**LOAN AGREEMENT**

between

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**

and

**WESTERN ENCORE PROPERTIES INCORPORATED**

Dated as of May 1, 2022

Relating to:

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY  
CHARTER SCHOOL REVENUE BONDS**

**(ENCORE EDUCATION CORPORATION)**

**SERIES 2022 (TAXABLE)**

ARTICLE I DEFINITIONS 2

Section 1.01. Definitions 2

Section 1.02. Interpretation 2

ARTICLE II FINDINGS, REPRESENTATIONS, COVENANTS AND WARRANTIES 3

Section 2.01. Findings by the Authority 3

Section 2.02. Representations and Warranties of the Authority 3

Section 2.03. Representations and Warranties of the Borrower 3

Section 2.04. Representations and Warranties of the Landlord 8

ARTICLE III LOAN FINANCING; LOAN REPAYMENTS; INDEMNIFICATION; construction draws 11

Section 3.01. Agreement to Issue Bonds and Application of Bond Proceeds 11

Section 3.02. The Loan; Loan Repayments; Intercept; Additional Payments 11

Section 3.03. Costs of Issuance and Other Expenses 14

Section 3.04. Indemnification 15

Section 3.05. Condition Precedent 16

Section 3.06. Covenants to Prepay 16

ARTICLE IV ADDITIONAL COVENANTS AND AGREEMENTS OF BORROWER 17

Section 4.01. Inspection of Books 17

Section 4.02. Reports and Information 17

Section 4.03. Notice 17

Section 4.04. Reliance 17

Section 4.05. Financial Statements 18

Section 4.06. Continuing Disclosure 18

Section 4.07. Warranty of Truth 18

Section 4.08. Prohibited Uses 18

Section 4.09. Indenture Provisions 18

ARTICLE V ADDITIONAL COVENANTS AND AGREEMENTS OF THE LANDLORD 18

Section 5.01. Inspection of Books 18

Section 5.02. Reports and Information 18

Section 5.03. Reliance 19

Section 5.04. Warranty of Truth 19

Section 5.05. Prohibited Uses 19

Section 5.06. Applicable Laws 19

Section 5.07. Enforcement of the Lease Agreement 19

ARTICLE VI DEFAULTS AND REMEDIES 19

Section 6.01. Events of Default 19

Section 6.02. Remedies 21

Section 6.03. Additional Remedies 21

Section 6.04. No Remedy Exclusive 21

Section 6.05. No Additional Waiver Implied by One Waiver 22

Section 6.06. Agreement to Pay Fees and Expenses Upon Default 22

Section 6.07. Proofs of Claim 22

Section 6.08. Treatment of Funds in Bankruptcy 23

ARTICLE VII PREPAYMENT 23

Section 7.01. Prepayment of the Loan 23

Section 7.02. Redemption of Bonds Upon Prepayment 24

Section 7.03. Amount of Prepayment 24

ARTICLE VIII MISCELLANEOUS 24

Section 8.01. Notice 24

Section 8.02. Concerning Successors and Assigns 25

Section 8.03. Governing Law; Venue 25

Section 8.04. Amendments; Modifications in Writing 25

Section 8.05. Captions 25

Section 8.06. Severability 25

Section 8.07. Counterparts and Electronic Execution 25

Section 8.08. Effective Date and Term 26

Section 8.09. Non‑Liability of Authority 26

Section 8.10. Expenses 28

Section 8.11. Waiver of Personal Liability 28

Section 8.12. No Prevailing Party Provision 28

Section 8.13. Binding Effect 28

Section 8.14. Authority’s Performance 28

Section 8.15. Survival of Covenants 29

Section 8.16. Covenant by Borrower and Landlord with respect to Statements, Representations and Warranties 29

**THIS LOAN AGREEMENT** (this “Loan Agreement”), dated as of May 1, 2022, is by and among the **CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY** (the “Authority”), a public instrumentality of the State of California, and **WESTERN ENCORE PROPERTIES INCORPORATED**, a California nonprofit public benefit corporation (the “Borrower”), and accepted and acknowledged by **16955 LEMON STREET LLC**, a California limited liability company (the “Landlord”).

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

**WHEREAS**, the Authority is a joint exercise of powers authority organized and operating under the provisions of Article 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, as amended (the “Act”) and a Joint Exercise of Powers Agreement, dated June 1, 2006 (the “Joint Powers Agreement”), among the cities of Eureka, Lancaster and Selma and other public agencies who have and may subsequently become associate members of the Authority;

**WHEREAS**, the Authority proposes to issue its California Enterprise Development Authority Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable) (the “Bonds”) in the aggregate principal amount of $ \_\_\_\_\_\_\_\_\_\_\_\_, pursuant to an Indenture, dated as of May 1, 2022 (the “Indenture”), by and between the Authority and UMB Bank, N.A. (the “Bond Trustee”);

**WHEREAS**,proceeds of the Bonds will be applied to fund a loan to the Borrower to finance working capital for the Borrower;

**WHEREAS,** the Borrower was formed as a supporting organization for Encore Education Corporation, a California nonprofit public benefit corporation and an entity described in Section 501(c)(3) of the Code (“Encore Education” or the “Lessee”);

**WHEREAS,** the Facility is leased by the Landlord, a California limited liability company the Sole Member of which is the Borrower, to the Lessee for the operation of the School (as defined herein) pursuant to the Lease (as defined herein);

**WHEREAS**, during the term of the Lease, the Facility will be used, occupied and operated in conjunction with the Encore Jr./Sr. High School for the Performing and Visual Arts (the “School”);

**WHEREAS,** the Landlord will advance the proceeds of the loan from the Authority to Lessee pursuant to the Lease;

**WHEREAS**, the Authority has determined that all acts and proceedings required by law necessary to constitute this Loan Agreement a valid and binding legal agreement of the Authority for the uses and purposes herein set forth, in accordance with its terms, have been done and taken, and the execution and delivery of this Loan Agreement by the Authority have been in all respects duly authorized;

**NOW**, **THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

# DEFINITIONS

## **Definitions**. Unless the context otherwise requires, all terms used herein shall have the meanings assigned to such terms in Section 1.01 of the Indenture.

## **Interpretation**. In this Loan Agreement, unless the context otherwise requires:

### The terms “hereby,” “hereof,” “herein,” “hereunder,” “hereinafter” and any similar terms as used in this Loan Agreement, refer to this Loan Agreement as a whole and not to a particular section or provision of this Loan Agreement, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the effective date of this Loan Agreement.

### Words of the any gender shall mean and include correlative words of any other gender, and words importing the singular number shall mean and include the plural number, and vice versa.

### Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

### Any headings or titles preceding the texts of the several Articles and Sections of this Loan Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Loan Agreement nor affect its meaning, construction or effect.

### Any certificates, letters or opinions required to be given pursuant to this Loan Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Loan Agreement.

### Every “request,” “order,” “demand,” “application,” “notice,” “statement,” “certificate,” “consent,” “instruction,” or similar action hereunder shall, unless the form thereof is specifically provided herein, be in writing, and in the case of the Authority or the Borrower, signed by an Authorized Representative of the Authority or the Borrower, as the case may be.

### The parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Loan Agreement and the Indenture. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Loan Agreement or the Indenture or any amendment or supplement or exhibit hereto or thereto.

### Notwithstanding any provision of this Loan Agreement to the contrary, in the case of any provision of this Loan Agreement or of the Indenture providing for the consent or approval of any Bondholder or of the Bond Trustee, the Borrower and Landlord each hereby acknowledges and agrees that the granting, approval, rejection or withholding of any requested consent, waiver or authorization to take or refrain from taking any action contemplated or required hereunder may be withheld or granted in the Bond Trustee’s or any Bondholder’s sole and absolute discretion.

# FINDINGS, REPRESENTATIONS, COVENANTS AND WARRANTIES

## **Findings by the Authority**. The Authority hereby finds and determines, based upon the representations, warranties and agreements of the Borrower and the Landlord and such other information as the Authority deems necessary, that (i) the Authority is a joint exercise of powers agency duly organized and existing under the laws of the State of California, and is duly authorized to issue the Bonds and to perform its obligations under this Loan Agreement; (ii) the Loan to be made hereunder with proceeds of the Bonds will promote the purposes of the Act by providing funds to pay the costs of a “project” as defined in the Act; (iii) said Loan is in the public interest, serves a public purpose and meets the requirements of the Act; and (iv) the amount of the Loan (corresponding to the portion of the proceeds of the Bonds allocated under the Indenture to the funding of the Project) does not exceed the costs of the Project as determined by the Borrower.

## **Representations and Warranties of the Authority**.

### The Authority is a joint exercise of powers agency duly organized and existing under the laws of the State and is duly authorized to issue the Bonds and to perform its obligations under this Loan Agreement.

### All requirements have been met and procedures have occurred in order to authorize the execution and delivery of this Loan Agreement. The Authority has taken all necessary action and has complied with all provisions of the law required to make this Agreement a valid and binding limited obligation of the Authority, except to the extent limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity, or by public policy.

### The Bonds have been duly authorized, executed and delivered by the Authority. Nothing in this Loan Agreement shall be construed as requiring the Authority to provide any financing for the purposes hereof other than the proceeds of the Bonds or to provide sufficient moneys for all of the cost of financing the Borrower’s working capital.

### To the best knowledge of the Authority, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Authority that (i) affects or seeks to prohibit, restrain or enjoin the issuance, execution or delivery of the Bonds, the origination of the loan or the lending of the proceeds of the Bonds to the Borrower, or the execution and delivery of the Financing Documents or (ii) affects or questions the validity or enforceability of the Bonds or the Financing Documents.

## **Representations and Warranties of the Borrower**. The Borrower represents and warrants to the Authority that, as of the date of the execution and delivery of this Loan Agreement and as of the date of delivery of the Bonds to the initial purchasers thereof (such representations and warranties to remain operative and in full force and effect regardless of the issuance of the Bonds or any investigations by or on behalf of the Authority or the results thereof):

### The Borrower is a nonprofit public benefit corporation duly incorporated and in good standing under the laws of the State, and has full legal right, power and authority to enter into the Borrower Documents, and to carry out all of its obligations under and consummate all transactions contemplated by the Borrower Documents, and by proper corporate action has duly authorized the execution, delivery and performance of the Borrower Documents.

### The officers of the Borrower executing the Borrower Documents are duly and properly in office and fully authorized to execute the same.

### The Borrower Documents have been duly authorized, executed and delivered by the Borrower.

### The Borrower Documents, when assigned to the Bond Trustee pursuant to the Indenture, will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower by the Bond Trustee in accordance with their terms for the benefit of the Holders of the Bonds, and the Retained Authority Rights constitute the legal, valid, and binding agreements of the Borrower enforceable against the Borrower by the Authority in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy, or the exercise of judicial discretion in appropriate cases.

### The execution and delivery of the Borrower Documents, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the articles of incorporation of the Borrower, its bylaws, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Documents, or the financial condition, assets, properties or operations of the Borrower.

### No consent or approval of any trustee or holder of any indebtedness of the Borrower or any guarantor of indebtedness of or other provider of credit or liquidity of the Borrower, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except with respect to any state securities or “blue sky” laws) is necessary in connection with the execution and delivery of the Borrower Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

### There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower or the assets, properties or operations of the Borrower which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Borrower Documents, or upon the financial condition, assets, properties or operations of the Borrower.

### the Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) (i) under the Borrower Documents, or (ii) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default could reasonably be expected to have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Documents or the Indenture, or the financial condition, assets, properties or operations of the Borrower. The Landlord enjoys the peaceful and undisturbed possession of the Facility, subject to the Lease.

### All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements of the [Lessee].

### No written information, exhibit or report furnished to the Authority by the Borrower in connection with the negotiation of the Borrower Documents contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

### The Borrower received a letter from the Internal Revenue Service indicating that it was an organization described in Section 501(c)(3) of the Code and was exempt from federal income tax under Section 501(a) of the Code, except for unrelated business taxable income under Section 511 of the Code, and that it was not a private foundation as described in Section 509(a) of the Code; however, the Borrower’s status as an organization described in Section 501(c)(3) of the Code was revoked, effective November 15, 2018, and the Borrower has applied for reinstatement of its status retroactive to the date of revocation.

### The Loan will be used by the Borrower solely to satisfy one or more of its charitable purposes, which have been previously recognized by the Internal Revenue Service as bona fide charitable purposes. The Borrower has full power and authority to carry on its business as now being conducted and to enter into the Borrower Documents and the transactions contemplated therein.

### All financial statements and information heretofore delivered to the Authority or posted to EMMA by or on behalf of the Borrower, including without limitation, information relating to the financial condition of the Members of the Obligated Group, the Project, and/or any guarantor, and including the audited balance sheets of the Lessee at June 30, 2021, and the related statements of income and statements of cash flows of the Lessee for the year ended June 30, 2021 (copies of which have been furnished to the Authority) fairly and accurately present the financial position of each respective entity at such date and the results of operations for the year ended on such date, and have been prepared (except where specifically noted therein) in accordance with generally accepted accounting principles consistently applied. Since the date of such statements, except as set forth in the Private Placement Memorandum, there has been no material adverse change in the financial condition or results of operations of the Lessee or the Borrower or other subjects of such statements.

### The Borrower’s purposes, character, activities, and methods of operation have not changed since its organization and are not different from the purposes, character, activities and methods of operation contemplated at the time of its determination by the Internal Revenue Service to be an organization described in Section 501(c)(3) of the Code; the Borrower has not and will not divert any part of its corpus or income for a purpose or purposes other than the purpose or purposes for which it is organized or operated; the Borrower has not operated, and will not operate, in a manner that would result in it being classified as an “action” organization within the meaning of Section 1.501(c)(3)-1(c)(3) of the Regulations, including, but not limited to, promoting or attempting to influence legislation by propaganda or otherwise as a substantial part of its activities; none of its directors, officers, or any related Persons, or any other Person having a private or professional interest in the Borrower’s activities has acquired or received, nor will such Persons be allowed to acquire or receive, directly or indirectly, any of the Borrower’s goods, services, income or assets, without fair compensation or consideration received in exchange therefor; the Borrower has not devoted and will not devote more than an insubstantial part of its activities in furtherance of a purpose other than an exempt purpose within the meaning of Section 501(c)(3) of the Code; and the Borrower has not taken any action, nor knows of any action that any other Person has taken, nor knows of the existence of any condition [that would prevent the Internal Revenue Service from reinstating its exemption from federal income taxation under Section 501(c)(3) of the Code].

### The Borrower shall not use (or permit the use of) any proceeds of the Bonds, or any income from the investment thereof or any property financed or refinanced with such proceeds or income, in any trade or business carried on by any Person other than itself and the Lessee.

### Except as provided in the Master Indenture, the Indenture and this Loan Agreement, the Borrower shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Loan Agreement and shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of the Bonds.

### The Borrower has made and shall continue to make all required contributions to all employee benefit plans, if any, and Borrower has no knowledge of any material liability which has been incurred by the Borrower and remains unsatisfied for any taxes or penalties with respect to any employee benefit plan or any multi‑employer plan, and each such plan has been administered in compliance with its terms and the applicable provisions of ERISA and any other federal or state law.

### The Borrower has no known material contingent liabilities, and has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Borrower is a party or by which the Borrower is otherwise bound, other than obligations incurred in connection with the ownership and operation of the Facility incurred in the ordinary course of its operations, including obligations pursuant to the 2016 Loan Agreement.

### The Borrower has not entered into this transaction or any Borrower Document with the actual intent to hinder, delay, or defraud any creditor and the Borrower has received reasonably equivalent value in exchange for its obligations under the Borrower Documents. Giving effect to the transactions contemplated by the Borrower Documents, the fair saleable value of the Borrower’s assets exceeds and will, immediately following the execution and delivery of the Borrower Documents, exceed the Borrower’s total liabilities, including, without limitation, subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower’s assets is and will, immediately following the execution and delivery of the Borrower Documents, be greater than the Borrower’s probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

### The Borrower is not (1) required to be qualified as an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (2) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (3) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

### The Borrower reasonably believes that the Gross Revenues will be sufficient (without any other borrowing) during the term of the Loan to pay the principal of, prepayment premium, if any, and interest on the Loan.

### All representations, warranties and certifications made by the Lessee or the Borrower in connection with the delivery of the Bonds on the Closing Date, including, but not limited to, those representations, warranties and certifications contained in any certificate or agreement executed by the Borrower, are true, correct, and complete in all material respects as of the Effective Date.

### The Landlord has and will have title to or a leasehold estate in the Facility sufficient to carry out the purposes of this Loan Agreement and the Lease.

### The Borrower does not have any material contingent liability in connection with any release of any Hazardous Substances into the environment.

### All material certificates, approvals, permits and authorizations of applicable local governmental agencies, and agencies of the State and the federal government have been or will be obtained with respect to the Facility and will be acquired, constructed, expanded, remodeled, renovated, improved, furnished, equipped and/or installed (as applicable) and the Facility will be operated pursuant to and in accordance with such certificates, approvals, permits and authorizations.

### The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing its working capital; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which the Borrower is a party or of which it is a beneficiary, including the Indenture; that it understands the risks inherent in such transactions; and that it has not relied on the Authority for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Documents and the Indenture or otherwise relied on the Authority for any advice.

### The Facility is not in violation of any federal, state or local Environmental Regulations. Neither the Borrower nor the Facility is the subject of a federal, state or local investigation evaluating whether any remedial action is needed to respond to any alleged violation of or condition regulated by Environmental Regulations or to respond to a release of any Hazardous Substances into the environment.

### Every surviving, resulting or transferee entity and other person referred to in this Section shall be bound by all of the covenants and agreements of the Borrower herein.

### The Borrower hereby acknowledges receipt of an original counterpart of the Indenture and hereby approves the Indenture.

### The Borrower shall, within 30 days of receipt of a written request from the Authority, provide any information necessary to fulfill the Authority’s reporting obligations under Government Code Section 8855 and shall provide such additional information as may be requested by the Authority.

## **Representations and Warranties of the Landlord**. The Landlord represents and warrants to the Authority that, as of the date of execution of this Loan Agreement and as of the date of delivery of the Bonds to the initial purchasers thereof (such representations and warranties to remain operative and in full force and effect regardless of the issuance of the Bonds or any investigations by or on behalf of the Authority or the results thereof):

### The Landlord is a duly organized limited liability company in good standing under the laws of the State, and has full legal right, power and authority to accept and acknowledge this Loan Agreement, and to carry out all of its obligations under and consummate all transactions contemplated by this Loan Agreement, and by proper corporate action has duly authorized the execution, delivery and performance of this Loan Agreement.

### The officers of the Landlord, or of the sole member or manager of the Landlord as the case may be, are duly and properly in office and are fully authorized to execute this Loan Agreement.

### This Loan Agreement has been duly authorized, executed and delivered by the Landlord.

### This Loan Agreement is, and when assigned to the Bond Trustee pursuant to the Indenture, will constitute the legal, valid and binding agreement of the Landlord enforceable against the Landlord by the Bond Trustee in accordance with its terms for the benefit of the Holders of the Bonds, and any Retained Authority Rights or other obligations of the Landlord not so assigned to the Bond Trustee constitute the legal, valid, and binding agreements of the Landlord enforceable against the Landlord by the Authority in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors’ rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy, or the exercise of judicial discretion in appropriate cases.

### The execution and delivery of this Loan Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the articles of organization of the Landlord, its operating agreements, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Landlord is a party or by which the Landlord or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Landlord, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Loan Agreement, or the financial condition, assets, properties or operations of the Landlord.

### There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Landlord, after reasonable investigation, threatened, against or affecting the Landlord or the assets, properties or operations of the Landlord which, if determined adversely to the Landlord or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, this Loan Agreement, or upon the financial condition, assets, properties or operations of the Landlord, and the Landlord is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Loan Agreement, or the financial condition, assets, properties or operations of the Landlord. All tax returns (federal, state and local) required to be filed by or on behalf of the Landlord have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Landlord in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements of the Lessee. The Landlord enjoys the peaceful and undisturbed possession of the Facility, subject to the Lease.

### The Landlord has full power and authority to carry on its business as now being conducted and to enter into this Loan Agreement and the transactions contemplated therein.

### All representations, warranties and certifications made by the Landlord in connection with the delivery of the Bonds on the Closing Date, are true, correct, and complete in all material respects as of the Closing Date.

### The Facility is not in violation of any federal, state or local Environmental Regulations. Neither the Landlord nor the Facility is the subject of a federal, state or local investigation evaluating whether any remedial action is needed to respond to any alleged violation of or condition regulated by Environmental Regulations or to respond to a release of any Hazardous Substances into the environment.

### The Landlord has no known material contingent liabilities, and has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Landlord is a party or by which the Landlord is otherwise bound, other than obligations incurred in connection with the ownership and operation of the Facility incurred in the ordinary course of its business, including obligations pursuant to the 2016 Loan Agreement.

### The Landlord does not have any material contingent liability in connection with any release of any Hazardous Substances into the environment.

### The Landlord represents that (a) it is a single member limited liability company, (b) its sole member is the Borrower, (c) it has not filed Form 8832 to be treated as a corporation and has not otherwise made an election to be treated as a corporation for federal income tax purposes, (d) the Landlord’s sole member has not filed Form 8832 to treat the Landlord as a corporation and has not otherwise made an election to treat the Landlord as a corporation for federal income tax purposes, and (e) the Landlord continues to be treated, or has made an election to be treated, as a single member “disregarded entity” for federal income tax purposes.

### The Landlord has and will have title to or a leasehold estate in the Facility sufficient to carry out the purposes of this Loan Agreement and Lease.

### All material certificates, approvals, permits and authorizations of applicable local governmental agencies, and agencies of the State and the federal government have been or will be obtained with respect to the Facility and the Facility will be operated pursuant to and in accordance with such certificates, approvals, permits and authorizations.

### The Landlord acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to this Loan Agreement; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions; and that it has not relied on the Authority for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Loan Agreement and the Indenture or otherwise relied on the Authority for any advice.

### Every surviving, resulting or transferee entity and other person referred to in this Section shall be bound by all of the covenants and agreements of the Landlord herein.

# LOAN FINANCING; LOAN REPAYMENTS; INDEMNIFICATION; construction draws

## **Agreement to Issue Bonds and Application of Bond Proceeds.**

### To fund the Loan and for the other purposes set forth in the Indenture, the Authority, concurrently with the execution and delivery of this Loan Agreement, will issue, sell and deliver the Bonds and direct the proceeds thereof to be deposited with the Bond Trustee and applied as provided in Article III of the Indenture. The Authority and the Borrower hereby agree that the proceeds of the Bonds shall be applied solely in accordance with the Indenture.

### The Borrower hereby approves the terms of the Indenture, the assignment thereunder to the Bond Trustee of the rights, title, and interest of the Authority in this Loan Agreement (except for the Retained Authority Rights) and the issuance of the Bonds, and to the extent applicable, agrees to be bound by such terms.

### In consideration of the issuance of the Bonds by the Authority and the application of the proceeds thereof as provided in the Indenture, the Borrower agrees to issue, or cause to be issued, and to cause to be authenticated and delivered to the Authority or its designee, pursuant to the Master Indenture of Trust and the Supplemental MTI for Obligation No. 2, concurrently with the issuance and delivery of the Bonds, Obligation No. 2 in substantially the form set forth in Section 11 of the Supplemental MTI for Obligation No. 2. The Authority agrees that Obligation No. 2 shall be registered in the name of the Bond Trustee. The Borrower agrees that the aggregate principal amount of Obligation No. 2 shall be limited to \_\_\_\_ Million \_\_\_\_ Hundred Thousand dollars ($\_\_\_\_\_\_\_\_\_\_\_\_), except for any Obligation No. 2 subsequently authenticated and delivered in lieu of another Obligation No. 2 as provided in Section 7 of the Supplemental MTI for Obligation No. 2 with respect to the mutilation, destruction, loss or theft of Obligation No. 2 or, subject to the provisions of Section 6 of the Supplemental MTI for Obligation No. 2, upon transfer of registration of Obligation No. 2. Issuance and delivery of the Bonds by the Authority shall be a condition of the issuance and delivery of Obligation No. 2.

### The Borrower agrees that, except as otherwise provided in this Section 3.01(d), so long as any Bond remains Outstanding, Obligation No. 2 shall be issuable only as a single obligation without coupons, registered as to principal and interest in the name of the Bond Trustee, and no transfer of Obligation No. 2 shall be registered under the Master Indenture of Trust or be recognized by the Borrower except for transfers to a successor Bond Trustee. Upon the principal of Obligation No. 2 being declared immediately due and payable, Obligation No. 2 may be transferred if and to the extent that the Bond Trustee requests that the aforementioned restrictions on transfers of this Section 3.01(d) be terminated.

## **The Loan; Loan Repayments; Intercept; Additional Payments.**

### The Loan. The Authority agrees, upon the terms and conditions herein specified, to loan to the Borrower the proceeds received by the Authority from the sale of the Bonds by causing such proceeds to be deposited with the Bond Trustee for disposition as provided in the Indenture. The obligation of the Authority to make the Loan is limited solely to such sale proceeds of the Bonds received by the Authority and shall be deemed fully discharged upon the deposit of the proceeds of the Bonds with the Bond Trustee pursuant hereto.

### Loan Repayments. In consideration of the issuance of the Bonds by the Authority and the loan of the proceeds thereof to the Borrower, the Borrower agrees that, on or before the 25th day of each month, commencing [May 25, 2022], and as long as any of the Bonds remain Outstanding, it shall pay to the Bond Trustee for deposit in the Revenue Fund such amount as is required by the Bond Trustee to make the transfers and deposits required on such date by Section 5.02 of the Indenture. Notwithstanding the foregoing, if five business days prior to any monthly installment date with respect to the Bonds, the aggregate amount in the Revenue Fund is for any reason insufficient or unavailable to make the required deposits of principal (or Redemption Price) of or interest on the Bonds then due under the Indenture, the Borrower shall promptly provide written notice to each Member and the Lessee and forthwith pay (or cause to be paid) the amount of any such deficiency (which, in the event there is more than one Member of the Obligated Group, such deficiency shall be made up by the various Members of the Obligated Group as set forth in the Master Indenture of Trust or by the Lessee pursuant to the Lease) to the Bond Trustee. Each payment by the Borrower to the Bond Trustee hereunder (the “Loan Repayments”) shall be in lawful money of the United States of America and paid to the Bond Trustee at its designated corporate trust office and held, invested, disbursed and applied as provided in the Indenture. Notwithstanding anything to the contrary herein, the Borrower shall instruct or cause the Landlord to instruct the Lessee to pay Base Rent directly to the Bond Trustee for deposit in the Revenue Fund.

The Borrower shall pay, or cause to be paid, the Loan Repayments from the Gross Revenues, including the Rental Payments, or from any other legally available funds of the Borrower, without any further notice thereof except as may be specifically required by this Section 3.02. The Loan Repayments payable by the Borrower under this Loan Agreement are expected to be equal in the aggregate to any amount which, together with other funds in the Revenue Fund then available for the payment of principal and interest on the Bonds, shall be sufficient to provide for the payment in full of the interest on, premium, if any, and principal of the Bonds as the same become due and payable.

### Intercept. [The Borrower and the Landlord shall enter into, and the Landlord shall cause the Lessee to enter into, the Intercreditor and Collateral Agency Agreement, and at all times while the Bonds are Outstanding, neither the Borrower nor the Landlord shall terminate the Intercreditor and Collateral Agency Agreement, and the Landlord shall cause the Lessee to not terminate the Intercreditor and Collateral Agency Agreement. In connection therewith, at all times while the Bonds are Outstanding, the Landlord shall cause the Lessee to direct all State apportionments relating to the School (less any amounts paid directly to a trustee by the California State Controller’s Office pursuant to Section 17199.4 of the Education Code) to be deposited in a depository account created in connection with the Intercreditor and Collateral Agent Agreement.]

### Additional Payments. In addition to the Loan Repayments, the Borrower shall also pay to the Authority or to the Bond Trustee, or to the appropriate payee, as the case may be, “Additional Payments,” as follows:

#### All taxes and assessments of any type or character charged to the Authority or to the Bond Trustee affecting the amount available to the Authority or the Bond Trustee from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Bond Trustee and taxes based upon or measured by the net income of the Bond Trustee; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Authority or the Bond Trustee, at the Borrower’s expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Authority or the Bond Trustee;

#### All reasonable fees, charges and expenses of the Bond Trustee for services rendered under the Indenture and all amounts referred to in Section 8.06 of the Indenture, as and when the same become due and payable;

#### All reasonable fees, charges and expenses of the Master Trustee for services rendered under the Master Indenture and all amounts referred to in Section 5.05 of the Master Indenture, as and when the same become due and payable;

#### The reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Bond Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under this Loan Agreement, the other Borrower Documents or the Indenture;

#### All fees and expenses of any Rating Agency, including any Surveillance Fee (if any);

#### All amounts necessary for deposit into the Administration Fund pursuant to Section 5.02 and Section 5.10 of the Indenture;

#### The Authority Issuance Fee, the Authority Annual Fee, and the reasonable fees and expenses of the Authority or any agent or attorney selected by the Authority to act on its behalf in connection with the Borrower Documents, the Bonds or the Indenture, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of any such Bonds or in connection with any litigation, investigation, inquiry or other proceeding which may at any time be instituted involving this Loan Agreement, the other Borrower Documents, the Bonds or the Indenture or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of any of the Borrower Documents; and

#### The amount necessary to replenish any fund established under the Indenture, but only to the extent then required under Section 5.02 of the Indenture.

The Authority Issuance Fee and the initial Authority Annual Fee shall be paid to the Authority by or on behalf of the Borrower on the Closing Date. Thereafter, the Authority Annual Fee shall be due and payable by the Borrower in advance on July 1 of each year commencing with the first such date following the Closing Date. Borrower’s obligation to pay the Authority Issuance Fee and the Authority Annual Fee shall in no way limit amounts payable by the Borrower to the Authority under the Corporation Documents, including for the enforcement thereof.

All such payments shall be made by the Borrower from the Gross Revenues or other legally available funds for payment to the Person or Persons entitled to such payments or for deposit to the appropriate fund or account held by the Bond Trustee under the Indenture.

### Failure to Make Payments. In the event the Borrower shall fail to deposit, or fail to cause to be deposited, with the Bond Trustee any Loan Repayments or Additional Payments as required by this Section 3.02, the Loan Repayments, Additional Payments or other payments required hereunder not paid from such Gross Revenues shall continue as an obligation hereunder of the Borrower until the amount in default shall have been fully paid.

### Obligations of Borrower Unconditional.

#### The Borrower shall pay to or upon the order of the Authority, at or before the time when payable by the Authority, all costs and liabilities incurred by the Authority, including without limitation fees and expenses of counsel to the Authority, in connection with the issuance of the Bonds and the making of the Loan to the Borrower herein, or otherwise as a result of the transactions contemplated by the Borrower Documents or the Indenture.

#### The obligation of the Borrower to make the payments as required in this Section 3.02, and to perform and observe any and all of the other covenants and agreements on its part contained herein, shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim which the Borrower may otherwise have against the Authority. The Borrower shall not: (1) suspend, discontinue, or abate any payment required by this Section 3.02 (except as expressly provided herein); (2) fail to observe any of its other covenants or agreements in this Loan Agreement; or (3) terminate this Loan Agreement for any cause whatsoever (except as provided in Section 7.01 hereof), including without limiting the generality of the foregoing, any declaration or finding that the Bonds, the Indenture, or any portion of this Loan Agreement are invalid or unenforceable, and, any failure of the Authority to perform and observe any agreement, whether expressed or implied, or any duty, liability, or obligation, arising out of or in connection with this Loan Agreement or otherwise.

## **Costs of Issuance and Other Expenses**. In addition to the payments required to be paid by the Borrower under Section 3.02 hereof, the Borrower agrees that it shall pay from the proceeds of the Bonds or Gross Revenues or other legally available funds of the Borrower, all Costs of Issuance of the Bonds. The Borrower agrees that it also shall pay all expenses incurred by it, including the expenses of its counsel. The Borrower shall also pay the costs of filing any financing statement(s) pursuant to Section 3.02 hereof or the Indenture.

The Borrower acknowledges that certain provisions of the Indenture set forth Administrative Fees and Expenses of the Bond Trustee as the amount of annual compensation and reimbursement payable from funds held under the Indenture to the Bond Trustee. In the event that the Bond Trustee incurs fees and expenses in the course of performing its duties in excess of Administrative Fees and Expenses or in excess of the funds available for the payment thereof under the Indenture, the Borrower agrees to compensate and reimburse the Bond Trustee from Gross Revenues or other funds of the Borrower, for Administrative Fees and Expenses and for any extraordinary fees and expenses, which compensation to the Bond Trustee shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust.

The Borrower covenants and agrees to pay and indemnify the Authority, the State Treasurer and the Bond Trustee against all reasonable and documented fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Bond Trustee, without negligence) and arising out of or in connection with the Borrower Documents, the Bonds or the Indenture. These obligations and those in Section 3.04 hereof shall remain valid and in effect notwithstanding repayment of the Loan hereunder or the Bonds or termination of this Loan Agreement or the Indenture or resignation or removal of the Bond Trustee.

## **Indemnification**. To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Authority, the Bondholders, the Bond Trustee, and each of their respective officers, governing members, directors, officials, employees, attorneys and agents (collectively, the “Indemnified Parties”), against any and all losses, damages, claims, actions, suits, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, attorneys’ fees and expenses, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

#### the Bonds, the Indenture or the Borrower Documents or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including the issuance, sale or resale of the Bonds;

#### any act or omission of the Borrower or the Landlord or any of their agents, contractors, servants, employees or licensees in connection with the Loan or the Lease, the Facility, the operation of the Facility or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Facility, or any part thereof;

#### any lien or charge upon payments by the Borrower or the Landlord to the Authority or the Bond Trustee, as the case may be, hereunder or under the Lease, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Authority or the Bond Trustee in respect of any portion of the Facility;

#### any violation of any Environmental Regulations with respect to, or the release of any Hazardous Substances at, on or under the Facility or any part thereof;

#### any defeasance or redemption, in whole or in part, of the Bonds;

#### any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering or disclosure document or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bonds, or any omission or alleged omission from any offering or disclosure document or disclosure or continuing disclosure document for the Bonds of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, or any failure to timely file any continuing disclosure document in connection with the Bonds required by any undertaking or by any applicable law, rule or regulation;

#### the Bond Trustee’s acceptance or administration of the trust of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party;

except (A) in the case of the foregoing indemnification of the Bond Trustee or any of its respective officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the negligence or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Authority or any of its officers, members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if in the judgment of such Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to Sections 3.02 and 3.03 hereof and this Section 3.04 shall survive the final payment or defeasance of the Bonds and in the case of the Bond Trustee any resignation or removal. The provisions of this Section 3.04 shall survive the termination of this Loan Agreement.

## **Condition Precedent**. The obligation of the Authority to make the Loan as herein provided shall be subject to the receipt by it of the proceeds of the issuance and sale of the Bonds.

## **Covenants to Prepay**.

### The Borrower hereby covenants to cause prepayment of the Loan hereunder and the redemption of the Bonds prior to any redemption of the 2016 Bonds (other than mandatory sinking fund redemption of 2016 Bonds as scheduled under the 2016 Indenture).

### The Borrower hereby covenants to cause prepayment of the Loan and corresponding redemption of Bonds pursuant to any [Excess Cash on Hand] received from or on behalf of the Lessee pursuant to the Lease.

# ADDITIONAL COVENANTS AND AGREEMENTS OF BORROWER

## **Inspection of Books**.

### The Authority and the Bond Trustee shall have the right, but not obligation, upon reasonable notice, during business hours, to examine and audit any and all of the Borrower’s records or accounts pertaining to the Loan, the Lease, the Indenture, the Intercreditor and Collateral Agency Agreement, and this Loan Agreement.

### Upon written notice to the Borrower delivered at least five Business Days in advance of an inquiry, the Borrower shall make its management personnel available for periodic inquiries from the Authority or the Bond Trustee.

## **Reports and Information**. At the request of the Authority or the Bond Trustee, their agents, employees or attorneys, the Borrower shall furnish to the Authority and the Bond Trustee, such information as may be reasonably requested in writing from time to time relative to compliance by the Borrower with the provisions of this Loan Agreement, including, without limitation, the most recently prepared consolidated financial statements.

Within 60 days of the Authority’s request, which request is to be made on or about July 1 of each year (commencing July 1, 2022), the Borrower shall provide information to the Authority needed for the Authority to comply with the reporting requirements contained in California Government Code Section 8855(k)(1). This covenant shall remain in effect until the later of the date (i) the Bonds are no longer Outstanding or (ii) the proceeds of the Bonds have been fully spent.

## **Notice**. Promptly following obtaining knowledge of an Event of Default under any Borrower Document, the Borrower hereby agrees to provide to the Bond Trustee and to the Authority written notice of such Event of Default (such notice to include a description of the nature of such event and what steps are being taken to remedy such Event of Default).

## **Reliance**. The Borrower hereby recognizes and agrees that the representations and covenants set forth in this Loan Agreement may be relied upon by all Persons interested in the legality and validity of the Bonds including, without limitation, the Bond Trustee for the benefit of the Owners of the Bonds. In performing its duties and obligations hereunder, the Bond Trustee may rely upon statements and certificates of the Borrower believed in good faith to be genuine and upon audits of the books and records of the Borrower pertaining to the Loan. The Bond Trustee, in its name or as assignee of the Authority, may, for and on behalf of the Bondholders, enforce all rights of the Authority which have been assigned to and are held by the Bond Trustee and all obligations of the Borrower under and pursuant to this Loan Agreement, whether or not the Authority has pursued or attempted to enforce any of such rights and obligations. In addition, the Authority and the Bond Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Authority or the Bond Trustee hereunder in good faith and in conformity with the opinion of such counsel. In determining whether any default or lack of compliance by the Borrower exists under this Loan Agreement, none of the Bond Trustee or the Authority shall be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely upon any notice or certificate delivered to the Bond Trustee by the Borrower with respect to the occurrence or absence of a default.

## **Financial Statements.** The Borrower hereby covenants that, for the year ended June 30, 2022, and each year thereafter, either (a) it will cause the audited financial statements of the Lessee to be prepared on a consolidated basis, reflecting the operations and finances of the Borrower and Lessee therein, or (b) it will cause independent audited financial statements to be prepared, reflecting all operations and finances of the Borrower and the Lessee to be reflected therein.

## **Continuing Disclosure**. The Borrower hereby covenants and agrees that (i) it shall comply with and carry out all of the provisions of the Continuing Disclosure Agreement and(ii) it shall post or cause to be posted to EMMA copies of any Supplemental Indenture and any amendment to the Loan Agreement or the Lease.

## **Warranty of Truth**. The Borrower covenants that no information, certificate, statement in writing or report required by this Loan Agreement, any other Borrower Documents or otherwise furnished by the Borrower to the Authority or the Bond Trustee shall contain any untrue statement of a material fact or omit a material fact necessary to make such information, certificate, statement or report not misleading as it relates to the Borrower.

## **Prohibited Uses**. No portion of the proceeds of the Bonds shall be used to finance or refinance any facility, place or building to be used (1) primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

## **Indenture Provisions**. The execution and delivery of this Loan Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower. Whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower shall carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

# ADDITIONAL COVENANTS AND AGREEMENTS OF THE LANDLORD

## **Inspection of Books.**

### The Authority and the Bond Trustee shall have the right, but not obligation, upon reasonable notice, during business hours, to examine and audit any and all of the Landlord records or accounts pertaining to the Loan, the Lease, and this Loan Agreement.

### Upon written notice to the Landlord delivered at least five Business Days in advance of an inquiry, the Landlord shall make its management personnel available for periodic inquiries from the Authority or the Bond Trustee.

## **Reports and Information**. At the request of the Authority or the Bond Trustee, their agents, employees or attorneys, the Landlord shall furnish to the Authority and the Bond Trustee, such information as may be reasonably requested in writing from time to time relative to compliance by the Landlord with the provisions of this Loan Agreement, the Lease, or the Intercreditor and Collateral Agency Agreement.

## **Reliance**. The Landlord hereby recognizes and agrees that the representations and covenants set forth in this Loan Agreement may be relied upon by all Persons interested in the legality and validity of the Bonds including, without limitation, the Bond Trustee for the benefit of the Owners of the Bonds. In performing its duties and obligations hereunder, the Bond Trustee may rely upon statements and certificates of the Landlord believed in good faith to be genuine and upon audits of the books and records of the Landlord pertaining to the Lease. The Bond Trustee, in its name or as assignee of the Authority, may, for and on behalf of the Bondholders, enforce all rights of the Authority which have been assigned to and are held by the Bond Trustee and all obligations of the Landlord under and pursuant to this Loan Agreement, whether or not the Authority has pursued or attempted to enforce any of such rights and obligations. In addition, the Authority and the Bond Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Authority or the Bond Trustee hereunder in good faith and in conformity with the opinion of such counsel. In determining whether any default or lack of compliance by the Landlord exists under this Loan Agreement, neither the Bond Trustee nor the Authority shall be required to conduct any investigation into or review of the operations or records of the Landlord and may rely solely upon any notice or certificate delivered to the Bond Trustee by the Landlord with respect to the occurrence or absence of a default.

## **Warranty of Truth**. The Landlord covenants that no information, certificate, statement in writing or report required by this Loan Agreement or otherwise furnished by the Landlord to the Authority or the Bond Trustee shall contain any untrue statement of a material fact or omit a material fact necessary to make such information, certificate, statement or report not misleading as it relates to the Landlord or its Lease.

## **Prohibited Uses**. The Landlord shall not cause or permit any portion of its Facility that are part of the Project to be used (1) primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

## **Applicable Laws**. The Landlord shall operate and maintain, or cause the Lessee to operate and maintain, the Facility in accordance in all material respects with all governmental laws, ordinances, approvals, rules, regulations and requirements including, without limitation, such zoning, sanitary, pollution and, safety and labor ordinances and laws (including, without limitation, California Labor Code Section 1720.8) and such rules and regulations thereunder as may be binding upon the Landlord and the Lessee, as applicable.

## **Enforcement of the Lease Agreement**. The Landlord agrees to use its best efforts to timely enforce the provisions of the Lease against the Lessee, so that the Rent under the Lease is timely paid and the Lessee complies with all covenants thereunder, as required thereby.

# DEFAULTS AND REMEDIES

## **Events of Default**. Any one of the following which occurs and continues shall constitute an Event of Default hereunder:

### failure by the Borrower to pay or cause to be paid any Loan Repayments when due; or

### failure by the Borrower to pay or cause to be paid when due any other amounts required to be paid under this Loan Agreement and continuation of such failure to pay for ten (10) Business Days following the giving of written notice thereof to the Borrower; or

### failure of the Borrower or the Landlord to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder (other than failure by the Borrower to pay the amounts required to be paid hereunder, as referred to in Section 6.01(a) or (b) above, and other than as provided in subparagraph (d) below) after the Borrower shall have been given 60 days’ written notice specifying such default and requesting it be remedied, unless the Bond Trustee shall have consented to an extension beyond such 60 day period, which extension shall not exceed 90 days; provided that the Borrower or Landlord shall have commenced a cure thereof and be diligently pursuing such cure thereof in good faith; or

### voluntary initiation by the Borrower or any Member of the Obligated Group of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower or any Member of the Obligated Group of any such proceeding that shall remain undismissed for 60 calendar days, or failure by the Borrower or any Member of the Obligated Group to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower or any Member of the Obligated Group to carry on its operations, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower or any Member of the Obligated Group into an agreement of composition with creditors or the failure generally by the Borrower or any Member of the Obligated Group to pay its debts as they become due;

### occurrence and continuance of an “Event of Default” under the Indenture, the 2016 Loan Agreement or any of the Borrower Documents, provided, however, that an Event of Default under the Indenture arising solely from the actions or inactions of the Authority or the Bond Trustee shall not be an Event of Default hereunder;

### any representation or warranty made herein or any statement or representation made by the Borrower in any certificate, report, opinion, financial statement or other instrument furnished in connection with the Loan or any of the Borrower Documents proves to be false or misleading in any material respect when made;

### the Borrower, Landlord or Lessee, as applicable, shall fail to comply with the provisions of Section 3.02(c) hereof;

### Judgment for the payment of money in excess of $250,000.00 (which is not covered by insurance) is rendered by any court or other governmental body against any Obligated Group Member, which Obligated Group Member does not discharge same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within 60 days from the date of entry thereof, and within said 60-day period or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefor as may be required under generally accepted accounting principles; or

### Failure of the Obligated Group Member or of the Lessee to pay any other Indebtedness of such entity not evidenced by this Loan Agreement, if the principal amount of such Indebtedness exceeds $100,000.

## **Remedies.**

### Upon the occurrence of an Event of Default pursuant to Section 6.01 hereof and at any time thereafter during the continuance of such Event of Default, the Bond Trustee, subject to the Bond Trustee’s right and protections under the Indenture, may take one or more or any combination of the following remedial steps:

#### By written notice to the Borrower, declare the unpaid indebtedness on the Bonds and all amounts then due and payable hereunder, whether by acceleration of maturity or otherwise, to be immediately due and payable, whereupon the same shall become immediately due and payable;

#### File a petition in a court of competent jurisdiction for appointment of a receiver over the Borrower, the Landlord and any of their assets, the Borrower and Landlord hereby agreeing that, during the occurrence and continuance of an Event of Default hereunder, the Bond Trustee shall be entitled as a matter of right to appointment of a receiver for breach of its obligations hereunder; and

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

Any amounts collected pursuant to action taken by the Bond Trustee under this Section 6.02(a) shall be applied in accordance with provisions of the Indenture. Notwithstanding anything herein to the contrary, the indebtedness of the Borrower under this Loan Agreement may be separately and independently accelerated with or without an acceleration of the Bonds.

### If the Bond Trustee shall have proceeded to enforce the rights of the Authority under this Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Bond Trustee or the Authority, then the Borrower, the Landlord, the Bond Trustee and the Authority shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Borrower, the Authority and the Bond Trustee shall continue as though no such proceedings had taken place.

## **Additional Remedies**. In addition to the above remedies, if an Event of Default occurs hereunder, the Authority and the Bond Trustee shall have the right and remedy, without posting bond or other security, to have the provisions of this Loan Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach will cause irreparable injury to the Bond Trustee and the Authority and that money damages will not provide an adequate remedy thereto.

## **No Remedy Exclusive**. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bond Trustee or the Authority to exercise any remedy reserved to it in this Article VI, it shall not be necessary to give notice, other than such notice as may be required in this Article VI. Such rights and remedies as are given the Authority hereunder shall also extend to Trustee on behalf of the Holders of the Bonds, who shall be entitled to the benefit of all covenants and agreements herein contained.

## **No Additional Waiver Implied by One Waiver**. In the event any agreement or covenant contained in this Loan Agreement should be breached by the Borrower and thereafter waived by the Authority or the Bond Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## **Agreement to Pay Fees and Expenses Upon Default**. In the event the Borrower or the Landlord is in default under any provision of this Loan Agreement or causes an event of default under the other Borrower Documents, the Borrower shall be liable to, and upon demand shall pay to, the Authority and the Bond Trustee all reasonable fees and disbursements of such Persons and their respective agents (including attorneys’ fees and expenses) that are reasonably connected therewith or incidental thereto, except with respect to the Bond Trustee and the Authority, such payment obligation shall be reduced to the extent such fees and disbursements are paid to the Bond Trustee and the Authority from money available therefor under the Indenture.

## **Proofs of Claim**.

### In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Authority, the Borrower or any other obligor upon the Bonds or the property of the Issuer, the Bond Trustee (irrespective of whether the principal of the Bonds shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Bond Trustee shall have made any demand on the Authority and/or the Borrower for the payment of overdue principal or interest) shall be entitled and empowered, by intervention of such proceeding or otherwise,

#### to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Bonds then Outstanding and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Bond Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Bond Trustee, its agents and counsel) and of the Bondholders allowed in such judicial proceeding; and to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and

#### any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Beneficial Owner to make such payments to the Bond Trustee, and, in the event that the Bond Trustee shall consent to the making of such payments directly to the Bondholders, to pay to the Bond Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Bond Trustee, its agent and counsel.

### So long as Bonds are Outstanding, the Bond Trustee is appointed under the terms of the Bond Indenture, and the successive respective Bondholders, by taking and holding the same, shall be conclusively deemed to have so appointed the Bond Trustee, the true and lawful attorney in fact of the respective Bondholders, with authority to make or file, in the respective names of the Bondholders or on behalf of all Bondholders, as a class, any proof of debt, amendment to proof of debt, petition or other documents and to execute any other papers and documents and to do and perform any and all acts and things for and on behalf of all Bondholders as a class, as may be necessary or advisable in the opinion of the Bond Trustee, in order to have the respective claim of the Bondholders against the Issuer, the Borrower or any other obligor allowed in receivership, insolvency, liquidation, bankruptcy or other proceeding, to which the Issuer, the Borrower or any other obligor, as the case may be, shall be a party. The Bond Trustee shall have full power of substitution and delegation in respect of any such powers.

## **Treatment of Funds in Bankruptcy**. The Borrower and Landlord each acknowledges and agrees that in the event any Obligated Group Member commences a case under the United States Bankruptcy Code located at 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code") or is the subject of an involuntary case that results in an order for relief under the Bankruptcy Code: (a) amounts on deposit in any of the funds or accounts held under the Indenture are not, nor shall they be deemed to be, property of the bankruptcy estate of the Borrower or Landlord as defined by Section 541 of the Bankruptcy Code; (b) in no event shall the Borrower or Landlord assert, claim or contend that amounts on deposit in any of the Funds are property of the bankruptcy estate of the Borrower; and (c) amounts on deposit in any of the Funds are held in trust solely for the benefit of the Bondholders, shall be applied only in accordance with the provisions of the Bond Indenture and the Borrower has no legal, equitable nor reversionary interest in, or right to, such amounts so long as any obligations under the Indenture remain unpaid or any Bonds remain Outstanding.

# PREPAYMENT

## **Prepayment of the Loan.**

### *General*. As further described below, the Borrower shall have the right, so long as all amounts which have become due hereunder have been paid, at any time or from time to time to prepay all or any part of its Loan Repayments and the Authority agrees that the Bond Trustee shall accept such prepayments when the same are tendered. Prepayments may be made by payments of cash or surrender of Bonds. All such prepayments (and the additional payment of any amount necessary to pay the applicable redemption price, if any, payable upon the redemption of Bonds) shall be deposited upon receipt in the applicable account of the Redemption Fund and, at the request of and as determined by the Borrower, credited against payments due hereunder or used for the redemption of Outstanding Bonds in the manner and subject to the terms and conditions set forth in Section 4.01 or Section 4.02 of the Indenture. The Borrower also shall have the right to surrender Bonds acquired by it in any manner whatsoever to the Bond Trustee for cancellation, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired. Notwithstanding any such prepayment or surrender of Bonds, as long as any Bonds remain Outstanding or any Additional Payments required to be made hereunder remain unpaid, the Borrower shall not be relieved of its obligations hereunder.

### *Prepayment in Whole or in Part*. The Loan may be prepaid in whole or in part at any time by delivering to the Bond Trustee amounts sufficient to defease a like principal amount of Bonds to their optional redemption date pursuant to Section 4.02 and Article X of the Indenture.

### *Prepayment in Whole or in Part from Amounts Transferred from Insurance and Condemnation Proceeds Fund.* The Loan may be prepaid in whole or in part at any time in a principal amount corresponding to amounts transferred from the Insurance and Condemnation Proceeds Fund pursuant to the Indenture and used to redeem Bonds at the option of the Borrower pursuant to Section 4.01(a) of the Indenture.

### *Prepayment in Whole or in Part from Amounts Deposited with Trustee in connection with Prohibited Use*. The Loan may be prepaid in whole or in part at any time in the event the Facility is used or operated in any manner that violates the provisions of the Act, in a principal amount corresponding to amounts transferred to the Redemption Fund and used to redeem Bonds pursuant to Section 4.01(b) of the Indenture.

## **Redemption of Bonds Upon Prepayment**. Upon prepayment of the Loan as provided in Section 7.01, the Bond Trustee shall do any of the following, as applicable: (1) call all or part of the Bonds for redemption, as required by the Indenture in the respective amounts set forth in the applicable paragraph of Section 4.01 or Section 4.02 of the Indenture and (2) provide for the defeasance of Bonds pursuant to Article X of the Indenture.

## **Amount of Prepayment**. In the event of any prepayment pursuant to Section 7.01, the amount of the Loan deemed to be prepaid shall be equal to the principal amount of Bonds defeased or redeemed as described in Section 4.01 or Section 4.02 of the Indenture. In the case of prepayment of the Loan in full, the Borrower shall pay to the Bond Trustee an amount sufficient, together with other funds held by the Bond Trustee and available for such purpose, to pay all reasonable and necessary fees and expenses (including attorneys’ fees) of the Authority, the Bond Trustee and any paying agent accrued and to accrue through final payment of the Bonds and all other liabilities of the Borrower accrued and to accrue under this Loan Agreement and shall pay to the Authority an amount required by Section 3.02(d). In the case of partial prepayment of the Loan, the Borrower shall pay or cause to be paid to the Bond Trustee an amount sufficient, together with other funds held by the Bond Trustee and available for such purpose, to pay expenses of redemption of the Bonds to be redeemed upon such prepayment.

The Borrower agrees that it will not prepay the Loan or any part thereof, except in amounts sufficient to redeem Bonds in Authorized Denominations.

# MISCELLANEOUS

## **Notice**. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or by messenger or overnight delivery service or by Electronic Notice, to the notice addresses set forth in the Indenture.

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

## **Concerning Successors and Assigns**. All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the execution and delivery of this Loan Agreement by the Authority, the Landlord, and the Borrower. Whenever in this Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower or the Landlord that are contained in this Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Authority.

## **Governing Law; Venue**. This Loan Agreement is a contract made under the laws of the State of California, and shall be governed by and construed in accordance with the Constitution and the laws applicable to contracts made and performed in said State. This Loan Agreement shall be enforceable in the State of California, and any action arising out of this Loan Agreement shall be filed and maintained in the Sacramento County Superior Court, Sacramento, California, unless the Authority waives this requirement; provided that, any action to foreclose on a Mortgage (as defined in the Master Indenture of Trust) may be filed and maintained in San Bernardino County, California.

## **Amendments; Modifications in Writing**. Except as otherwise provided in this Loan Agreement or the Indenture, subsequent to the initial issuance of Bonds and prior to their payment in full, or provision for such payment having been made as provided in the Indenture, this Loan Agreement may be effectively amended, changed, modified, altered or terminated only as permitted under the Indenture, by written instrument executed by the parties hereto. The Authority hereby agrees that it will not consent to an amendment of the Indenture without the approval of the Borrower.

## **Captions**. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Loan Agreement.

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

## **Counterparts and Electronic Execution**. This Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument. Each of the parties hereto agrees that the transaction consisting of this Loan Agreement may be conducted by electronic means. Each party agrees, and acknowledges that it is such party’s intent, that if such party signs this Loan Agreement using an electronic signature, it is signing, adopting, and accepting this agreement and that signing this agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this Loan Agreement on paper. Each party acknowledges that it is being provided with an electronic or paper copy of this agreement in a usable format.

## **Effective Date and Term**. This Loan Agreement shall become effective upon its execution and delivery by the Parties hereto, shall remain in full force from the date thereof and, subject to the provisions hereof, shall continue in effect as long as any of the Bonds are outstanding or the Bond Trustee holds any money under the Indenture.

## **Non‑Liability of Authority**.

### NONE OF THE AUTHORITY, ANY AUTHORITY MEMBER OR ANY PERSON EXECUTING THE BONDS IS LIABLE PERSONALLY ON THE BONDS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THEIR ISSUANCE. THE BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY, PAYABLE SOLELY FROM REVENUES AND OTHER ASSETS PLEDGED UNDER THE INDENTURE. NEITHER THE AUTHORITY, ITS MEMBERS, THE STATE OF CALIFORNIA, NOR ANY OF ITS POLITICAL SUBDIVISIONS SHALL BE DIRECTLY, INDIRECTLY, CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONEYS OR ASSETS TO PAY ALL OR ANY PORTION OF THE DEBT SERVICE DUE ON THE BONDS, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT. THE BONDS ARE NOT A PLEDGE OF THE FAITH AND CREDIT OF THE AUTHORITY, ITS MEMBERS, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS, NOR DO THEY CONSTITUTE INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION. THE AUTHORITY HAS NO TAXING POWER. THE AUTHORITY SHALL NOT BE LIABLE FOR PAYMENT OF THE PRINCIPAL OF, PREMIUM OR INTEREST ON THE BONDS OR ANY OTHER COSTS, EXPENSES, LOSSES, DAMAGES, CLAIMS OR ACTIONS OF ANY CONCEIVABLE KIND ON ANY CONCEIVABLE THEORY, UNDER OR BY REASON OF OR IN CONNECTION WITH THE INDENTURE, THE BONDS OR ANY OTHER DOCUMENTS, EXCEPT ONLY TO THE EXTENT AMOUNTS ARE RECEIVED FOR THE PAYMENT THEREOF FROM THE BORROWER UNDER THIS LOAN AGREEMENT.

### No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the Authority contained in this Loan Agreement, any other Authority Documents, or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise or agreement of the Authority contained in any agreement, instrument or certificate executed in connection with the issuance and sale of the Bonds, against any Authority Indemnified Parties, whether by virtue of any Constitutional provision, statute or rule of the law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any Authority Indemnified Party, either directly or by reason of any of the obligations, covenants, promises or agreements entered into by the Authority with the Borrower or the Bond Trustee to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against each and every Authority Indemnified Party is, by the execution of the Bonds, this Loan Agreement, and the other Authority Documents, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Loan Agreement, and the other Authority Documents, is expressly waived and released.

### No agreements or provisions contained herein, nor any agreement, covenant or undertaking by the Authority in connection with the issuance, sale and/or delivery of the Bonds shall give rise to any pecuniary liability of the Authority or a charge against its general credit, or shall obligate the Authority financially in any way, except as may be payable from the revenues pledged hereby for the payment of the Bonds and their application as provided in the Indenture. No failure of the Authority to comply with any term, covenant or agreement contained in the Bonds, this Loan Agreement or the Indenture, or in any document executed by the Authority in connection with the issuance and sale of the Bonds, shall subject the Authority to liability for any claim for damages, costs or other financial or pecuniary charge, except to the extent that the same can be paid or recovered from the revenues pledged for the payment of the Bonds or other revenues derived under this Loan Agreement. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Authority for any failure to comply with any term, condition, covenant or agreement herein; provided that no costs, expenses or other monetary relief shall be recoverable from the Authority, except as may be payable from the revenues pledged in the Indenture for the payment of the Bonds or other revenue derived under this Loan Agreement. No provision, covenant or agreement contained herein, or any obligations imposed upon the Authority, or the breach thereof, shall constitute an indebtedness of the Authority within the meaning of any State Constitutional or statutory limitation or shall constitute or give rise to a charge against the general credit of the State. In making the agreements, provisions and covenants set forth in this Loan Agreement, the Authority has not obligated itself, except with respect to the application of the revenues pledged in the Indenture for the payment of the Bonds or other revenues derived under this Loan Agreement or the Indenture.

### None of the provisions of this Loan Agreement shall require the Authority to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from the revenues pledged under the Indenture, or the Authority shall first have been adequately indemnified to its satisfaction against the cost, expense and liability which may be incurred thereby. The Authority shall not be under any obligation hereunder to perform any administrative service with respect to the Bonds (including, without limitation, record keeping and legal services), it being understood that such services shall be performed or provided by the Bond Trustee or the Borrower. The Authority covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions expressly contained in this Loan Agreement, the Indenture and in any and every Bond executed, authenticated and delivered under the Indenture; provided, however, that (i) the Authority shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower or the Bond Trustee, and (ii) the Authority shall have received the instrument to be executed.

### The Borrower hereby acknowledges that the Authority’s sole source of moneys to repay the Bonds will be provided by the payments made by the Borrower to the Bond Trustee pursuant to this Loan Agreement, together with other amounts received by the Bond Trustee pursuant to the Indenture or the Intercreditor and Collateral Agency Agreement and investment income on certain funds and accounts held by the Bond Trustee under the Indenture, and hereby agrees that if such amounts shall ever prove insufficient to pay all principal (or redemption price) and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Bond Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or redemption price) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Bond Trustee, the Borrower, the Authority or any third party, subject to any right of reimbursement from the Bond Trustee, the Authority or any such third party, as the case may be, therefor.

### The Borrower acknowledges that the County shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with, the Bonds.

## **Expenses**. Subject to Section 3.02(f), the Borrower covenants and agrees to pay and indemnify the Authority, the County and the Bond Trustee, against all documented fees, costs and charges, including fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Bond Trustee, without gross negligence) and arising out of or in connection with the Borrower Documents, the Bonds or the Indenture. These obligations shall remain valid and in effect notwithstanding repayment of the Loan hereunder or the Bonds or termination of this Loan Agreement or the Indenture or resignation or removal of the Bond Trustee.

## **Waiver of Personal Liability**. No official, director, member, officer, agent or employee of the County or the Authority or any director, officer, agent or employee of the Borrower, the Landlord or the Lessee shall be individually or personally liable for the payment of any principal (or redemption price) or interest on the Bonds or any sum hereunder or under the Indenture or be subject to any personal liability or accountability by reason of the execution and delivery of this Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Loan Agreement.

No covenant or agreement contained in the Bonds or in this Loan Agreement shall be deemed to be the covenant or agreement of any elected or appointed official, director, member, officer, agent or employee of the Authority in his or her individual capacity, and neither the members of the governing body of the Authority nor any official executing the Bonds, shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

## **No Prevailing Party Provision**. Nothing in this Loan Agreement shall be construed to provide for award of attorneys’ fees and costs to the Authority, the Landlord, or the Borrower for the enforcement of this Loan Agreement as described in Section 1717 of the Civil Code. Nothing in this Section affects the rights of the Bond Trustee provided herein.

## **Binding Effect**. This Loan Agreement shall inure to the benefit of and shall be binding upon the Authority, the Bond Trustee, the Borrower, the Landlord and their respective successors and assigns, subject, however, to the limitations contained in Section 8.02 hereof. The Landlord has entered into this Agreement to induce the Authority to make the Loan hereunder.

## **Authority’s Performance**. None of the provisions of this Loan Agreement shall require the Authority to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from the Gross Revenues pledged under the Indenture, or the Authority shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Authority shall not be under any obligation hereunder to perform any administrative service with respect to the Bonds and the Facility (including, without limitation, record keeping and legal services), it being understood that such services shall be performed or provided by the Bond Trustee or the Borrower.

## **Survival of Covenants**. Notwithstanding the payment in full of the Bonds, the discharge of the Indenture, and the termination or expiration of this Loan Agreement, all provisions in this Loan Agreement concerning (a) the interpretation of this Loan Agreement in Section 1.02 hereof, (b) the governing law and venue in Section 8.03 hereof, (c) the Authority’s right to rely on facts or certificates, and (d) the immunity of the Authority’s directors, officers, counsel, financial advisors, and agents and employees in Sections 8.09 and 8.11 hereof; (e) the indemnity of the Authority Indemnified Parties, the Bond Trustee and the Bondholders; and (f) the Authority’s lack of pecuniary liability shall survive and remain in full force and effect.

## **Covenant by Borrower and Landlord with respect to Statements, Representations and Warranties**. It is understood by the Borrower and the Landlord that all statements, representations and warranties made by them in this Loan Agreement shall be deemed to have been relied upon by the Authority as an inducement to issue the Bonds, and that if any such statements, representations and warranties were false at the time they were made or (with respect to those representations and warranties which are to continue) are breached during the term hereof, such misrepresentation or breach shall constitute a breach of this Loan Agreement which may give rise to an Event of Default hereunder. It is expressly understood and agreed by the parties hereto that the Authority may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Authority by the Borrower or the Landlord as to the existence of any fact or state of affairs required hereunder to be noticed by the Authority.

**IN WITNESS WHEREOF**, the parties hereto have executed this Loan Agreement as of the date stated above.

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**

By:

Gurbax Suhota  
Chair

**WESTERN ENCORE PROPERTIES INCORPORATED**

By:

President

**ACCEPTED, ACKNOWLEDGED AND AGREED BY**

**16955 LEMON STREET LLC**

**By: WESTERN ENCORE PROPERTIES INCORPORATED,** its sole member

By:

President