Party A the termination date for such Transactions. In the event Party B exercises its right of optional termination hereunder, the provisions of Section 6(e)(ii)(1) shall apply as though Party B is the sole Affected Party. Party B may not optionally terminate any Transactions pursuant to this section unless Party B also provides evidence



reasonably satisfactory to Party A and the Insurer that Party B has or will have on the termination date available funds without regard to any swap insurance policy with which to pay any amount due to Party A as a result of such optional termination. Notwithstanding anything herein to the contrary, the parties will be obligated to pay any accrued and unpaid amounts that would otherwise be due on the date of such optional termination.”

**Part 2. Agreement to Deliver Documents.**

For the purpose of Section 4(a) of this Agreement, each party agrees to deliver the following documents, as applicable:

Party Required to Deliver Document	Form/Certificate Document	Date by Which to be Delivered	Covered by Section 3(d)
Party A and Party B	Certified copies of all documents evidencing necessary corporate and other authorizations and approvals with respect to the execution, delivery and performance by the party and any Credit Support Provider of this Agreement, any Credit Support Document and any Confirmation, including, where applicable, certified copies of the resolutions of its Board of Directors authorizing the execution and delivery of this Agreement, the relevant Credit Support Document or any Confirmation.	Upon execution of this Agreement and promptly at the request of the other party upon execution of a Confirmation.	Yes
Party A and Party B	A certificate of an authorized officer of the party and any Credit Support Provider as to the incumbency and authority of the officers of the party and any Credit Support Provider signing this Agreement, any Credit Support Document or any Confirmation.	Upon execution of this Agreement and promptly at the request of the other party upon execution of a Confirmation.	Yes
Party A	Guaranty of Morgan Stanley in the form of Exhibit B attached hereto.	As soon as practicable, but no later than upon execution of this Agreement.	
Party A and Party B	With respect to Party A, a copy of the most recent annual report (and each annual report thereafter) of Party A’s Credit Support Provider, and with respect to Party B, a copy of the most recent audited annual financial statements of Party B and Annual Information Statement of the State of New York and any updates thereto and the audited	Promptly after request by the other party.	Yes

	financial statements of the State of New York, in each case when available to Party B, containing in all cases audited consolidated financial statements for each fiscal year during which this Agreement is in effect certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the United States or in the country in which such party is organized.		
Party A	A copy of the unaudited consolidated financial statements of Party A, for each semiannual period in each fiscal year during which this Agreement is in effect prepared in accordance with generally accepted accounting principles in the United States or in the country in which such party is organized.	Promptly after request by the other party.	Yes
Party A	A copy of each regular financial or business reporting document that is (i) distributed or made generally available to respective shareholders or investors and made publicly available or (ii) filed in accordance with the disclosure requirements of any applicable statute, rule, regulation or judicial decree and made available for public inspection.	Promptly after request by the other party.	Yes
Party A and Party B	Such other documents as the other party may reasonably request.	Promptly after request by the other party.	Yes
Party A and Party B	With respect to Party A, an opinion of counsel to Party A (and any Credit Support Provider) in form and substance satisfactory to Party B and the Insurer; and with respect to Party B, an opinion of counsel substantially in the form set forth in Exhibit C attached hereto and covering such other matters as reasonably requested by Party A and the Insurer.	Upon execution of this Agreement and each Confirmation.	No

**Part 3. Miscellaneous.**

- (a) **Notices.** For the purpose of Section 10(a) to this Agreement:—

Address for notices or communications to Party A:—

Address: Morgan Stanley Capital Services Inc.  
Transaction Management Group  
1585 Broadway, 3rd Floor  
New York, New York 10036-8293

Attention: Fixed Income Derivatives – Transactions Management

Facsimile No: 212-761-0162

Telephone No.: 212-761-2533

Address for notices or communications to Party B:—

Address: New York State Thruway Authority  
200 Southern Boulevard  
Albany, NY 12209

Attention: Chief Financial Officer

Facsimile No.: 518-471-5050

Telephone No.: 518-436-2820

Each party agrees to send a copy of all notices or communications sent by such party to the other party to the Insurer at the address set forth in Part 4(j)(xxiii).

- (b) **Notices.** Section 10(a) is amended by adding in the third line thereof after the phrase “messaging system” and before the “)” the words “; provided, however, any such notice or other communication may be given by facsimile transmission if telex is unavailable, no telex number is supplied to the party providing notice, or if answer back confirmation is not received from the party to whom the telex is sent.”
- (c) **Calculation Agent.** The Calculation Agent is Party A unless Party A is the Defaulting Party, in which case the Calculation Agent means a leading dealer in the relevant market designated by Party B. Calculations by the Calculation Agent shall be binding and conclusive absent manifest error.
- (d) **Credit Support Document.** Details of any Credit Support Document: in relation to Party A means the Guarantee of Morgan Stanley attached as Exhibit B and the Credit Support Annex attached as Exhibit D and with respect to Party B means the Credit Support Annex attached as Exhibit D.
- (e) **Credit Support Provider.** Credit Support Provider means in relation to Party A, Morgan Stanley and in relation to Party B, not applicable.

- (f) **Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE.
- (g) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply to all Transactions entered into between Party A and Party B.
- (h) **"Affiliate"** will have the meaning specified in Section 12 of this Agreement, but with respect to Party B, will exclude the State of New York and, with respect to Party A, will exclude Morgan Stanley Derivative Products, Inc.
- (i) **"Government Entity"** means Party B.
- (j) **Account details.** Payments shall be made to the following accounts:

Payments to Party A:

For Cash:

Name of Bank: CITIBANK, New York

Account No.:4072-4601

For the Account of: Morgan Stanley Capital Services Inc.

Fed ABA No.:021 000 018

For Treasury Securities and Agency Notes:

Name of Bank: Bank of New York, New York

For the Account of: Morgan Stanley Capital Services Inc.

Fed ABA No.:021 000 089

Payments to Party B:

Name of Bank: JPMorgan Chase Bank

Account No.:507943635

For the Account of: Morgan Stanley CHIPS Swap Payment

Fed ABA No.:021 000 021

**Part 4. Other Provisions.****(a) Representations.**

(i) The introductory clause of Section 3 of this Agreement is hereby amended to read in its entirety as follows:

“Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(a), 3(e) and 3(f), at all times until the termination of this Agreement) that:—”.

(ii) Section 3(a) of this Agreement is hereby amended by adding the following subparagraph (vi):

“(vi) **Eligible Contract Participant.** It is an “eligible contract participant” within the meaning of Section 1(a)(12) of the Commodity Exchange Act.”.

(iii) Section 3 of this Agreement is hereby amended by adding the following subsections (e), (f), (g) and (h) thereto:

“(e) **Non-Speculation.** This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for purposes of managing its borrowings or investments and not for purposes of speculation.”

“(f) **No Immunity.** It is not immune from suit or judgment for amounts due and payable pursuant to this Agreement, it being understood that, with respect to Party B, payment of any judgment shall be solely from sources available under Section 4(d) “Source of Payments” hereof.”.

“(g) **Acting as Principal.** Each party hereto represents and warrants to the other party hereto that it is acting as a principal hereunder and not as an agent for any other party.”

“(h) **No Reliance.** In connection with the negotiation of, the entering into, and the confirming of the execution of, this Agreement, any Credit Support Document to which it is a party, and each Transaction: (i) the other party is not acting as a fiduciary or financial or investment advisor for it; (ii) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary; (iii) that Transaction has been the result of arm’s length negotiations between the parties; (iv) it is entering into this Agreement, such Credit Support Document and such Transaction with a full understanding of all of the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks; (v) it is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (vi) it is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction (it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction); and (vii) it has not received from the other party any assurance or guarantee as to the expected results of that Transaction.”

(b) *Agreements.*

(i) Section 4 of this Agreement is hereby amended by adding the following subsections (d), (e) and (f) thereto:

“(d) **Source of Payments.** This Agreement is a special limited obligation of Party B, and all amounts payable under this Agreement constitute Subordinate Obligations. The obligation of Party B to make such payments is secured solely by a pledge of and lien on Revenues on deposit in the Administrative Fund, subject and subordinate in all respects to the pledge of and lien on such Revenues created by Section 501 of the Resolution in favor of the payment of the Principal and Redemption Price of, and Sinking Fund Installments for, and interest on, the Bonds, and to the requirements of the Resolution for withdrawals from the Revenue Fund for deposit into the Bond Service Fund and any Bond Service Reserve Fund as provided therein.

This Agreement constitutes a Qualified Interest Rate Exchange Agreement pursuant to Section 207 of the Resolution.

Capitalized terms used in this Section 4(d) and not defined have the respective meanings ascribed to such terms in the Resolution.

(e) **No Recourse.** All covenants, stipulations, promises, agreements and obligations of Party B contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Party B and not of any member, officer or employee of Party B in his or her individual capacity, and no recourse shall be had for the payment of any amount due hereunder or for any claims based hereon against any member, officer or employee of Party B or any person executing this Agreement for Party B, all such liability, if any, being expressly waived and released by Party A.

(f) **Actions with Respect to Financing Agreement and Resolution.** Party B agrees to comply with all of its obligations under the Financing Agreement that are material to the performance of its obligations under this Agreement or the Resolution (including but not limited to the definition of Administrative Fund Requirement). Party B shall not enter into any amendment to, or waive any provision of, the Financing Agreement or the Resolution (including, but not limited to, the definition of Administrative Fund Requirement) if such amendment or waiver would materially adversely affect Party B's ability to perform its obligations hereunder without the prior written consent of Party A and the Insurer. Party B agrees to enforce all provisions of the Financing Agreement relating to the performance of its obligations hereunder.

Party B agrees to include all amounts payable hereunder by Party B in its calculation of the Administrative Fund Requirement, as such term is defined and determined pursuant to the Resolution.

(c) *Transfer.* Section 7 of this Agreement is hereby amended to read in its entirety as follows:

“Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:

(a) upon reasonable notice, a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or

substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement);

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e);

(c) Party A upon five (5) Business Days notice to Party B and the Insurer may transfer this Agreement and all of its interests and obligations in or under this Agreement to any Affiliates of Morgan Stanley; provided that the Guarantee of Morgan Stanley remains in full force and effect with only such amendments as may be required to reflect the fact of the transfer by Party A; and

(d) Party B may transfer all of its rights and obligations under any Transaction (the "Transferred Obligation") to another entity (the "Transferee"); provided that:

(1) the credit worthiness of the Transferee or its guarantor is reasonably acceptable to Party A;

(2) the Transferee and Party A shall have executed a master agreement in form and substance satisfactory to Party A with terms appropriate for counterparties with the Transferee's credit rating, as determined by Party A in good faith (including such Credit Support Documents as shall be required by Party A and appropriate for counterparties with the Transferee's (or its guarantor's) credit rating, as determined by Party A in good faith) under which the Transferred Obligations will be governed;

(3) at the time of such transfer, no Early Termination Date shall have been designated under this Agreement and no Event of Default, Potential Event of Default or Termination Event shall have occurred and be continuing under this Agreement with respect to Party B;

(4) such transfer will not result in the violation of any law, regulation, rule, judgment, order or other legal limitation or restriction applicable to Party A;

(5) such transfer will not result in a violation of Party A's counterparty eligibility or credit practices or policies or exposure limitations;

(6) at the time of such transfer, no event which would constitute a Termination Event, Event of Default or Potential Event of Default with respect to the Transferee if the Transferee were a party to this Agreement (or its guarantor were a Credit Support Provider under this Agreement) shall have occurred;

(7) such transfer does not result in any adverse tax consequences to Party A, including the obligation to deduct or withhold an amount with respect to any Tax from payments required to be made to the Transferee, the receipt of payments from the Transferee from which amounts with respect to any Tax may be deducted or withheld or the imposition of any tax, levy, impost, duty charge, or fee of any nature by any government or taxing authority which would not have been imposed but for such transfer;

(8) the Transferee is organized under the laws of the United States or a state

thereof; and

(9) the prior written consent of the Insurer is obtained.

Any purported transfer that is not in compliance with this Section will be void.”

- (d) ***Jurisdiction/Waiver of Immunities.*** Section 11(b) and Section 11(c) of this Agreement are hereby deleted in their entirety and replaced with the following:

“With respect to any suit, action or proceedings relating to this Agreement (“Proceedings”), each party irrevocably:

(i) submits to the exclusive jurisdiction of the Supreme Court of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.”

- (e) ***Waiver of Jury Trial.*** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT.

- (f) ***Definitions.*** Section 12 of this Agreement is hereby amended to add the following definitions in their appropriate alphabetical order:

“***Financing Agreement***’ means the Local Highway and Bridge Service Contract, dated as of August 15, 1991, as amended.”

“***Government Entity***’ means Party B.”

“***Incipient Illegality***’ means (i) any assertion by an officer of a party in his or her official capacity on behalf of such party in any legal proceeding or action in respect of such party, to the effect that performance by such party under this Agreement or similar agreements is unlawful and (ii) the enactment of legislation by the legislature (e.g., in the case of the State of New York, both the New York State Senate and the New York State Assembly and in the case of the United States, both the United States Senate and the U.S. House of Representatives) that is not vetoed and has not become law for 60 days which, if adopted as law, would render unlawful (a) the performance by a party of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by a party with any other material provisions of this Agreement relating to such Transaction or (b) the performance by a party or a Credit Support Provider of such party of any contingent or other obligation which such party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction.”

“***Resolution***’ means the Local Highway and Bridge Special Limited Obligation Service Contract Bond Resolution, adopted on August 23, 1991, as amended and supplemented, including, but not limited to, by a fourteenth supplemental resolution adopted September



17, 2003.”

- (g) **Accuracy of Specified Information.** Section 3(d) is hereby amended by adding at the end of the third line thereof after the word “respect” and before the period the words, “or, in the case of audited or unaudited financial statements, a fair presentation of the financial condition of it.” With respect to information concerning the State of New York provided by Party B, such representation is based solely upon the representation of the Division of the Budget of the State of New York or the Office of the State Comptroller of the State of New York, as applicable.
- (h) **Notice of Incipient Illegality.** If an Incipient Illegality occurs, Party B will, promptly upon becoming aware of it, notify Party A, specifying the nature of that Incipient Illegality; provided that, the failure of Party B to provide such notice shall not constitute an Event of Default hereunder. Party B will also give such other information about that Incipient Illegality as Party A reasonably requests.
- (i) **Deferral of Payments and Deliveries in Connection with Illegality and Incipient Illegality.** Section 2(a)(iii) is hereby amended to read in its entirety as follows:

“(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Illegality, Potential Event of Default or Incipient Illegality with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.”

- (j) **Insurer Provisions.** The following provisions shall apply to any Transaction to which the Swap Insurance Policy issued by MBIA Insurance Corporation (together with any successor, the “Insurer”) to the account of Party B, as principal, and for the benefit of Party A, as beneficiary (the “Swap Insurance Policy”), relates (the “Insured Transactions”).

- (i) Notwithstanding anything to the contrary in Section 6 of this Agreement, if any:
  - (A) Event of Default in respect of any Insured Transaction under Section 5(a) of this Agreement occurs with respect to Party B as the Defaulting Party; or
  - (B) Termination Event in respect of any Insured Transaction under Section 5(b) of this Agreement occurs with respect to Party B as the Affected Party;

then, in either such case, Party A shall not designate an Early Termination Date in respect of any such Insured Transaction unless:

- (Y) an Additional Termination Event under Part 4(j)(x) has occurred and is continuing; or
- (Z) Insurer has otherwise consented in writing to such designation.

Amounts payable by Party B to Party A upon termination shall not be insured by the Swap Insurance Policy except as provided in Part 4(j)(ii).

- (ii) Notwithstanding anything in this Agreement, if any Event of Default under this Agreement occurs, with Party B as the Defaulting Party, then the Insurer (unless an Additional Termination Event described in Part 4(j)(x) has occurred and is continuing) shall have the right (but not the obligation) upon notice to Party A to designate an Early Termination Date with respect to Party B with the same effect as if such designation were made by Party A. For purposes of the foregoing sentence, an Event of Default with respect to Party B shall be considered to be continuing, notwithstanding any payment by the Insurer under the Swap Insurance Policy. Party A and Party B acknowledge that, except as the Swap Insurance Policy may be otherwise endorsed, unless the Insurer designates an Early Termination Date (as opposed to merely consenting to such designation by one of the parties) termination payments due from Party B because an Early Termination Date has been designated will not be insured.
- (iii) Party A and Party B hereby each acknowledge and agree that Insurer's obligation with respect to Insured Transactions shall be limited to the terms of the Swap Insurance Policy. Notwithstanding Section 2(e) or any other provision of this Agreement, Insurer shall not have any obligation to pay interest on any amount payable by Party B under this Agreement.
- (iv) The definition of "Reference Market Makers" set forth in Section 12 of this Agreement shall be amended in its entirety to read as follows:

*"Reference Market Makers"* means four (4) leading dealers in the relevant swap market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among dealers having an office in the greater New York Metropolitan area. The rating classification assigned to any outstanding long-term senior debt securities issued by such dealers shall be at least (1) Aa3 or higher as determined by Moody's Investors Service, Inc. (or any successor) ("Moody's") (2) AA- or higher as determined by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. (or any successor) ("S&P") or (3) an equivalent investment grade rating determined by a nationally-recognized rating service acceptable to both parties and Insurer, provided however, that, in any case, if Market Quotation cannot be determined by four (4) such dealers, the party making the determination of the Market Quotation may designate, with the consent of the other party and Insurer, one (1) or more leading dealers whose long-term senior debt bears a lower investment grade rating.
- (v) Section 8(b) of this Agreement is hereby amended by (A) adding the phrase "or any Credit Support Document" after the word "Agreement" in the first line thereof and (B) adding the phrase "and their respective Credit Support Providers" following after the word "parties" in the second line thereof.
- (vi) No amendment, modification, supplement or waiver of this Agreement will be effective unless in writing and signed by each of the parties hereto and unless the parties hereto shall have obtained the prior written consent of Insurer.
- (vii) Party A and Party B hereby each acknowledge and agree that Insurer shall be an express third-party beneficiary (and not merely an incidental third-party beneficiary) of this Agreement and the obligations of such party under any Insured

Transaction, and as such, entitled to enforce this Agreement and the terms of any such Insured Transaction against such party on its own behalf and otherwise shall be afforded all remedies available hereunder or otherwise afforded by law against the parties hereto to redress any damage or loss incurred by Insurer including, but not limited to, fees (including professional fees), costs and expenses incurred by Insurer which are related to, or resulting from any breach by such party of its obligations hereunder.

- (viii) So long as the Swap Insurance Policy shall remain in effect, no Insured Transaction may be assigned or transferred by Party B or Party A without the prior written consent of Insurer other than as provided in Section 7(a), (b) or (c).
- (ix) Party A and Party B hereby acknowledge that to the extent of payments made by Insurer to Party A under the Swap Insurance Policy, Insurer shall be fully subrogated to the rights of Party A against Party B under the Insured Transaction to which such payments relate, including, but not limited to, the right to receive payment from Party B and the enforcement of any remedies. Party A hereby agrees to assign to Insurer its right to receive payment from Party B under any Insured Transaction to the extent of any payment thereunder by Insurer to Party A and to execute all such instruments or agreements as Insurer deems reasonably necessary to effect such assignment. Party B hereby acknowledges and consents to the assignment by Party A to Insurer of any rights and remedies that Party A has under any Insured Transaction or any other document executed in connection herewith.
- (x) *Additional Termination Event will apply.* The following shall constitute Additional Termination Events in respect of Party B (and amounts payable by Party B to Party A upon such termination shall not be insured by the Swap Insurance Policy):
  - (a) The Insurer fails to meet its payment obligations under its Swap Insurance Policy and such failure is continuing with respect to the Insurer under the Swap Insurance Policy; provided, however, that, in any such case, either
    - (X) an Event of Default has occurred or is continuing with respect to Party B as the Defaulting Party; or
    - (Y) a Termination Event has occurred or is continuing with respect to Party B as the Affected Party.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.
  - (b) The Insurer's financial strength rating from S&P is below A- and the Insurer's claims paying ability rating from Moody's is below A3;
 

provided, however, that in any such case, either

    - (X) an Event of Default has occurred and is continuing with respect to Party B as the Defaulting Party; or
    - (Y) a Termination Event has occurred and is continuing with respect to

Party B as the Affected Party.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

- (c) (A) The Insurer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation-amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of the Insurer under the Swap Insurance Policy by operation of law or pursuant to an agreement reasonably satisfactory to Party A and (B) Party B fails, within 20 days of notice from Party A, to provide a replacement guarantee, letter of credit, surety bond, insurance policy or other credit enhancement instrument providing, in the reasonable opinion of Party A, support substantially the same as provided by the Swap Insurance Policy by a provider whose credit ratings are at least equal to those of the Insurer at the time of the replacement. For the purpose of this Termination Event, the Affected Party shall be Party B.
- (d) (A) The entry of a non-appealable order of a court of competent jurisdiction that the Swap Insurance Policy is invalid and (B) Party B fails, within 20 days of notice from Party A, to provide a replacement guarantee, letter of credit, surety bond, insurance policy or other credit enhancement instrument providing, in the reasonable opinion of Party A, support substantially the same as provided by the Swap Insurance Policy by a provider whose credit ratings are at least equal to those of the Insurer at the time of the replacement. For the purpose of this Termination Event, the Affected Party shall be Party B.
- (xi) Notwithstanding Section 6 of this Agreement, any designation of an Early Termination Date in respect of the Insured Transactions by the Insurer or by Party A with the consent of the Insurer pursuant to paragraph (i) above shall apply only to the Insured Transactions and not to any other Transaction under this Agreement, unless Party A shall designate an Early Termination Date in respect of such other Transaction. Nothing contained in this paragraph (xi) shall affect the rights of Party A under this Agreement to designate an Early Termination Date in respect of any Transaction other than the Insured Transactions, which designation shall not apply to the Insured Transactions unless expressly provided in such designation and unless the Insurer shall have designated, or consented to the designation by Party A of, an Early Termination Date in respect of the Insured Transactions in accordance with paragraph (i) above or such designation of an Early Termination Date is otherwise permitted under paragraph (i) or (x).
- (xii) Notwithstanding anything else in this Agreement, in no event shall either Party A or Party B be entitled to net or set off the payment obligations of the other party that are not with respect to Insured Transactions against the payment obligations of such party under Insured Transactions (whether by counterclaim or otherwise), it being the intention of the parties that their payment obligations under Insured Transactions be treated separate and apart from all other obligations. Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Transaction shall be determined without regard to any obligation other than those under the Insured Transactions, it being the intention of the parties that their payment obligations under the Insured Transactions be treated separate and apart from all

other obligations unless otherwise specified in such other obligation and agreed to in writing by the Insurer.

- (xiii) None of the rights and obligations of the Insurer with respect to the Insured Transactions shall affect the rights and obligations of the parties hereto pursuant to any Transaction that is not an Insured Transaction.
- (xiv) Notice of any Change of Account under Section 2(b) shall be delivered or given to the Insurer.
- (xv) *Reserved.*
- (xvi) Pursuant to Section 8(c) of this Agreement, all obligations of the parties will survive the termination of any Transaction or the term of this Agreement or the Resolution so long as amounts owed under the Swap Insurance Policy or under Part 4(j)(xxi) of this Agreement remain outstanding.
- (xvii) For the purpose of Section 10(a) of the Agreement, all notices and communications shall be delivered or given to Party A, Party B and the Insurer as set forth in Part 3(a) of this Schedule.
- (xviii) Notwithstanding Section 2(a)(iii) of this Agreement, Party A shall not suspend any payments due under an Insured Transaction under Section 2(a)(iii) unless the Insurer is in default in respect of any payment obligations due under the Swap Insurance Policy.
- (xix) No notice of an Event of Default or Termination Event shall be effective against Party B unless such notice is given to the Insurer.
- (xx) Party B agrees to reimburse the Insurer, solely from amounts available to Party B under the Financing Agreement, immediately and unconditionally upon demand for all reasonable expenses incurred by the Insurer in connection with the issuance of the Swap Insurance Policy and the enforcement by the Insurer of Party B's obligations under this Agreement and any other documents executed in connection with the execution and delivery of this Agreement, including, but not limited to, fees (including professional fees), costs and expenses incurred by the Insurer which are related to, or resulting from any breach by Party B of its obligations hereunder.
- (xxi) Party B hereby covenants and agrees that it shall reimburse Insurer, solely from amounts available to Party B under the Financing Agreement, for any amounts paid by the Insurer under the Swap Insurance Policy and all costs of collection thereof and enforcement of this Agreement at the Insurer Payment Rate (as hereinafter defined). For purposes of the foregoing, "Insurer Payment Rate" shall mean the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, ("Chase") at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by Chase) plus 3 percent and (ii) the then highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Insurer Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event that Chase ceases to announce its Prime Rate publicly, the Prime Rate shall be the publicly announced

prime or base lending rate of such national bank as the Insurer shall specify.

- (xxii) Each party agrees that each of its representations and agreements in this Agreement is expressly made to and for the benefit of the Insurer.
- (xxiii) Each party agrees to send a copy of all notices or communications sent by such party to the other party, to the Insurer at the following address:

MBIA Insurance Corporation  
113 King Street  
Armonk, New York 10504  
Attention: IPM-PFG-Eastern  
Tel: (914) 273-4545  
Fax: (914) 765-3799

- (k) **Consent to Recording.** Each party (i) consents to the recording of all telephone conversations between trading and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction; (ii) agrees to give notice to its own personnel and the personnel of its Affiliates that their calls will be recorded; and (iii) agrees that, in any Proceedings, such recordings may be introduced into evidence and it will not object to the introduction of such recordings into evidence on grounds that consent was not properly given.
- (l) **Appendix A.** Notwithstanding any other provisions of this Agreement, Party A and Party B agree that Party A shall be bound by the provisions of Appendix A (Standard Clauses for New York State Thruway Authority and New York State Canal Corporation Procurement Contracts) annexed hereto, which shall be deemed an integral part of this Agreement. Notwithstanding Section 12 of Appendix A, if there exists a conflict between a provision in Appendix A and this Agreement, this Agreement shall govern to the extent permitted by law.

In addition, the following changes are made to Appendix A:

- (i) The last sentence of Section 3 shall not apply.
  - (ii) Notwithstanding the first sentence of Section 9 of Appendix A, Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter.
  - (iii) The following shall be added to Section 9: The Authority shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the State's Public Officer's Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate Authority official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Authority's right to discovery in any pending or future litigation.
  - (iv) The last sentence of Section 21 shall not apply.
- (m) **Liability; No Indemnification.** Each party will be responsible for all damage to life and properties due to negligent or otherwise tortious acts, errors or omissions of such party in connection with its obligations under this Agreement to the extent provided by law. Party B shall not indemnify Party A, and Party A shall not indemnify Party B, for any claims, suits, actions,

damages, and costs resulting from the performance of its obligations under this Agreement.

The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

MORGAN STANLEY CAPITAL SERVICES  
INC.

By: Nina C. Simmons

Title: NINA C. SIMMONS  
VICE PRESIDENT

NEW YORK STATE THRUWAY  
AUTHORITY

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

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

damages, and costs resulting from the performance of its obligations under this Agreement.

The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

MORGAN STANLEY CAPITAL SERVICES  
INC.

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

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

NEW YORK STATE THRUWAY  
AUTHORITY

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

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



**APPENDIX A**  
**STANDARD CLAUSES FOR NEW YORK STATE THRUWAY AUTHORITY AND**  
**NEW YORK STATE CANAL CORPORATION PROCUREMENT CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind ("the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party and its agents, successors and assigns, other than the Thruway Authority ("Authority") or Canal Corporation ("Corporation"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. NON-ASSIGNMENT CLAUSE.** This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority/Corporation and any attempts to assign the contract without the Authority's/Corporation's written consent are null and void.

**2. COMPTROLLER APPROVAL.** Unless otherwise provided by resolution of the Authority or Corporation Board, if this contract involves the expenditure of funds for goods or services in excess of \$25,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this contract, the Authority/Corporation agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, this contract shall not be valid, effective or binding upon the Authority/Corporation until it has been approved by the State Comptroller and filed in his office.

**3. WORKERS' COMPENSATION AND DISABILITY BENEFITS.**

This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the State Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

**4. NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in

accordance with State Labor Law §220-e, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in State Labor Law §230, then, in accordance with §239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of any moneys due hereunder for a second or subsequent violation.

**5. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the State Labor Law.

**6. NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and

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**STANDARD CLAUSES FOR NEW YORK STATE THRUWAY AUTHORITY AND**  
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delivered to the Authority/Corporation a non-collusive bidding certification on Contractor's behalf.

**7. INTERNATIONAL BOYCOTT PROHIBITION.**

In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Authority/Corporation within five (5) business days of such conviction, determination or disposition of appeal.

**8. SET-OFF RIGHTS.** The Authority/Corporation shall have rights of set-off. These rights shall include, but not be limited to, the Authority's/Corporation's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing by the Contractor to the Authority/Corporation with regard to this contract, or any other contract with the Authority/Corporation, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority/Corporation for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority/Corporation and third parties in connection therewith.

**9. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority/Corporation, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and

reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contract or the end date of the term stated in the contract.

**10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Authority/Corporation must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in State Tax Law §5. Disclosure of this information by the seller or lessor to the Authority/Corporation is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority/Canal Corporation, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

**11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority/Corporation is committed to

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expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Authority/Corporation; or (ii) a written agreement in excess of \$100,000 whereby the Authority/Corporation is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.

(b) At the request of the Authority/Corporation, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance this contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such work is for the

beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities.

**12. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**13. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**14. LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880, and 21 NYCRR Part 109.

**15. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**16. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the Authority's/Corporation's receipt of the return thereof by the United State Postal Service as refused or undeliverable. Contractor must promptly notify the Authority/Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Authority/Corporation to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless

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specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the Authority/Corporation.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in State Finance Law §165. Any such use must meet with the approval of the Authority/Corporation; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the Authority/Corporation.

**18. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in State Finance Law §165), and shall permit independent monitoring of compliance with such principles.

**19. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl Street  
Albany, NY 12245  
Phone: (518) 292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Minority and Women's Business Development  
Division  
30 South Pearl Street  
Albany, NY 12245  
<http://www.empire.state.ny.us/>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, the Contractor certifies that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the Authority/Corporation;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the NYS Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the Authority/Corporation upon request; and

(d) The Contractor acknowledges that the Authority/Corporation may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the Authority/Corporation in these efforts.

**20. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapters 684 and 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact

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the Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

**21. LIABILITY.** The Contractor shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of the Contractor in connection with its services under this contract. Further, it is expressly understood that the Contractor shall indemnify and save harmless the Authority/Corporation and/or the State of New York, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of the Contractor or the quality of goods provided under this contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. The provisions of this clause shall survive the expiration or termination of this contract.

**22. OBSERVANCE OF LAWS.** The Contractor agrees to observe all Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

**23. INDEPENDENT CONTRACTOR.** The Contractor is and shall be, in all respects, an independent contractor in performing services pursuant to this contract. In accordance with its status as an independent contractor, the Contractor covenants and agrees that neither it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of the Authority/Corporation, and that neither the Contractor nor its agents and employees shall make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Authority/Corporation, including but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

**24. NO WAIVER OF PROVISIONS.** The Authority's/Corporation's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority/Corporation of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority/Corporation, and such waiver shall be limited

to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

**25. ENTIRE AGREEMENT.** This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

EXHIBIT A to Schedule

Form of Confirmation

October \_\_, 2003

MBIA Insurance Corporation INSURED CONFIRMATION

New York State Thruway Authority  
200 Southern Boulevard  
Albany, NY 12209  
Attention: Chief Financial Officer  
Facsimile No.: 518-471-5050  
Telephone No.: 518-436-2820  
Tax ID:

Ladies and Gentlemen:

The purpose of this letter agreement (the "Confirmation") is to set forth the terms and conditions of the Transaction entered into between COUNTERPARTY X ("Party A") and the NEW YORK STATE THRUWAY AUTHORITY ("Party B") on the Trade Date specified below (the "Transaction"). This Transaction constitutes an "Insured Transaction" as referred to in the Agreement specified below.

The definitions and provisions contained in the 2000 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc.) (the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between those Definitions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms part of, and is subject to the Master Agreement and Schedule thereto dated as of October \_\_, 2003 (the "Agreement") between you and us. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:—

Party A: COUNTERPARTY X

Party B: NEW YORK STATE THRUWAY AUTHORITY

[Notional Amount:]

Trade Date:

Effective Date:

Termination Date:

FIXED AMOUNTS:

Fixed Rate Payer: [Party A/B]

Fixed Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment of Early Payment applies]: [ \_\_\_\_\_ ], subject to adjustment in accordance with the [Following/Modified Payment or [Following/Preceding] Business convention, with respect to a \_\_\_\_\_ Banking Day and a \_\_\_\_\_ Banking Day [with No Adjustment of Period End Dates].

[Fixed Amount:]

Fixed Rate:

Fixed Rate Day Count Fraction:

FLOATING AMOUNTS:

Floating Rate Payer: [Party B/A]

[Floating Rate Payer Currency Amount:]

Floating Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment or Early Payment applies]: [ \_\_\_\_\_ ], subject to adjustment in accordance with the [Following/Modified Payment or [Following/Preceding] Business convention, with respect to a \_\_\_\_\_ Banking Day and a \_\_\_\_\_ Banking Day [with No Adjustment of Period End Dates].

Floating Rate for initial Calculation Period:

Floating Rate Option:

Designated Maturity:

Floating Rate Spread: [plus/minus] % p.a.

Floating Rate Day Count Fraction:

Floating Rate Reset Dates:

[Rate Cut-off Dates:]

[Floating Rate Method of Averaging: Unweighted/Weighted Average Rate]

Compounding: Applicable/Inapplicable

[Compounding Dates:]

[Initial Exchange:

Initial Exchange Date:

Party A Initial Exchange  
Amount:

Party B Initial Exchange  
Amount:

Final Exchange:

Final Exchange Date:

Party A Final Exchange  
Amount:

Party B Final Exchange  
Amount:]

Calculation Agent:

3. Account Details

Payments to Party A

Account for payments in [first currency]: [ ]

Account for payments in [second currency]: [ ]

Payments to Party B

Account for payments in [second currency]: [ ]

Account for payments in [first currency]: [ ]

4. Offices

The Office of Party B for the Transaction is [ .]

5. [Broker/Arranger: ]

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,



COUNTERPARTY X

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

Name: \_\_\_\_\_

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

Accepted and confirmed as of the  
Trade Date

NEW YORK STATE THRUWAY AUTHORITY

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

Name: \_\_\_\_\_

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

ANNEX I  
to Confirmation, dated October \_\_, 2003  
between Morgan Stanley Capital Services Inc. and  
New York State Thruway Authority

<u>Reduction Date</u>	<u>Notional Reduction Amount</u>	<u>Outstanding Motional Amount</u>
3/15/2010		
3/15/2011		
3/15/2012		
3/15/2013		
3/15/2014		
3/15/2015		
3/15/2016		
3/15/2017		
3/15/2018		
3/15/2019		
3/15/2020		
3/15/2021		

EXHIBIT B

[FORM OF GUARANTEE OF MORGAN STANLEY]

Morgan Stanley

MORGAN STANLEY  
1585 BROADWAY  
NEW YORK, NY 10036-8293

Date

[Address]

Ladies and Gentlemen:

In consideration of that certain ISDA Master Agreement dated as of [date] between Morgan Stanley Capital Services Inc., a Delaware corporation (hereinafter "MSCS") and [counterparty] (hereinafter "Counterparty") (such ISDA Master Agreement, together with each Confirmation exchanged between the parties pursuant thereto, hereinafter the "Agreement"), Morgan Stanley, a Delaware corporation (hereinafter "MS"), hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date of the Agreement, the due and punctual payment of all amounts payable by MSCS under the Agreement when the same shall become due and payable, whether on Scheduled Payment Dates, upon demand, upon declaration of termination or otherwise, in accordance with the terms of the Agreement and giving effect to any applicable grace period. Upon failure of MSCS punctually to pay any such amounts, and upon written demand by Counterparty to MS at its address set forth in the signature block of this Guarantee (or to such other address as MS may specify in writing), MS agrees to pay or cause to be paid such amounts; provided that delay by Counterparty in giving such demand shall in no event affect MS's obligations under this Guarantee.

MS hereby agrees that its obligations hereunder shall be unconditional and will not be discharged except by complete payment of the amounts payable under the Agreement, irrespective of any claim as to the Agreement's validity, regularity or enforceability or the lack of authority of MSCS to execute or deliver the Agreement; or any change in or amendment to the Agreement; or any waiver or consent by Counterparty with respect to any provisions thereof; or the absence of any action to enforce the Agreement or the recovery of any judgment against MSCS or of any action to enforce a judgment against MSCS under the Agreement; or any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally. MS hereby waives diligence, presentment, demand on MSCS for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against MSCS and protest or notice, except as provided for in the Agreement with respect to amounts payable by MSCS. If at any time payment under the Agreement is rescinded or must be otherwise restored or returned by Counterparty upon the insolvency, bankruptcy or reorganization of MSCS or MS or otherwise, MS's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by Counterparty.

MS represents to Counterparty as of the date hereof, which representations will be deemed to be repeated by MS on each date on which a Transaction is entered into, that:

(1) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;

(2) its execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

(3) all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

(4) this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

By accepting this Guarantee and entering into the Agreement, Counterparty agrees that MS shall be subrogated to all rights of Counterparty against MSCS in respect of any amounts paid by MS pursuant to this Guarantee, provided that MS shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by MSCS under the Agreement.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York. All capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Agreement.

MORGAN STANLEY

By: \_\_\_\_\_  
Name:  
Title:  
Address: 1585 Broadway  
3rd Floor  
New York, NY 10036  
Attention: Derivative Products Group  
Fax No.: (212) 761-0162

EXHIBIT C to Schedule

[Form of Opinion of Counsel to Party B]

October \_\_, 2003

Morgan Stanley Capital Services Inc.  
New York, New York

Morgan Stanley  
New York, New York

MBIA Insurance Corporation  
113 King Street  
Armonk, New York 10504

Ladies and Gentlemen:

We have acted as counsel to New York State Thruway Authority, a body corporate and politic constituting a public corporation of the State of New York ("Party B") in connection with the execution and delivery of the Master Agreement, Schedule and Credit Support Annex thereto (the "Master Agreement") dated as of October \_\_, 2003 between Counterparty X ("Party A") and Party B and the Confirmation(s), dated \_\_\_\_\_, 2003 (the "Initial Confirmation(s)"), each between Party A and Party B. The Master Agreement together with the Initial Confirmation(s) shall constitute one agreement and hereinafter is referred to as the "Agreement".

In connection with this opinion, we have examined executed copies of the Master Agreement and such documents and records of Party B, certificates of public officials and officers of Party B and such other documents as we have deemed necessary or appropriate for the purposes of this opinion. In this opinion, we have assumed the genuineness of all the signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed or photostatic copies.

Party B has authorized the Agreement by and pursuant to Resolution No. 5316 adopted by the Board of Party B on September 17, 2003. In addition, pursuant to the Guidelines for Interest Rate Exchange Agreements, adopted by Party B pursuant to said Article 5-D on December 5, 2002 (the "Guidelines"), Public Financial Management, Inc., has issued a letter dated October \_\_, 2003, to Party B finding that the terms and conditions of the Agreement reflect a fair market value. We have relied on such letter, without further investigation, in rendering this opinion.

Based upon the foregoing, we are of the opinion that:

1. Party B is a body corporate and politic constituting a public corporation of the State of New York duly organized and validly existing under the laws of the State of New York.
2. Party B is authorized under the New York State Thruway Authority Act, Title 9 of Article 2 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended, Article 5-D of the State Finance Law, the Guidelines, the Financing Agreement (as

defined in the Agreement) and the Resolution (as defined in the Agreement), to enter into the Agreement and to perform its obligations thereunder.

3. Party B has taken all necessary action required to be taken to ensure that the Agreement complies in all respects with the New York State Thruway Authority Act, Article 5-D of the State Finance Law, the Guidelines and the Resolution.

4. The Agreement has been duly executed and delivered by Party B and constitutes a legally valid and binding obligation of Party B enforceable against Party B in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law); provided, however, that this opinion is subject to the qualification that in connection with any early termination on the grounds of default, a court might limit the non-Defaulting Party's recovery to its actual damages in the circumstances, imposing its own settlement procedures in lieu of the provisions of Section 6(e) of the Agreement.

5. To the best of our knowledge, no consent, authorization, license or approval of, or registration or declaration with, any governmental authority is required in connection with the execution, delivery and performance of the Agreement by Party B.

6. The Agreement is a special limited obligation of Party B, and all amounts payable under the Agreement constitute Subordinate Obligations. The obligation of Party B to make such payments is secured solely by a pledge of and lien on Revenues on deposit in the Administrative Fund, subject and subordinate in all respects to the pledge of and lien on such Revenues created by Section 501 of the Resolution in favor of the payment of the Principal and Redemption Price of, and Sinking Fund Installments for, and interest on, the Bonds, and to the requirements of the Resolution for withdrawals from the Revenue Fund for deposit into the Bond Service Fund and any Bond Service Reserve Fund as provided therein. Capitalized terms used in this paragraph and not defined have the respective meanings ascribed to such terms in the Resolution.

Our opinion is rendered only with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or any other material of any kind not specifically opined on above. No other opinions are intended nor should they be inferred. This opinion is issued as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law, or in interpretations thereof, that may hereinafter occur, or for any other reason whatsoever.

This opinion is solely for your information and assistance and may not be relied upon by any other person.

Very truly yours,

SCHEDULE

to the

ISDA Master Agreement

dated as of October 21, 2003, between

MORGAN STANLEY CAPITAL SERVICES INC.,  
a Delaware corporation

("Party A")

and

NEW YORK STATE THRUWAY AUTHORITY,  
a body corporate and politic of the State of New York  
constituting a public corporation of the State of New York

("Party B")

**Part 1. Termination Provisions.**

In this Agreement:—

(a) **"Specified Entity"** means in relation to Party A for the purpose of:—

Section 5(a)(v) (Default under Specified Transaction),	Affiliates
Section 5(a)(vi) (Cross Default),	Not applicable.
Section 5(a)(vii) (Bankruptcy),	Not applicable.
Section 5(b)(ii) (Credit Event Upon Merger),	Not applicable.

and in relation to Party B for the purpose of:—

Section 5(a)(v)(Default under Specified Transaction)	Not applicable.
Section 5(a)(vi) (Cross Default),	Not applicable.
Section 5(a)(vii)(Bankruptcy),	Not applicable.
Section 5(b)(ii) (Credit Event Upon Merger)	Not applicable.

(b) **"Specified Transaction"** will have the meaning specified in Section 12 of this Agreement; provided that with respect to Party B, Specified Transaction shall include only those Specified Transactions that are payable from the source of payment specified in Section 4(d) of this Agreement.

(c) The **"Cross Default"** provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B.

The following provisions apply:

**“Specified Indebtedness”** with respect to Party A, will have the meaning specified in Section 12 of this Agreement and, with respect to Party B, will mean any bonds issued pursuant to the Resolution and any interest rate exchange agreement executed by Party B that is payable from the source of payment specified in Section 4(d) of this Agreement (the inclusion of interest rate exchange agreements as Specified Indebtedness shall not create any implication that an interest rate exchange agreement constitutes indebtedness).

**“Threshold Amount”** means the lesser of \$100,000,000 and 3% of Stockholders’ Equity of Party A’s Credit Support Provider for Party A and \$35,000,000 for Party B. For purposes hereof, “Stockholders’ Equity” shall be determined by reference to Party A’s Credit Support Provider’s most recent consolidated balance sheet and shall include legal capital, paid-in capital, retained earnings and cumulative translation adjustments.

- (d) The **“Credit Event Upon Merger”** provisions of Section 5(b)(ii) will apply to Party A and will not apply to Party B.
- (e) The **“Automatic Early Termination”** provisions of Section 6(a) will not apply to Party A or to Party B.
- (f) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:
  - (A) Market Quotation will apply.
  - (B) The Second Method will apply.
- (g) **Additional Termination Event will apply.** The following shall constitute Additional Termination Events:

(i) If the unenhanced, unsubordinated Specified Indebtedness of Party B or the outstanding long term unsecured, unsubordinated, unenhanced debt of Party A’s Credit Support Provider is not rated by at least one of Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. (or any successor) (“S&P”), Moody’s Investors Service, Inc. (or any successor) (“Moody’s”), or Fitch Ratings (or any successor) (“Fitch”) at least BBB, Baa2 or BBB, as applicable, or the unenhanced, unsubordinated Specified Indebtedness of Party B or the outstanding long term unsecured, unsubordinated, unenhanced debt of Party A’s Credit Support Provider is rated by any one of S&P, Moody’s or Fitch lower than BBB-, Baa3 or BBB-, as applicable, or any rating is withdrawn or suspended, then a “Ratings Event” shall be deemed to have occurred with respect to such party. The party for which the Ratings Event is deemed to have occurred (“X”) shall promptly notify the other party of the occurrence of such Ratings Event; provided that, the failure of such a party to provide such notice shall not constitute an Event of Default hereunder. A Ratings Event shall be deemed an Additional Termination Event for which all Transactions under this Agreement shall be Affected Transactions. For the purposes of Section 6(b) and Section 6(e), X shall be the sole Affected Party.

(ii) It shall be an Additional Termination Event if Party A has notified Party B that a Party B Downgrade Event (as defined below) has occurred and Party B has not, within 20 days of receiving such notice, at its sole election, either (a) provided a guarantee, letter of credit, surety bond, insurance policy or other credit support document with respect to the amounts payable by Party B under Sections 2 and 6 of this Agreement in a form and by a provider reasonably acceptable to Party A and, unless the Insurer has failed to pay under the Swap Insurance Policy,



the Insurer; (b) transferred this Agreement pursuant to Section 7(d) of this Agreement or otherwise transferred this Agreement to a counterparty reasonably acceptable to Party A pursuant to terms reasonably acceptable to Party A and unless the Insurer has failed to pay under the Swap Insurance Policy, the Insurer; or (c) executed a credit support annex with Party A in substantially the form executed by Party A upon the execution and delivery of this Agreement. For purposes of Section 6(e), Party B shall be the sole Affected Party. A "Party B Downgrade Event" shall occur if the unenhanced, unsubordinated Specified Indebtedness of Party B is not rated by at least one of S&P, Moody's or Fitch at least BBB+, Baal or BBB+, as applicable, or the unenhanced, unsubordinated Specified Indebtedness of Party B is rated by any one of S&P, Moody's or Fitch lower than BBB, Baa2 or BBB, as applicable. Party B shall promptly notify Party A of the occurrence of a Party B Downgrade Event; provided that, the failure of Party B to provide such notice shall not constitute an Event of Default hereunder. This Additional Termination Event shall be deemed to have been waived by Party A until such time as (i) the Insurer fails to make a payment due under its Swap Insurance Policy or (ii) the Insurer's financial strength rating from S&P is below A- and its claims paying ability rating from Moody's is below A3.

(h) ***Events of Default.***

(i) ***Cross Default.*** Section 5(a)(vi) of this Agreement is hereby amended to read in its entirety as follows:

"(vi) ***Cross Default.*** With respect to Party A shall mean the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period); provided, however, that notwithstanding the foregoing, an Event of Default shall not occur if, as demonstrated to the reasonable satisfaction of Party B, (a) the event or condition or the failure to pay is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to Party A to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of such failure to pay; and

With respect to Party B shall mean the occurrence or existence of a default on Specified Indebtedness of Party B with a principal or notional amount of not less than the Threshold Amount (as specified in the Schedule) either (1) when any amount on such Specified Indebtedness is due and payable or (2) which has resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments before it would otherwise have been due and payable; provided, however, that notwithstanding the foregoing, an Event of Default shall not occur if, as demonstrated to the reasonable satisfaction of Party A, (a) the event or condition or the failure to pay is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to Party B to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of

such failure to pay;”.

(ii) **Bankruptcy.** Section 5(a)(vii) is hereby amended by renumbering existing Clauses (8) and (9) to be Clauses (9) and (10), respectively and is further amended by replacing the reference to “clauses (1) to (7) (inclusive)” in what is now Clause (9), with a reference to “clauses (1) to (8) (inclusive)” and is further amended by adding a new clause (8) to read as follows:

“(8) is subject to a statute, rule or regulation which has been enacted and has the force of law and which establishes an agency, authority, body or oversight board to monitor, review or oversee a financial emergency with respect to such party”.

(iii) **Merger Without Assumption.** Section 5(a)(viii) of this Agreement is hereby amended to read in its entirety as follows:

“(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity (or, without limiting the foregoing, if such party is a Government Entity, an entity such as a board, commission, authority, agency, public corporation, public benefit corporation or political subdivision succeeds to the principal functions of, or powers and duties granted to, such party or any Credit Support Provider of such party) and, at the time of such consolidation, amalgamation, merger, transfer or succession:

(1) the resulting, surviving, transferee, or successor entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement;

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement; or

(3) in the case of Party B, the benefits of the Financing Agreement fail to extend (without the consent of the other party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement.”

(i) **Early Termination.**

Section 6 is hereby amended by adding the following new subsections (f) and (g):

“(f) **Set-off.** Neither party hereto shall have a right of set-off with respect to amounts due hereunder; provided, however, that this provision shall not affect the rights of Party B to exercise remedies including any right of set-off under the credit support annex executed in connection herewith.”

“(g) **Optional Termination by Party B.** Party B may, upon at least five (5) Business Days’ written notice to Party A and the Insurer, terminate any Transactions under this Agreement by designating to Party A the termination date for such Transactions. In the event Party B exercises its right of optional termination hereunder, the provisions of Section 6(e)(ii)(1) shall apply as though Party B is the sole Affected Party. Party B may not optionally terminate any Transactions pursuant to this section unless Party B also provides evidence

reasonably satisfactory to Party A and the Insurer that Party B has or will have on the termination date available funds without regard to any swap insurance policy with which to pay any amount due to Party A as a result of such optional termination. Notwithstanding anything herein to the contrary, the parties will be obligated to pay any accrued and unpaid amounts that would otherwise be due on the date of such optional termination.”

**Part 2. Agreement to Deliver Documents.**

For the purpose of Section 4(a) of this Agreement, each party agrees to deliver the following documents, as applicable:

<u>Party Required to Deliver Document</u>	<u>Form/Certificate Document</u>	<u>Date by Which to be Delivered</u>	<u>Covered by Section 3(d)</u>
Party A and Party B	Certified copies of all documents evidencing necessary corporate and other authorizations and approvals with respect to the execution, delivery and performance by the party and any Credit Support Provider of this Agreement, any Credit Support Document and any Confirmation, including, where applicable, certified copies of the resolutions of its Board of Directors authorizing the execution and delivery of this Agreement, the relevant Credit Support Document or any Confirmation.	Upon execution of this Agreement and promptly at the request of the other party upon execution of a Confirmation.	Yes
Party A and Party B	A certificate of an authorized officer of the party and any Credit Support Provider as to the incumbency and authority of the officers of the party and any Credit Support Provider signing this Agreement, any Credit Support Document or any Confirmation.	Upon execution of this Agreement and promptly at the request of the other party upon execution of a Confirmation.	Yes
Party A	Guaranty of Morgan Stanley in the form of Exhibit B attached hereto.	As soon as practicable, but no later than upon execution of this Agreement.	
Party A and Party B	With respect to Party A, a copy of the most recent annual report (and each annual report thereafter) of Party A’s Credit Support Provider, and with respect to Party B, a copy of the most recent audited annual financial statements of Party B and Annual Information Statement of the State of New York and any updates thereto and the audited	Promptly after request by the other party.	Yes

	financial statements of the State of New York, in each case when available to Party B, containing in all cases audited consolidated financial statements for each fiscal year during which this Agreement is in effect certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the United States or in the country in which such party is organized.		
Party A	A copy of the unaudited consolidated financial statements of Party A, for each semiannual period in each fiscal year during which this Agreement is in effect prepared in accordance with generally accepted accounting principles in the United States or in the country in which such party is organized.	Promptly after request by the other party.	Yes
Party A	A copy of each regular financial or business reporting document that is (i) distributed or made generally available to respective shareholders or investors and made publicly available or (ii) filed in accordance with the disclosure requirements of any applicable statute, rule, regulation or judicial decree and made available for public inspection.	Promptly after request by the other party.	Yes
Party A and Party B	Such other documents as the other party may reasonably request.	Promptly after request by the other party.	Yes
Party A and Party B	With respect to Party A, an opinion of counsel to Party A (and any Credit Support Provider) in form and substance satisfactory to Party B and the Insurer; and with respect to Party B, an opinion of counsel substantially in the form set forth in Exhibit C attached hereto and covering such other matters as reasonably requested by Party A and the Insurer.	Upon execution of this Agreement and each Confirmation.	No

**Part 3. Miscellaneous.**

- (a) **Notices.** For the purpose of Section 10(a) to this Agreement:—

Address for notices or communications to Party A:—

Address: Morgan Stanley Capital Services Inc.  
Transaction Management Group  
1585 Broadway, 3rd Floor  
New York, New York 10036-8293

Attention: Fixed Income Derivatives – Transactions Management

Facsimile No: 212-761-0162

Telephone No.: 212-761-2533

Address for notices or communications to Party B:—

Address: New York State Thruway Authority  
200 Southern Boulevard  
Albany, NY 12209

Attention: Chief Financial Officer

Facsimile No.: 518-471-5050

Telephone No.: 518-436-2820

Each party agrees to send a copy of all notices or communications sent by such party to the other party to the Insurer at the address set forth in Part 4(j)(xxiii).

- (b) **Notices.** Section 10(a) is amended by adding in the third line thereof after the phrase “messaging system” and before the “)” the words “; provided, however, any such notice or other communication may be given by facsimile transmission if telex is unavailable, no telex number is supplied to the party providing notice, or if answer back confirmation is not received from the party to whom the telex is sent.”
- (c) **Calculation Agent.** The Calculation Agent is Party A unless Party A is the Defaulting Party, in which case the Calculation Agent means a leading dealer in the relevant market designated by Party B. Calculations by the Calculation Agent shall be binding and conclusive absent manifest error.
- (d) **Credit Support Document.** Details of any Credit Support Document: in relation to Party A means the Guarantee of Morgan Stanley attached as Exhibit B and the Credit Support Annex attached as Exhibit D and with respect to Party B means the Credit Support Annex attached as Exhibit D.
- (e) **Credit Support Provider.** Credit Support Provider means in relation to Party A, Morgan Stanley and in relation to Party B, not applicable.

- (f) **Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE.
- (g) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply to all Transactions entered into between Party A and Party B.
- (h) **"Affiliate"** will have the meaning specified in Section 12 of this Agreement, but with respect to Party B, will exclude the State of New York and, with respect to Party A, will exclude Morgan Stanley Derivative Products, Inc.
- (i) **"Government Entity"** means Party B.
- (j) **Account details.** Payments shall be made to the following accounts:

Payments to Party A:

For Cash:

Name of Bank: CITIBANK, New York

Account No.:4072-4601

For the Account of: Morgan Stanley Capital Services Inc.

Fed ABA No.:021 000 018

For Treasury Securities and Agency Notes:

Name of Bank: Bank of New York, New York

For the Account of: Morgan Stanley Capital Services Inc.

Fed ABA No.:021 000 089

Payments to Party B:

Name of Bank: JPMorgan Chase Bank

Account No.:507943635

For the Account of: Morgan Stanley CHIPS Swap Payment

Fed ABA No.:021 000 021

**Part 4. Other Provisions.****(a) Representations.**

(i) The introductory clause of Section 3 of this Agreement is hereby amended to read in its entirety as follows:

“Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(a), 3(e) and 3(f), at all times until the termination of this Agreement) that:—”.

(ii) Section 3(a) of this Agreement is hereby amended by adding the following subparagraph (vi):

“(vi) **Eligible Contract Participant.** It is an “eligible contract participant” within the meaning of Section 1(a)(12) of the Commodity Exchange Act.”.

(iii) Section 3 of this Agreement is hereby amended by adding the following subsections (e), (f), (g) and (h) thereto:

“(e) **Non-Speculation.** This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for purposes of managing its borrowings or investments and not for purposes of speculation.”

“(f) **No Immunity.** It is not immune from suit or judgment for amounts due and payable pursuant to this Agreement, it being understood that, with respect to Party B, payment of any judgment shall be solely from sources available under Section 4(d) “Source of Payments” hereof.”.

“(g) **Acting as Principal.** Each party hereto represents and warrants to the other party hereto that it is acting as a principal hereunder and not as an agent for any other party.”

“(h) **No Reliance.** In connection with the negotiation of, the entering into, and the confirming of the execution of, this Agreement, any Credit Support Document to which it is a party, and each Transaction: (i) the other party is not acting as a fiduciary or financial or investment advisor for it; (ii) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary; (iii) that Transaction has been the result of arm’s length negotiations between the parties; (iv) it is entering into this Agreement, such Credit Support Document and such Transaction with a full understanding of all of the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks; (v) it is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (vi) it is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction (it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction); and (vii) it has not received from the other party any assurance or guarantee as to the expected results of that Transaction.”

(b) *Agreements.*

(i) Section 4 of this Agreement is hereby amended by adding the following subsections (d), (e) and (f) thereto:

“(d) **Source of Payments.** This Agreement is a special limited obligation of Party B, and all amounts payable under this Agreement constitute Subordinate Obligations. The obligation of Party B to make such payments is secured solely by a pledge of and lien on Revenues on deposit in the Administrative Fund, subject and subordinate in all respects to the pledge of and lien on such Revenues created by Section 501 of the Resolution in favor of the payment of the Principal and Redemption Price of, and Sinking Fund Installments for, and interest on, the Bonds, and to the requirements of the Resolution for withdrawals from the Revenue Fund for deposit into the Bond Service Fund and any Bond Service Reserve Fund as provided therein.

This Agreement constitutes a Qualified Interest Rate Exchange Agreement pursuant to Section 207 of the Resolution.

Capitalized terms used in this Section 4(d) and not defined have the respective meanings ascribed to such terms in the Resolution.

(e) **No Recourse.** All covenants, stipulations, promises, agreements and obligations of Party B contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of Party B and not of any member, officer or employee of Party B in his or her individual capacity, and no recourse shall be had for the payment of any amount due hereunder or for any claims based hereon against any member, officer or employee of Party B or any person executing this Agreement for Party B, all such liability, if any, being expressly waived and released by Party A.

(f) **Actions with Respect to Financing Agreement and Resolution.** Party B agrees to comply with all of its obligations under the Financing Agreement that are material to the performance of its obligations under this Agreement or the Resolution (including but not limited to the definition of Administrative Fund Requirement). Party B shall not enter into any amendment to, or waive any provision of, the Financing Agreement or the Resolution (including, but not limited to, the definition of Administrative Fund Requirement) if such amendment or waiver would materially adversely affect Party B’s ability to perform its obligations hereunder without the prior written consent of Party A and the Insurer. Party B agrees to enforce all provisions of the Financing Agreement relating to the performance of its obligations hereunder.

Party B agrees to include all amounts payable hereunder by Party B in its calculation of the Administrative Fund Requirement, as such term is defined and determined pursuant to the Resolution.

(c) *Transfer.* Section 7 of this Agreement is hereby amended to read in its entirety as follows:

“Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:

(a) upon reasonable notice, a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or



substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement);

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e);

(c) Party A upon five (5) Business Days notice to Party B and the Insurer may transfer this Agreement and all of its interests and obligations in or under this Agreement to any Affiliates of Morgan Stanley; provided that the Guarantee of Morgan Stanley remains in full force and effect with only such amendments as may be required to reflect the fact of the transfer by Party A; and

(d) Party B may transfer all of its rights and obligations under any Transaction (the "Transferred Obligation") to another entity (the "Transferee"); provided that:

(1) the credit worthiness of the Transferee or its guarantor is reasonably acceptable to Party A;

(2) the Transferee and Party A shall have executed a master agreement in form and substance satisfactory to Party A with terms appropriate for counterparties with the Transferee's credit rating, as determined by Party A in good faith (including such Credit Support Documents as shall be required by Party A and appropriate for counterparties with the Transferee's (or its guarantor's) credit rating, as determined by Party A in good faith) under which the Transferred Obligations will be governed;

(3) at the time of such transfer, no Early Termination Date shall have been designated under this Agreement and no Event of Default, Potential Event of Default or Termination Event shall have occurred and be continuing under this Agreement with respect to Party B;

(4) such transfer will not result in the violation of any law, regulation, rule, judgment, order or other legal limitation or restriction applicable to Party A;

(5) such transfer will not result in a violation of Party A's counterparty eligibility or credit practices or policies or exposure limitations;

(6) at the time of such transfer, no event which would constitute a Termination Event, Event of Default or Potential Event of Default with respect to the Transferee if the Transferee were a party to this Agreement (or its guarantor were a Credit Support Provider under this Agreement) shall have occurred;

(7) such transfer does not result in any adverse tax consequences to Party A, including the obligation to deduct or withhold an amount with respect to any Tax from payments required to be made to the Transferee, the receipt of payments from the Transferee from which amounts with respect to any Tax may be deducted or withheld or the imposition of any tax, levy, impost, duty charge, or fee of any nature by any government or taxing authority which would not have been imposed but for such transfer;

(8) the Transferee is organized under the laws of the United States or a state

thereof; and

(9) the prior written consent of the Insurer is obtained.

Any purported transfer that is not in compliance with this Section will be void.”

- (d) ***Jurisdiction/Waiver of Immunities.*** Section 11(b) and Section 11(c) of this Agreement are hereby deleted in their entirety and replaced with the following:

“With respect to any suit, action or proceedings relating to this Agreement (“Proceedings”), each party irrevocably:

(i) submits to the exclusive jurisdiction of the Supreme Court of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.”

- (e) ***Waiver of Jury Trial.*** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT.

- (f) ***Definitions.*** Section 12 of this Agreement is hereby amended to add the following definitions in their appropriate alphabetical order:

“***Financing Agreement***’ means the Local Highway and Bridge Service Contract, dated as of August 15, 1991, as amended.”

“***Government Entity***’ means Party B.”

“***Incipient Illegality***’ means (i) any assertion by an officer of a party in his or her official capacity on behalf of such party in any legal proceeding or action in respect of such party, to the effect that performance by such party under this Agreement or similar agreements is unlawful and (ii) the enactment of legislation by the legislature (e.g., in the case of the State of New York, both the New York State Senate and the New York State Assembly and in the case of the United States, both the United States Senate and the U.S. House of Representatives) that is not vetoed and has not become law for 60 days which, if adopted as law, would render unlawful (a) the performance by a party of any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of a Transaction or the compliance by a party with any other material provisions of this Agreement relating to such Transaction or (b) the performance by a party or a Credit Support Provider of such party of any contingent or other obligation which such party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction.”

“***Resolution***’ means the Local Highway and Bridge Special Limited Obligation Service Contract Bond Resolution, adopted on August 23, 1991, as amended and supplemented, including, but not limited to, by a fourteenth supplemental resolution adopted September

17, 2003.”

- (g) **Accuracy of Specified Information.** Section 3(d) is hereby amended by adding at the end of the third line thereof after the word “respect” and before the period the words, “or, in the case of audited or unaudited financial statements, a fair presentation of the financial condition of it.” With respect to information concerning the State of New York provided by Party B, such representation is based solely upon the representation of the Division of the Budget of the State of New York or the Office of the State Comptroller of the State of New York, as applicable.
- (h) **Notice of Incipient Illegality.** If an Incipient Illegality occurs, Party B will, promptly upon becoming aware of it, notify Party A, specifying the nature of that Incipient Illegality; provided that, the failure of Party B to provide such notice shall not constitute an Event of Default hereunder. Party B will also give such other information about that Incipient Illegality as Party A reasonably requests.
- (i) **Deferral of Payments and Deliveries in Connection with Illegality and Incipient Illegality.** Section 2(a)(iii) is hereby amended to read in its entirety as follows:

“(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default, Illegality, Potential Event of Default or Incipient Illegality with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.”

- (j) **Insurer Provisions.** The following provisions shall apply to any Transaction to which the Swap Insurance Policy issued by XL Capital Assurance Inc. (together with any successor, the “Insurer”) to the account of Party B, as principal, and for the benefit of Party A, as beneficiary (the “Swap Insurance Policy”), relates (the “Insured Transactions”).

- (i) Notwithstanding anything to the contrary in Section 6 of this Agreement, if any:
- (A) Event of Default in respect of any Insured Transaction under Section 5(a) of this Agreement occurs with respect to Party B as the Defaulting Party; or
- (B) Termination Event in respect of any Insured Transaction under Section 5(b) of this Agreement occurs with respect to Party B as the Affected Party;

then, in either such case, Party A shall not designate an Early Termination Date in respect of any such Insured Transaction unless:

- (Y) an Additional Termination Event under Part 4(j)(x) has occurred and is continuing; or
- (Z) Insurer has otherwise consented in writing to such designation.

Amounts payable by Party B to Party A upon termination shall not be insured by the Swap Insurance Policy except as provided in Part 4(j)(ii).

- (ii) Notwithstanding anything in this Agreement, if any Event of Default under this Agreement occurs, with Party B as the Defaulting Party, then the Insurer (unless an Additional Termination Event described in Part 4(j)(x) has occurred and is continuing) shall have the right (but not the obligation) upon notice to Party A to designate an Early Termination Date with respect to Party B with the same effect as if such designation were made by Party A. For purposes of the foregoing sentence, an Event of Default with respect to Party B shall be considered to be continuing, notwithstanding any payment by the Insurer under the Swap Insurance Policy. Party A and Party B acknowledge that, except as the Swap Insurance Policy may be otherwise endorsed, unless the Insurer designates an Early Termination Date (as opposed to merely consenting to such designation by one of the parties) termination payments due from Party B because an Early Termination Date has been designated will not be insured.
- (iii) Party A and Party B hereby each acknowledge and agree that Insurer's obligation with respect to Insured Transactions shall be limited to the terms of the Swap Insurance Policy. Notwithstanding Section 2(e) or any other provision of this Agreement, Insurer shall not have any obligation to pay interest on any amount payable by Party B under this Agreement.
- (iv) The definition of "Reference Market Makers" set forth in Section 12 of this Agreement shall be amended in its entirety to read as follows:
- "Reference Market Makers"* means four (4) leading dealers in the relevant swap market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among dealers having an office in the greater New York Metropolitan area. The rating classification assigned to any outstanding long-term senior debt securities issued by such dealers shall be at least (1) Aa3 or higher as determined by Moody's Investors Service, Inc. (or any successor) ("Moody's") (2) AA- or higher as determined by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. (or any successor) ("S&P") or (3) an equivalent investment grade rating determined by a nationally-recognized rating service acceptable to both parties and Insurer, provided however, that, in any case, if Market Quotation cannot be determined by four (4) such dealers, the party making the determination of the Market Quotation may designate, with the consent of the other party and Insurer, one (1) or more leading dealers whose long-term senior debt bears a lower investment grade rating.
- (v) Section 8(b) of this Agreement is hereby amended by (A) adding the phrase "or any Credit Support Document" after the word "Agreement" in the first line thereof and (B) adding the phrase "and their respective Credit Support Providers" following after the word "parties" in the second line thereof.
- (vi) No amendment, modification, supplement or waiver of this Agreement will be effective unless in writing and signed by each of the parties hereto and unless the parties hereto shall have obtained the prior written consent of Insurer.
- (vii) Party A and Party B hereby each acknowledge and agree that Insurer shall be an express third-party beneficiary (and not merely an incidental third-party beneficiary) of this Agreement and the obligations of such party under any Insured

Transaction, and as such, entitled to enforce this Agreement and the terms of any such Insured Transaction against such party on its own behalf and otherwise shall be afforded all remedies available hereunder or otherwise afforded by law against the parties hereto to redress any damage or loss incurred by Insurer including, but not limited to, fees (including professional fees), costs and expenses incurred by Insurer which are related to, or resulting from any breach by such party of its obligations hereunder.

- (viii) So long as the Swap Insurance Policy shall remain in effect, no Insured Transaction may be assigned or transferred by Party B or Party A without the prior written consent of Insurer other than as provided in Section 7(a), (b) or (c).
- (ix) Party A and Party B hereby acknowledge that to the extent of payments made by Insurer to Party A under the Swap Insurance Policy, Insurer shall be fully subrogated to the rights of Party A against Party B under the Insured Transaction to which such payments relate, including, but not limited to, the right to receive payment from Party B and the enforcement of any remedies. Party A hereby agrees to assign to Insurer its right to receive payment from Party B under any Insured Transaction to the extent of any payment thereunder by Insurer to Party A and to execute all such instruments or agreements as Insurer deems reasonably necessary to effect such assignment. Party B hereby acknowledges and consents to the assignment by Party A to Insurer of any rights and remedies that Party A has under any Insured Transaction or any other document executed in connection herewith.
- (x) *Additional Termination Event will apply.* The following shall constitute Additional Termination Events in respect of Party B (and amounts payable by Party B to Party A upon such termination shall not be insured by the Swap Insurance Policy):
  - (a) The Insurer fails to meet its payment obligations under its Swap Insurance Policy and such failure is continuing with respect to the Insurer under the Swap Insurance Policy; provided, however, that, in any such case, either
    - (X) an Event of Default has occurred or is continuing with respect to Party B as the Defaulting Party; or
    - (Y) a Termination Event has occurred or is continuing with respect to Party B as the Affected Party.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

- (b) The Insurer's financial strength rating from S&P is below A- and the Insurer's claims paying ability rating from Moody's is below A3;
  - provided, however, that in any such case, either
    - (X) an Event of Default has occurred and is continuing with respect to Party B as the Defaulting Party; or
    - (Y) a Termination Event has occurred and is continuing with respect to

## Party B as the Affected Party.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

- (c) (A) The Insurer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of the Insurer under the Swap Insurance Policy by operation of law or pursuant to an agreement reasonably satisfactory to Party A and (B) Party B fails, within 20 days of notice from Party A, to provide a replacement guarantee, letter of credit, surety bond, insurance policy or other credit enhancement instrument providing, in the reasonable opinion of Party A, support substantially the same as provided by the Swap Insurance Policy by a provider whose credit ratings are at least equal to those of the Insurer at the time of the replacement. For the purpose of this Termination Event, the Affected Party shall be Party B.
- (d) (A) The entry of a non-appealable order of a court of competent jurisdiction that the Swap Insurance Policy is invalid and (B) Party B fails, within 20 days of notice from Party A, to provide a replacement guarantee, letter of credit, surety bond, insurance policy or other credit enhancement instrument providing, in the reasonable opinion of Party A, support substantially the same as provided by the Swap Insurance Policy by a provider whose credit ratings are at least equal to those of the Insurer at the time of the replacement. For the purpose of this Termination Event, the Affected Party shall be Party B.
- (xi) Notwithstanding Section 6 of this Agreement, any designation of an Early Termination Date in respect of the Insured Transactions by the Insurer or by Party A with the consent of the Insurer pursuant to paragraph (i) above shall apply only to the Insured Transactions and not to any other Transaction under this Agreement, unless Party A shall designate an Early Termination Date in respect of such other Transaction. Nothing contained in this paragraph (xi) shall affect the rights of Party A under this Agreement to designate an Early Termination Date in respect of any Transaction other than the Insured Transactions, which designation shall not apply to the Insured Transactions unless expressly provided in such designation and unless the Insurer shall have designated, or consented to the designation by Party A of, an Early Termination Date in respect of the Insured Transactions in accordance with paragraph (i) above or such designation of an Early Termination Date is otherwise permitted under paragraph (i) or (x).
- (xii) Notwithstanding anything else in this Agreement, in no event shall either Party A or Party B be entitled to net or set off the payment obligations of the other party that are not with respect to Insured Transactions against the payment obligations of such party under Insured Transactions (whether by counterclaim or otherwise), it being the intention of the parties that their payment obligations under Insured Transactions be treated separate and apart from all other obligations. Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Transaction shall be determined without regard to any obligation other than those under the Insured Transactions, it being the intention of the parties that their payment obligations under the Insured Transactions be treated separate and apart from all

other obligations unless otherwise specified in such other obligation and agreed to in writing by the Insurer.

- (xiii) None of the rights and obligations of the Insurer with respect to the Insured Transactions shall affect the rights and obligations of the parties hereto pursuant to any Transaction that is not an Insured Transaction.
- (xiv) Notice of any Change of Account under Section 2(b) shall be delivered or given to the Insurer.
- (xv) *Reserved.*
- (xvi) Pursuant to Section 8(c) of this Agreement, all obligations of the parties will survive the termination of any Transaction or the term of this Agreement or the Resolution so long as amounts owed under the Swap Insurance Policy or under Part 4(j)(xxi) of this Agreement remain outstanding.
- (xvii) For the purpose of Section 10(a) of the Agreement, all notices and communications shall be delivered or given to Party A, Party B and the Insurer as set forth in Part 3(a) of this Schedule.
- (xviii) Notwithstanding Section 2(a)(iii) of this Agreement, Party A shall not suspend any payments due under an Insured Transaction under Section 2(a)(iii) unless the Insurer is in default in respect of any payment obligations due under the Swap Insurance Policy.
- (xix) No notice of an Event of Default or Termination Event shall be effective against Party B unless such notice is given to the Insurer.
- (xx) Party B agrees to reimburse the Insurer, solely from amounts available to Party B under the Financing Agreement, immediately and unconditionally upon demand for all reasonable expenses incurred by the Insurer in connection with the issuance of the Swap Insurance Policy and the enforcement by the Insurer of Party B's obligations under this Agreement and any other documents executed in connection with the execution and delivery of this Agreement, including, but not limited to, fees (including professional fees), costs and expenses incurred by the Insurer which are related to, or resulting from any breach by Party B of its obligations hereunder.
- (xxi) Party B hereby covenants and agrees that it shall reimburse Insurer, solely from amounts available to Party B under the Financing Agreement, for any amounts paid by the Insurer under the Swap Insurance Policy and all costs of collection thereof and enforcement of this Agreement at the Insurer Payment Rate (as hereinafter defined). For purposes of the foregoing, "Insurer Payment Rate" shall mean the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, ("Chase") at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by Chase) plus 3 percent and (ii) the then highest rate of interest on the Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Insurer Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event that Chase ceases to announce its Prime Rate publicly, the Prime Rate shall be the publicly announced

prime or base lending rate of such national bank as the Insurer shall specify.

- (xxii) Each party agrees that each of its representations and agreements in this Agreement is expressly made to and for the benefit of the Insurer.
- (xxiii) Each party agrees to send a copy of all notices or communications sent by such party to the other party, to the Insurer at the following address:

XL Capital Assurance Inc.  
 1221 Avenue of the Americas  
 New York, New York 10020  
 Attention: Surveillance  
 Tel: (212) 478-3400  
 Fax: (212) 478-3597

- (k) **Consent to Recording.** Each party (i) consents to the recording of all telephone conversations between trading and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction; (ii) agrees to give notice to its own personnel and the personnel of its Affiliates that their calls will be recorded; and (iii) agrees that, in any Proceedings, such recordings may be introduced into evidence and it will not object to the introduction of such recordings into evidence on grounds that consent was not properly given.
- (l) **Appendix A.** Notwithstanding any other provisions of this Agreement, Party A and Party B agree that Party A shall be bound by the provisions of Appendix A (Standard Clauses for New York State Thruway Authority and New York State Canal Corporation Procurement Contracts) annexed hereto, which shall be deemed an integral part of this Agreement. Notwithstanding Section 12 of Appendix A, if there exists a conflict between a provision in Appendix A and this Agreement, this Agreement shall govern to the extent permitted by law.

In addition, the following changes are made to Appendix A:

- (i) The last sentence of Section 3 shall not apply.
- (ii) Notwithstanding the first sentence of Section 9 of Appendix A, Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter.
- (iii) The following shall be added to Section 9: The Authority shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the State's Public Officer's Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate Authority official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Authority's right to discovery in any pending or future litigation.
- (iv) The last sentence of Section 21 shall not apply.
- (m) **Liability; No Indemnification.** Each party will be responsible for all damage to life and properties due to negligent or otherwise tortious acts, errors or omissions of such party in connection with its obligations under this Agreement to the extent provided by law. Party B shall not indemnify Party A, and Party A shall not indemnify Party B, for any claims, suits, actions,



damages, and costs resulting from the performance of its obligations under this Agreement.

The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

MORGAN STANLEY CAPITAL SERVICES  
INC.

By: *Nina C. Simmons*

Title: NINA G. SIMMONS  
VICE PRESIDENT

NEW YORK STATE THRUWAY  
AUTHORITY

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

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

damages, and costs resulting from the performance of its obligations under this Agreement.

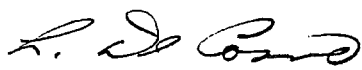
The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

MORGAN STANLEY CAPITAL SERVICES  
INC.

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

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

NEW YORK STATE THRUWAY  
AUTHORITY

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

Title: Treasurer

**APPENDIX A**  
**STANDARD CLAUSES FOR NEW YORK STATE THRUWAY AUTHORITY AND**  
**NEW YORK STATE CANAL CORPORATION PROCUREMENT CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind ("the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party and its agents, successors and assigns, other than the Thruway Authority ("Authority") or Canal Corporation ("Corporation"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. NON-ASSIGNMENT CLAUSE.** This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority/Corporation and any attempts to assign the contract without the Authority's/Corporation's written consent are null and void.

**2. COMPTROLLER APPROVAL.** Unless otherwise provided by resolution of the Authority or Corporation Board, if this contract involves the expenditure of funds for goods or services in excess of \$25,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this contract, the Authority/Corporation agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, this contract shall not be valid, effective or binding upon the Authority/Corporation until it has been approved by the State Comptroller and filed in his office.

**3. WORKERS' COMPENSATION AND DISABILITY BENEFITS.**

This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the State Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

**4. NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in

accordance with State Labor Law §220-e, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in State Labor Law §230, then, in accordance with §239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of any moneys due hereunder for a second or subsequent violation.

**5. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the State Labor Law.

**6. NON-COLLUSIVE BIDDING REQUIREMENT.**

In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and

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delivered to the Authority/Corporation a non-collusive bidding certification on Contractor's behalf.

**7. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Authority/Corporation within five (5) business days of such conviction, determination or disposition of appeal.

**8. SET-OFF RIGHTS.** The Authority/Corporation shall have rights of set-off. These rights shall include, but not be limited to, the Authority's/Corporation's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing by the Contractor to the Authority/Corporation with regard to this contract, or any other contract with the Authority/Corporation, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority/Corporation for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority/Corporation and third parties in connection therewith.

**9. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority/Corporation, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and

reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of completion of the work of the contract or the end date of the term stated in the contract.

**10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Authority/Corporation must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in State Tax Law §5. Disclosure of this information by the seller or lessor to the Authority/Corporation is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority/Canal Corporation, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

**11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority/Corporation is committed to

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expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Authority/Corporation; or (ii) a written agreement in excess of \$100,000 whereby the Authority/Corporation is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.

(b) At the request of the Authority/Corporation, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance this contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such work is for the

beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities.

12. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

13. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

14. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880, and 21 NYCRR Part 109.

15. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

16. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the Authority's/Corporation's receipt of the return thereof by the United State Postal Service as refused or undeliverable. Contractor must promptly notify the Authority/Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Authority/Corporation to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

17. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless

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specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the Authority/Corporation.

NYS Department of Economic Development  
Minority and Women's Business Development  
Division  
30 South Pearl Street  
Albany, NY 12245  
<http://www.empire.state.ny.us/>

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in State Finance Law §165. Any such use must meet with the approval of the Authority/Corporation; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the Authority/Corporation.

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, the Contractor certifies that whenever the total bid amount is greater than \$1 million:

**18. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in State Finance Law §165), and shall permit independent monitoring of compliance with such principles.

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the Authority/Corporation;

**19. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the NYS Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the Authority/Corporation upon request; and

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl Street  
Albany, NY 12245  
Phone: (518) 292-5220

A directory of certified minority and women-owned business enterprises is available from:

(d) The Contractor acknowledges that the Authority/Corporation may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the Authority/Corporation in these efforts.

**20. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapters 684 and 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact

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the Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

21. **LIABILITY.** The Contractor shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of the Contractor in connection with its services under this contract. Further, it is expressly understood that the Contractor shall indemnify and save harmless the Authority/Corporation and/or the State of New York, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of the Contractor or the quality of goods provided under this contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. The provisions of this clause shall survive the expiration or termination of this contract.

22. **OBSERVANCE OF LAWS.** The Contractor agrees to observe all Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

23. **INDEPENDENT CONTRACTOR.** The Contractor is and shall be, in all respects, an independent contractor in performing services pursuant to this contract. In accordance with its status as an independent contractor, the Contractor covenants and agrees that neither it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of the Authority/Corporation, and that neither the Contractor nor its agents and employees shall make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Authority/Corporation, including but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

24. **NO WAIVER OF PROVISIONS.** The Authority's/Corporation's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority/Corporation of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority/Corporation, and such waiver shall be limited

to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

25. **ENTIRE AGREEMENT.** This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

EXHIBIT A to Schedule

Form of Confirmation

October \_\_, 2003

XL Capital Assurance Inc. INSURED CONFIRMATION

New York State Thruway Authority  
200 Southern Boulevard  
Albany, NY 12209  
Attention: Chief Financial Officer  
Facsimile No.: 518-471-5050  
Telephone No.: 518-436-2820  
Tax ID:

Ladies and Gentlemen:

The purpose of this letter agreement (the "Confirmation") is to set forth the terms and conditions of the Transaction entered into between COUNTERPARTY X ("Party A") and the NEW YORK STATE THRUWAY AUTHORITY ("Party B") on the Trade Date specified below (the "Transaction"). This Transaction constitutes an "Insured Transaction" as referred to in the Agreement specified below.

The definitions and provisions contained in the 2000 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc.) (the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between those Definitions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms part of, and is subject to the Master Agreement and Schedule thereto dated as of October \_\_, 2003 (the "Agreement") between you and us. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:—

Party A: COUNTERPARTY X

Party B: NEW YORK STATE THRUWAY AUTHORITY

[Notional Amount:]

Trade Date:

Effective Date:

Termination Date:

FIXED AMOUNTS:

EXHIBIT A

Page 1



Fixed Rate Payer:

[Party A/B]

Fixed Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment of Early Payment applies]:

[ \_\_\_\_\_ ], subject to adjustment in accordance with the [Following/Modified Payment or [Following/Preceding] Business convention, with respect to a \_\_\_\_\_ Banking Day and a \_\_\_\_\_ Banking Day [with No Adjustment of Period End Dates].

[Fixed Amount:]

Fixed Rate:

Fixed Rate Day Count Fraction:

FLOATING AMOUNTS:

Floating Rate Payer:

[Party B/A]

[Floating Rate Payer Currency Amount:]

Floating Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment or Early Payment applies]:

[ \_\_\_\_\_ ], subject to adjustment in accordance with the [Following/Modified Payment or [Following/Preceding] Business convention, with respect to a \_\_\_\_\_ Banking Day and a \_\_\_\_\_ Banking Day [with No Adjustment of Period End Dates].

Floating Rate for initial Calculation Period:

Floating Rate Option:

Designated Maturity:

Floating Rate Spread:

[plus/minus] % p.a.

Floating Rate Day Count Fraction:

Floating Rate Reset Dates:

[Rate Cut-off Dates:]

[Floating Rate Method of Averaging:

Unweighted/Weighted Average Rate]

Compounding:

Applicable/Inapplicable

[Compounding Dates:]

[Initial Exchange:

Initial Exchange Date:

Party A Initial Exchange  
Amount:

Party B Initial Exchange  
Amount:

Final Exchange:

Final Exchange Date:

Party A Final Exchange  
Amount:

Party B Final Exchange  
Amount:]

Calculation Agent:

3. Account Details

Payments to Party A

Account for payments in [first currency]: [ ]

Account for payments in [second currency]: [ ]

Payments to Party B

Account for payments in [second currency]: [ ]

Account for payments in [first currency]: [ ]

4. Offices

The Office of Party B for the Transaction is [ .]

5. [Broker/Arranger: ]

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,

COUNTERPARTY X

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

Name: \_\_\_\_\_

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

Accepted and confirmed as of the  
Trade Date

NEW YORK STATE THRUWAY AUTHORITY

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

Name: \_\_\_\_\_

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

ANNEX I  
to Confirmation, dated October \_\_, 2003  
between Morgan Stanley Capital Services Inc. and  
New York State Thruway Authority

<u>Reduction Date</u>	<u>Notional Reduction Amount</u>	<u>Outstanding Motional Amount</u>
3/15/2010		
3/15/2011		
3/15/2012		
3/15/2013		
3/15/2014		
3/15/2015		
3/15/2016		
3/15/2017		
3/15/2018		
3/15/2019		
3/15/2020		
3/15/2021		

EXHIBIT B

[FORM OF GUARANTEE OF MORGAN STANLEY]

Morgan Stanley

MORGAN STANLEY  
1585 BROADWAY  
NEW YORK, NY 10036-8293

Date

[Address]

Ladies and Gentlemen:

In consideration of that certain ISDA Master Agreement dated as of [date] between Morgan Stanley Capital Services Inc., a Delaware corporation (hereinafter "MSCS") and [counterparty] (hereinafter "Counterparty") (such ISDA Master Agreement, together with each Confirmation exchanged between the parties pursuant thereto, hereinafter the "Agreement"), Morgan Stanley, a Delaware corporation (hereinafter "MS"), hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date of the Agreement, the due and punctual payment of all amounts payable by MSCS under the Agreement when the same shall become due and payable, whether on Scheduled Payment Dates, upon demand, upon declaration of termination or otherwise, in accordance with the terms of the Agreement and giving effect to any applicable grace period. Upon failure of MSCS punctually to pay any such amounts, and upon written demand by Counterparty to MS at its address set forth in the signature block of this Guarantee (or to such other address as MS may specify in writing), MS agrees to pay or cause to be paid such amounts; provided that delay by Counterparty in giving such demand shall in no event affect MS's obligations under this Guarantee.

MS hereby agrees that its obligations hereunder shall be unconditional and will not be discharged except by complete payment of the amounts payable under the Agreement, irrespective of any claim as to the Agreement's validity, regularity or enforceability or the lack of authority of MSCS to execute or deliver the Agreement; or any change in or amendment to the Agreement; or any waiver or consent by Counterparty with respect to any provisions thereof; or the absence of any action to enforce the Agreement or the recovery of any judgment against MSCS or of any action to enforce a judgment against MSCS under the Agreement; or any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally. MS hereby waives diligence, presentment, demand on MSCS for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against MSCS and protest or notice, except as provided for in the Agreement with respect to amounts payable by MSCS. If at any time payment under the Agreement is rescinded or must be otherwise restored or returned by Counterparty upon the insolvency, bankruptcy or reorganization of MSCS or MS or otherwise, MS's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by Counterparty.

MS represents to Counterparty as of the date hereof, which representations will be deemed to be repeated by MS on each date on which a Transaction is entered into, that:

EXHIBIT B

Page 1

(1) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;

(2) its execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

(3) all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

(4) this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

By accepting this Guarantee and entering into the Agreement, Counterparty agrees that MS shall be subrogated to all rights of Counterparty against MSCS in respect of any amounts paid by MS pursuant to this Guarantee, provided that MS shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by MSCS under the Agreement.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York. All capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Agreement.

MORGAN STANLEY

By: \_\_\_\_\_  
Name:  
Title:  
Address: 1585 Broadway  
3rd Floor  
New York, NY 10036  
Attention: Derivative Products Group  
Fax No.: (212) 761-0162

EXHIBIT C to Schedule

[Form of Opinion of Counsel to Party B]

October \_\_, 2003

Morgan Stanley Capital Services Inc.  
New York, New York

Morgan Stanley  
New York, New York

XL Capital Assurance Inc.  
1221 Avenue of the Americas  
New York, New York 10020

Ladies and Gentlemen:

We have acted as counsel to New York State Thruway Authority, a body corporate and politic constituting a public corporation of the State of New York ("Party B") in connection with the execution and delivery of the Master Agreement, Schedule and Credit Support Annex thereto (the "Master Agreement") dated as of October \_\_, 2003 between Counterparty X ("Party A") and Party B and the Confirmation(s), dated \_\_\_\_\_, 2003 (the "Initial Confirmation(s)"), each between Party A and Party B. The Master Agreement together with the Initial Confirmation(s) shall constitute one agreement and hereinafter is referred to as the "Agreement".

In connection with this opinion, we have examined executed copies of the Master Agreement and such documents and records of Party B, certificates of public officials and officers of Party B and such other documents as we have deemed necessary or appropriate for the purposes of this opinion. In this opinion, we have assumed the genuineness of all the signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed or photostatic copies.

Party B has authorized the Agreement by and pursuant to Resolution No. 5316 adopted by the Board of Party B on September 17, 2003. In addition, pursuant to the Guidelines for Interest Rate Exchange Agreements, adopted by Party B pursuant to said Article 5-D on December 5, 2002 (the "Guidelines"), Public Financial Management, Inc., has issued a letter dated October \_\_, 2003, to Party B finding that the terms and conditions of the Agreement reflect a fair market value. We have relied on such letter, without further investigation, in rendering this opinion.

Based upon the foregoing, we are of the opinion that:

1. Party B is a body corporate and politic constituting a public corporation of the State of New York duly organized and validly existing under the laws of the State of New York.

2. Party B is authorized under the New York State Thruway Authority Act, Title 9 of Article 2 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended, Article 5-D of the State Finance Law, the Guidelines, the Financing Agreement (as

defined in the Agreement) and the Resolution (as defined in the Agreement), to enter into the Agreement and to perform its obligations thereunder.

3. Party B has taken all necessary action required to be taken to ensure that the Agreement complies in all respects with the New York State Thruway Authority Act, Article 5-D of the State Finance Law, the Guidelines and the Resolution.

4. The Agreement has been duly executed and delivered by Party B and constitutes a legally valid and binding obligation of Party B enforceable against Party B in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law); provided, however, that this opinion is subject to the qualification that in connection with any early termination on the grounds of default, a court might limit the non-Defaulting Party's recovery to its actual damages in the circumstances, imposing its own settlement procedures in lieu of the provisions of Section 6(e) of the Agreement.

5. To the best of our knowledge, no consent, authorization, license or approval of, or registration or declaration with, any governmental authority is required in connection with the execution, delivery and performance of the Agreement by Party B.

6. The Agreement is a special limited obligation of Party B, and all amounts payable under the Agreement constitute Subordinate Obligations. The obligation of Party B to make such payments is secured solely by a pledge of and lien on Revenues on deposit in the Administrative Fund, subject and subordinate in all respects to the pledge of and lien on such Revenues created by Section 501 of the Resolution in favor of the payment of the Principal and Redemption Price of, and Sinking Fund Installments for, and interest on, the Bonds, and to the requirements of the Resolution for withdrawals from the Revenue Fund for deposit into the Bond Service Fund and any Bond Service Reserve Fund as provided therein. Capitalized terms used in this paragraph and not defined have the respective meanings ascribed to such terms in the Resolution.

Our opinion is rendered only with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or any other material of any kind not specifically opined on above. No other opinions are intended nor should they be inferred. This opinion is issued as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law, or in interpretations thereof, that may hereinafter occur, or for any other reason whatsoever.

This opinion is solely for your information and assistance and may not be relied upon by any other person.

Very truly yours,