



## Encore JR/SR High School

### Regular Encore Board of Directors Meeting - April 2022

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#### **Date and Time**

Monday April 25, 2022 at 6:30 PM PDT

#### **Location**

This meeting is being held virtually pursuant to Government Code Section 54953 (e). The public can access this meeting via Zoom as follows:

Join Zoom Meeting

<https://zoom.us/j/5871494303?pwd=Mit3eIRMOVhzYjM4K1d2SSStPeEZiQT09>

Meeting ID: 587 149 4303

Passcode: 936591

One tap mobile

+16699006833,,5871494303#,,,,,0#,,936591# US (San Jose)

+13462487799,,5871494303#,,,,,0#,,936591# US (Houston)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

+1 253 215 8782 US (Tacoma)

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+1 301 715 8592 US (Washington D.C)

Meeting ID: 587 149 4303

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Find your local number: <https://zoom.us/u/aFccAHayh>

Members of the public who wish to comment during the Board meeting may use the "raise hand" tool on the Zoom platform. Members of the public calling in will be given the opportunity to address the Board during the meeting. Individual comments will be limited to three (3) minutes. If an interpreter is needed for comments, they will be translated to English and the time limit shall be six (6) minutes. The Board may limit the total time for public comment to a reasonable time. The Board reserves the right to mute or remove a participant from the meeting if the participant unreasonably disrupts the Board meeting.

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#### **Agenda**

	Purpose	Presenter	Time
<b>I. Opening Items</b>			<b>6:30 PM</b>
<b>A. Call the Meeting to Order</b>		Rob Gabler, Board President	
<b>B. Record Attendance</b>		Rob Gabler, Board President	1 m
<b>C. Approval of Board Findings Relating to Teleconference Meetings During State of Emergency</b>	Vote	Joseph Thibodeaux	1 m
Board findings pursuant to Government Code Section 54953(e)			
The Charter School Board of Directors determines, in accordance with Government Code Section 54953(e)(1)(B), that meeting in person would present imminent risks to the health or safety of attendees. Pursuant to Government Code Section 54953(e)(3), the Board has also reconsidered the circumstances of the State of Emergency declared by the Governor on March 4, 2020, and finds the State of Emergency continues to directly impact the ability of the Directors to meet safely in person and/or that State or local officials continue to impose or recommend measures to promote social distancing.			
<b>D. Public Comment</b>		Joseph Thibodeaux	1 m
All public comment, both on agenda items and non-agenda items within the jurisdiction of the Board, should be provided during the agenda item titled, "invitation for public to address the Board." Members of the public who wish to comment during the Board meeting may use the "raise hand" tool on the Zoom platform. Members of the public calling in will be given the opportunity to address the Board during the meeting. Individual comments will be limited to three (3) minutes per agenda item and one three (3) minute period to address an item not on the agenda. If an interpreter is needed for comments, they will be translated to English and the time limit shall be six (6) minutes per person per agenda item. The Board limits the total time for public comment to thirty minutes, and may extend this time at its sole discretion. The Board reserves the right to mute or remove a participant from the meeting if the participant unreasonably disrupts the Board meeting.			
<b>II. Finance</b>			<b>6:33 PM</b>
<b>A. Board Resolution 2022-004 (CEDA Series 2022 Bonds)</b>	Vote	Sabrina Bow	2 m
<b>B. March 2022 Financials</b>	Vote	Paul Khoury	5 m
<b>III. Employee Reimbursement</b>			<b>6:40 PM</b>
Expense reimbursement request submitted by Sabrina Bow			
<b>A. Executive Director expense reimbursement</b>			5 m
<b>IV. Staff Reports</b>			<b>6:45 PM</b>
<b>A. Executive Director Report</b>	FYI	Sabrina Bow	3 m
The Executive Director will provide a written report summarizing school operations for each regular board meeting.			

	<b>Purpose</b>	<b>Presenter</b>	<b>Time</b>
<b>B. Director of Academics Report</b>	FYI	Julia Dolf	5 m
Encore's Director of Academics provides regular reports on curriculum, instruction, and assessment to the Encore Board of Directors. This is for information purposes only.			
<b>C. Staff Liaison Report</b>	FYI	Jamie Waggoner	2 m
Encore High School has a staff elected liaison that makes themselves available to the staff for questions, comments, and concerns throughout the school year. The liaison also meets each semester with the staff and reports monthly to the Encore Board of Directors.			
<b>D. ESG President Report</b>	FYI	Anabel Estrada	2 m
Each month, Encore's ESG President routinely reports on the academic operations on campus to the Encore Board of Directors. This is for information purposes only.			

**V. Consent Items 6:57 PM**

It is recommended that the board considers approving a number of agenda items as a consent list. These items can be **enacted in one motion** without further discussion. Consent items may be called up by any member at the meeting for clarification, discussion, or change.

<b>A. Board Meeting Minutes</b>	Approve Minutes	Joseph Thibodeaux	2 m
Minutes corresponding to the following meetings of the Encore Education Corporation Board of Directors:			
<ul style="list-style-type: none"> <li>• February 19, 2022 Special Board Meeting</li> <li>• February 28, 2022 Regular Board Meeting</li> <li>• March 7, 2022 Regular Board Meeting</li> <li>• March 11, 2022 Special Board Meeting</li> <li>• March 14, 2022 Regular Board Meeting</li> <li>• March 27, 2022 Special Board Meeting.</li> </ul>			
<b>B. DOJ Report</b>	FYI	Joseph Thibodeaux	1 m
Report outlining background checks from the Department of Justice.			
<b>C. Finance Reports</b>	Vote	Carol Walker	1 m
<ol style="list-style-type: none"> <li>1. STRS payment report, PERS payment report, 403B payment report</li> <li>2. March 2022 Warrant Report Detail</li> <li>3. March 2022 Warrant Report Summary</li> <li>4. Employee Reimbursements</li> </ol>			

**VI. Adjourn to Closed Session 7:01 PM**

Pursuant to Government code section 54957, the Board may adjourn to closed session at any time during the meeting to discuss staff/student personnel matters, negotiations, litigation, and/or acquisition of land or facilities. The board will adjourn to closed session in a private area for discussion and may take action on the following closed session items.

- |   | Purpose | Presenter | Time |
|---|---------|-----------|------|
| <b>A. Conference with Legal Counsel. Anticipated Litigation</b>                     |         |           |      |
| Significant exposure to litigation pursuant to Section 54956.9(d)(2): Two (2) Cases |         |           |      |
| <b>B. Public Employment</b>   |         |           |      |
| Title: Executive Director   |         |           |      |

- |   |         |            |     |
|---|---------|------------|-----|
| <b>A. Reconvene from closed session</b>   | Discuss | Rob Gabler | 2 m |
| After the closed session is complete, the Board will reconvene and report any action taken on closed session. |         |            |     |

**VII. Closing Items 7:03 PM**

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|---------------------------|------|------------|-----|
| <b>A. Adjourn Meeting</b> | Vote | Rob Gabler | 2 m |
|---------------------------|------|------------|-----|

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A copy of the agenda will be posted at least 72 hours before such meeting. A copy of the written materials which will be submitted to the Board of Encore Junior and Senior High School for the Arts is available along with this agenda following the posting of the agenda by emailing Sabrina Bow at [sbow@encorehighschool.com](mailto:sbow@encorehighschool.com).

Requests for disability-related modifications or accommodations to participate in this public meeting shall be made 24 hours prior to the meeting by calling (760) 956-2632 or emailing Joseph Thibodeaux at [jthibodeaux@encorehighschool.com](mailto:jthibodeaux@encorehighschool.com). All efforts will be made for reasonable accommodations. The agenda and public documents can be modified upon request as required by Section 202 of the Americans with Disabilities Act.

# Coversheet

## Board Resolution 2022-004 (CEDA Series 2022 Bonds)

**Section:** II. Finance  
**Item:** A. Board Resolution 2022-004 (CEDA Series 2022 Bonds)  
**Purpose:** Vote  
**Submitted by:** Sabrina Bow

**Related Material:**

Encore Board Resolution 2022-004 (CEDA Series 2022 Bonds).pdf  
Second Supplemental Master Indenture (Amendatory) [CEDA Charter School Revenue Bonds (Encore Education Obligated Group) Series 2022], 4883-9063-324\_.docx  
Loan Agreement [CEDA Charter School Revenue Bonds (Encore Education Obligated Group) Series 2022], 4892-2700-3675\_3.docx  
Encore Education - [16955 Lemon Street Lease Agreement] v4.DOCX  
Bond Indenture [CEDA Charter School Revenue Bonds (Encore Education Obligated Group) Series 2022], 4886-2217-1931\_3.docx  
Appendix A [CEDA Charter School Revenue Bonds (Encore Education) Series 2022], 4873-1378-4092\_1.docx  
PPM [CEDA Charter School Revenue Bonds (Encore Education) Series 2022], 4857-0041-8844\_1.docx

RECOMMENDATION:

Encore staff recommends approval of this item.

**ENCORE EDUCATION CORPORATION**  
**RESOLUTIONS OF THE BOARD OF DIRECTORS**

**Resolution #2022-004**

The Board of Directors (the “Board”) of Encore Education Corporation hereby adopts the following Resolutions:

**WHEREAS**, Encore Education Corporation, a California nonprofit public benefit corporation (“Encore” or the “Corporation”), is organized for charitable purposes;

**WHEREAS**, Western Encore Properties Incorporated, a California nonprofit public benefit corporation (“WEP”), was formed and is operated exclusively to support Encore;

**WHEREAS**, WEP has formed and is the sole member and manager of 16955 Lemon Street, LLC, a California limited liability company (the “Landlord”);

**WHEREAS**, Encore operates the public charter school currently known as Encore High School for the Arts (the “School”) on real property (the “Lemon Street Property”) leased by Encore from the Landlord;

**WHEREAS**, in order to finance the acquisition and development of the Lemon Street Property, WEP obtained a loan (the “Series 2016 Loan”) from the California School Finance Authority (“CSFA”) in aggregate amount of \$17,440,000 pursuant to a Loan Agreement dated as of November 1, 2016, (the “2016 Loan Agreement”) between CSFA and WEP, which loan was funded from the proceeds of CSFA’s Charter School Revenue Bonds (Encore Education Obligated Group) Series 2016A and Charter School Revenue Bonds (Encore Education Obligated Group) Series 2016B (Taxable) (collectively, the “Series 2016 Bonds”) issued pursuant to an Indenture dated as of November 1, 2016, (the “Series 2016 Indenture”) between CSFA and UMB Bank, N.A., as successor Trustee (the “Series 2016 Bond Trustee”);

**WHEREAS**, in connection with the Series 2016 Loan Agreement, WEP, as the initial Obligated Group Representative, the Landlord, , as the Initial Member of an Obligated Group, and U.S. Bank National Association, as Master Trustee (together with its successors and assigns, the “Master Trustee”), entered into a Master Indenture of Trust dated as of November 1, 2016, (as amended or supplemented from time to time, the “Master Indenture of Trust”), as supplemented by a Supplemental Master Indenture for Obligation No. 1 dated as of November 1, 2016, (“Supplemental MTI No. 1”) between WEP, as Obligated Group Representative, and the Master Trustee, relating to the 2016 Loan Agreement, and WEP issued Obligation No. 1 in the principal amount of \$17,440,000 in favor of the Series 2016 Bond Trustee;

**WHEREAS**, in connection with the 2016 Loan Agreement, the Landlord and Encore entered into a Lease Agreement dated as of November 1, 2016, (as amended from time to time, the “Original Lease”) pursuant to which the Landlord leased the Lemon Street Property to Encore for use by Encore in the operation of the School;

**WHEREAS**, the Original Lease has been amended by a First Amendment to Lease Agreement dated as of August 1, 2019, by and between the Landlord and Encore;

**WHEREAS**, Encore and WEP propose that, in order to finance the Lease Payment described below, WEP will obtain a loan (the “Series 2022 Loan”) from the California Enterprise Development Authority (“CEDA”) in an aggregate amount not to exceed the \$2,000,000 pursuant to a Loan Agreement (the “Series 2022 Loan Agreement”) between CEDA and WEP, which loan will be funded from the proceeds of CEDA’s Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable) (the “Series 2022 Bonds”) to be issued pursuant to an Indenture (the “Series 2022 Indenture”) between CEDA and UMB Bank, N.A., as Trustee (the “Series 2022 Bond Trustee”);

**WHEREAS**, Encore and WEP propose that, in connection with the 2022 Loan Agreement, WEP and UMB Bank, N.A, as successor Master Trustee, will enter into a Supplemental Master Indenture for Obligation No. 2 (“Supplemental MTI No. 2”), and WEP will issue its Obligation No. 2 in the principal amount of the Series 2022 Bonds in favor of the Series 2022 Bond Trustee;

**WHEREAS**, Encore and WEP propose that, in connection with the 2022 Loan Agreement, the Landlord and Encore will further amend the Original Lease to provide for Landlord’s payment to Encore from the proceeds of the Series 2022 Bonds of a lease incentive payment (the “Lease Payment”) in the approximate amount of \$2,000,000 to increase the rent payable by Encore under the lease, to add to and amend the covenants of Encore in the lease, to provide for Encore’s grant of a security interest in all unrestricted personal property of Encore to secure Encore’s obligations under the lease, and to provide for an intercept of Encore’s revenues in favor of the Master Trustee, subject to the intercept of the revenues of Encore effected in connection with the issuance of the Series 2016 Bonds, all as set forth in an amended and restated Lease Agreement (the “New Lease”) to be effective as the making of the Series 2022 Loan;

**WHEREAS**, Encore and WEP propose that the obligations of WEP and the Landlord under the 2022 Loan Agreement, the Master Indenture of Trust, and Obligation No. 2 and/or the obligations of Encore under the New Lease, will be secured or supported by, among other things (i) a pledge of the gross revenues of the Landlord, (ii) a security interest in all other personal property of the Landlord, (iii) the deed of trust encumbering the Lemon Street Property executed by the Landlord in connection with the issuance of the Series 2016 Bonds, (iv) a pledge and intercept of the gross revenues of Encore, subject to the intercept of the revenues of Encore effected in connection with the issuance of the Series 2016 Bonds, (v) a security interest in all unrestricted personal property of Encore, and (vi) Encore’s guaranty of all obligations of WEP under the Master Indenture;

**WHEREAS**, Stifel, Nicolaus & Company, Incorporated (the “Underwriter”) proposes to underwrite the Series 2022 Bonds pursuant to a private placement agreement (the “Private Placement Agreement”) by and among the Underwriter, CEDA, WEP, and Encore;

**WHEREAS**, the Board finds that the terms of the foregoing transactions and proposed transactions (collectively, the “Transactions”), including the New Lease are fair and reasonable as to Encore, the School, WEP, and the Landlord (collectively, the “Encore Entities”) under the

circumstances, in the best interests of the Encore Entities, and in furtherance of the charitable purposes of the Corporation;

**WHEREAS**, the Board desires the Encore Entities to take all actions necessary or advisable to consummate the Transactions; and

**WHEREAS**, the individuals listed on Schedule 1 attached hereto have been elected or appointed to the offices of the Corporation set forth after their names on Schedule 1, and such individuals are currently serving as such officers of the Corporation;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board ratifies and confirms the election or appointment, as applicable, of the officers of the Corporation listed on Schedule 1;

**RESOLVED, FURTHER**, that the Board ratifies and approves the Transactions and authorizes the execution, delivery and performance by the Encore Entities of the documents and agreements listed on Schedule 2 attached hereto (collectively, the “Primary Transaction Documents”) to which the Encore Entities may be a party and all such other documents, instruments and agreements as may be necessary or advisable to facilitate the Transactions (together with the Primary Transaction Documents, the “Transaction Documents”);

**RESOLVED FURTHER**, that the Board requests WEP and the Landlord to take all actions necessary or advisable to consummate the Transactions;

**RESOLVED FURTHER**, that the Board appoints the officers of the Corporation, and each of them individually (each, an “Authorized Signatory”), as authorized signatories of the WEP Entities for purposes of executing the Transaction Documents on behalf of the WEP Entities;

**RESOLVED FURTHER**, that the Authorized Signatories, and each of them individually, are authorized and directed, for and in the name and on behalf of the Corporation, to open such deposit accounts or other bank accounts and to contract for such banking services for the WEP Entities as such Authorized Signatories may deem necessary or advisable to consummate the Transactions and to execute, on behalf of the WEP Entities, all related standard form resolutions required by all banks, trust companies and financial institutions;

**RESOLVED FURTHER**, that the Authorized Signatories, and each of them individually, are authorized and directed, for and in the name and on behalf of the Corporation, to execute, deliver, approve, and, as appropriate, declare final the Transaction Documents, together with such amendments or modifications thereto as an Authorized Signatory may approve as necessary or advisable to consummate the Transactions, and all such other applications, grant agreements, bond purchase agreements, private placement agreements, disclosure agreements, offering statements, offering memoranda, master indentures, supplements to master indentures, indentures, loan agreements, promissory notes, obligations, leases, subleases, deeds of trust, security agreements, account control agreements, subordination, non-disturbance and attornment agreements, tax certificates, tax and regulatory compliance agreements, assignments, indemnification agreements, guaranties, subordination agreements, escrow agreements, letters of representation, notices, certificates, and other documents, agreements, or instruments or amendments to any of the foregoing, as an Authorized Signatory may approve as necessary or advisable to consummate the Transactions, each with such additions, deletions or changes therein as the Authorized Signatory



executing the same may approve (the execution and delivery thereof by any such Authorized Signatory to be conclusive evidence of his or her approval of any such document, agreement, instrument, amendment, addition, deletion or change);

**RESOLVED FURTHER**, that the Board hereby ratifies and confirms the acts of the officers, agents or employees of the Corporation taken on behalf of the Corporation in connection with the Transactions;

**RESOLVED FURTHER**, that by the adoption of these resolutions, the Board hereby reconfirms, ratifies and adopts all prior actions of the Board which may have previously been taken in connection with the Transactions;

**RESOLVED FURTHER**, that all prior resolutions of the Board or any parts thereof in conflict with any or all of the foregoing resolutions are hereby repealed to the extent of such conflict;

**RESOLVED FURTHER**, that these resolutions shall take effect and be in full force immediately after their adoption by the Board; and

**RESOLVED FURTHER**, that the Authorized Signatories, and each of them individually, are authorized and directed, for and in the name and on behalf of the Corporation, to approve, execute and deliver any and all documents, instruments and agreements, and to perform or cause to be performed any and all acts as may, in their judgment, be necessary or desirable to accomplish the purposes of the foregoing resolutions and the transactions contemplated thereby and by the agreements therein approved, and any such documents, instrument or agreements so executed and delivered or actions taken by them or any of them shall be conclusive evidence of their authority in so doing.

### **Certificate of Secretary**

The undersigned certifies that the undersigned is the duly appointed and acting Secretary of the Corporation and that the foregoing is a true and correct copy of Resolutions that were duly adopted on \_\_\_\_\_, 2022, by the majority vote of the directors of the Corporation present at a meeting of the board of directors of the Corporation duly held on such date in compliance with the bylaws of the Corporation and while a quorum was present.

**IN WITNESS WHEREOF**, I have hereunto set my hand as Secretary of the Corporation this \_\_\_\_ day of \_\_\_\_\_ 2022.

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Kelly Ahmed, Secretary

## **Schedule 1**

### **Officers of the Corporation**

Ron Gabler

President

Sabrina Bow

Chief Executive Officer and Executive  
Director

Kelly Ahmed

Secretary

## **Schedule 2**

### **Primary Transaction Documents**

1. Private Placement Agreement.
2. Indenture.
3. Bonds.
4. Loan Agreement.
5. Supplemental MTI for Obligation No. 2.
6. Obligation No. 2 (as such term is defined in the Supplemental MTI for Obligation No. 2).
7. New Lease.
8. Guaranty.
9. Intercreditor and Collateral Agency Agreement.
10. Continuing Disclosure Agreement.
11. Private Placement Memorandum.

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SUPPLEMENTAL MASTER INDENTURE (AMENDATORY)  
FOR OBLIGATION NO. 2

WESTERN ENCORE PROPERTIES INCORPORATED  
and  
THE LIMITED LIABILITY COMPANY LISTED ON  
APPENDIX A OF THE HEREINAFTER DEFINED MASTER INDENTURE,  
as Initial Member of the Obligated Group

and

UMB BANK, N.A.,  
as Master Trustee

Dated as of May 1, 2022

Supplementing and Amending the Master Indenture of Trust  
Dated as of November 1, 2016

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SUPPLEMENTAL MASTER INDENTURE (AMENDATORY)  
FOR OBLIGATION NO. 2

This Supplemental Master Indenture (Amendatory) for Obligation No. 2, dated as of May 1, 2022 (“Supplement No. 2”), between WESTERN ENCORE PROPERTIES INCORPORATED, a nonprofit public benefit corporation under the laws of the State of California (the “Borrower”), as Obligated Group Representative pursuant to the Master Indenture of Trust, dated as of November 1, 2016 (the “Original Master Indenture”), between the Borrower, the Initial Member (as defined therein) and UMB BANK, N.A., a national banking association organized and existing under the laws of the United States of America, as successor master trustee (the “Master Trustee”), further supplements and amends the Original Master Indenture as described herein;

W I T N E S S E T H

WHEREAS, the Borrower, the Initial Member and the Master Trustee have entered into the Original Master Indenture which provides for the issuance by the Obligated Group Representative of Obligations thereunder upon the Obligated Group Representative and the Master Trustee entering into an indenture supplemental to the Master Indenture;

WHEREAS, the Borrower has been appointed the Obligated Group Representative under the Original Master Indenture and has all requisite corporate power and is authorized under the terms of the Original Master Indenture to issue Obligations, which constitute the joint and several Obligations of the Members;

WHEREAS, there has heretofore been issued Obligation No. 1 pursuant to the Supplemental Master Indenture for Obligation No. 1, dated as of November 1, 2016;

WHEREAS, the Borrower, as Obligated Group Representative, desires to issue an Obligation hereunder to secure the obligations arising under and pursuant to a loan agreement, dated as of May 1, 2022, between the California Enterprise Development Authority and the Borrower;

WHEREAS, the Borrower, as Obligated Group Representative, and the beneficial owners of Related Bonds issued pursuant to the 2016 Bond Indenture desire to amend certain provisions of the Original Master Indenture, as set forth herein (such Original Master Indenture, as amended and supplemented from time to time, the “Master Indenture”);

WHEREAS, pursuant to Section 6.02 of the Master Indenture, the Holders of all Obligations Outstanding have consented to this Supplement No. 2; and

WHEREAS, all acts and things necessary to constitute this Supplement No. 2 a valid supplemental indenture and agreement according to its terms have been done and performed, and the Borrower, as Obligated Group Representative, has duly authorized the execution and delivery hereof and of the Obligation issued hereby;

NOW, THEREFORE, in consideration of the premises, of the acceptance by the Master Trustee of the trusts hereby created, and of the giving of consideration for and acceptance of the Obligation issued hereunder by the Holder thereof, the Borrower, as Obligated Group Representative, covenants and agrees with the Master Trustee for the benefit of the Holder from time to time of the Obligation issued hereby, as follows:

**Section 1. Definitions.** Unless otherwise required by the context, all terms used herein which are defined in the Master Indenture shall have the meanings assigned to them therein, except as set forth below:

Authority

“Authority” means the California Enterprise Development Authority and its successors or assigns.

GAAP

“GAAP” means generally accepted accounting principles, as applicable to a Member or any Lessee, consistently applied, as in effect for the period of computation.

Lessee Indebtedness

“Lessee Indebtedness” means Indebtedness of the Lessee.

Majority Obligation Holders

“Majority Obligation Holders” means the owners of a majority in aggregate principal amount of Outstanding Obligations.

Net Operating School Revenue

“Net Operating School Revenue” means the Lessee’s Gross School Revenue minus its Operating Expenses; provided, that no determination thereof will take into account: (a) any gain or loss resulting from either the early extinguishment or refinancing of Lessee Indebtedness or the sale, exchange or other disposition of capital assets not made in the ordinary course of business; (b) gifts, grants, bequests, donations or contributions, and income therefrom, to the extent specifically permanently restricted by the donor or by law to a particular purpose inconsistent with their use for the payment of Operating Expenses; (c) the net proceeds of insurance (other than business interruption insurance) and condemnation awards; (d) adjustments to the value of assets or liabilities resulting from changes in generally accepted accounting principles; (e) unrealized gains or losses that do not result in the receipt or expenditure of cash; and (f) nonrecurring items which involve the receipt, expenditure or transfer of assets.

Obligation No. 2

“Obligation No. 2” means the Obligation issued pursuant hereto.

Permitted Liens

“Permitted Liens” shall mean and include:

- (a) Any judgment lien or notice of pending action against any Member so long as such judgment or pending action is being contested in good faith and execution thereon is stayed, or while the period for responsive pleading has not lapsed, so long as such judgment does not exceed



\$250,000, unless covered by insurance and the insurance carrier has acknowledged coverage in writing;

(b) (i) Rights reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license, permit or provision of law, affecting any Property; (ii) any liens on any Property for taxes, assessment, levies, fees, water and sewer charges, and other governmental and similar charges; (iii) covenants, conditions and restriction agreements, easements, rights-of-way, water rights, servitudes, waivers, reservations of abutter's rights, restrictions, governmental requirements and other defects, encumbrances, and irregularities in the title to any Property which do not materially impair the use of such Property or materially and adversely affect the value thereof; (iv) condominium declarations, condominium plans, condominium maps, tract maps, lot splits or lot line adjustment maps affecting the property; and (v) rights reserved to or vested in any municipality or public authority to control or regulate any Property or to use such Property in any manner, which rights do not materially impair the use of such Property in any manner, or materially and adversely affect the value thereof;

(c) Any Lien described in the final title policy which summarized certain liens existing on the date of execution of this Master Indenture provided that no such Lien (or the amount of Indebtedness secured thereby) may be increased, extended, renewed or modified to apply to any Property of any Member not subject to such Lien on such date;

(d) Any Lien in favor of the Master Trustee;

(e) Liens arising by reason of good faith deposits with any Member in connection with leases of real estate, bids or contracts (other than contract for the payment of money), deposits by any Member to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

(f) Any Lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any public body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable any Member to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workers' compensation, unemployment insurance, pension or profit sharing plans or other similar social security plans, or to share in the privileges or benefits required for companies participating in such arrangements, and any Lien in the nature of a banker's lien or right of setoff with respect to deposits which any Member is not required to maintain with the bank in question;

(g) Any Lien arising by reason of any escrow established to pay debt service with respect to Indebtedness, including Irrevocable Deposits;

(h) Any Lien in favor of a trustee of Related Bonds on the proceeds of Indebtedness prior to the application of such proceeds;

(i) Liens on Property received by any Member through gifts, grants or bequests, such Liens being due to restrictions on such gifts, grants or bequests of Property or the income thereon, up to the Fair Market Value of such Property;

(j) Liens securing Non-recourse Member Indebtedness incurred pursuant to this Master Indenture so long as the Property purchased, acquired, constructed, or equipped with the proceeds of such Non-recourse Member Indebtedness does not replace any Property of the Members which generated more than ten percent (10%) of the Total Revenues of the Members for the most recent Fiscal Year for which Obligated Group Financial Statements are available;

(k) Any liens of mechanics, materialmen, laborers, suppliers or vendors for work or services performed or materials furnished in connection with such Property, which are not due and payable or which are not delinquent and that have been due for less than 60 days;

(l) [Reserved];

(m) [Reserved]; and

(n) [Reserved].

#### Series 2016 Bond Indenture

“Series 2016 Bond Indenture” means that certain bond indenture, dated as of November 1, 2016, between the California School Finance Authority and UMB Bank, N.A., as successor trustee thereunder, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof.

#### Series 2022 Bond Indenture

“Series 2022 Bond Indenture” means that certain bond indenture, dated as of May 1, 2022, between the Authority and the Series 2022 Bond Trustee, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof.

#### Series 2022 Bonds

“Series 2022 Bonds” means the California Enterprise Development Authority Charter School Revenue Bonds (Encore Education Corporation), Series 2022 (Taxable).

#### Series 2022 Bond Trustee

“Series 2022 Bond Trustee” means UMB Bank, N.A., a national banking association duly organized and existing under the laws of the United States of America, in its capacity as trustee under the Series 2022 Bond Indenture, and any successor to its duties or co-trustee under the Series 2022 Bond Indenture.

#### Series 2022 Loan Agreement

“Series 2022 Loan Agreement” means that certain loan agreement, dated as of May 1, 2022, between the Authority and the Borrower, as acknowledged and agreed to by the Initial Member, as

originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of the Series 2022 Bond Indenture.

### Series 2022 Loan Repayments

“Series 2022 Loan Repayments” means all of the payments so designated and required to be made by the Borrower pursuant to Section 3.02 of the Series 2022 Loan Agreement.

### Series 2022 Private Placement Memorandum

“Series 2022 Private Placement Memorandum” means the Private Placement Memorandum, dated April \_\_, 2022, of the Borrower relating to the Series 2022 Bonds.

### Supplement No. 2

“Supplement No. 2” means this Supplemental Master Indenture (Amendatory) for Obligation No. 2.

#### **Section 2.** Amendment of Master Indenture.

(a) Subsection (c) to Section 2.05 of the Master Indenture is hereby replaced in its entirety with the following:

(c) The Master Trustee shall have received an Officer’s Certificate to the effect that, except as disclosed in the Series 2022 Private Placement Memorandum, neither an Event of Default nor any event which with the passage of time or the giving of notice or both would become an Event of Default has occurred and is then outstanding or would occur upon issuance of such Obligation or is continuing under this Master Indenture or any Related Supplement.

(b) Section 2.06 is hereby added to the Master Indenture as follows:

#### Section 2.06. Grant of Security Interest.

(a) In addition to any security interest granted (i) under any Mortgage and (ii) under Section 3.14 hereof, the Members hereby grant to the Master Trustee a continuing security interest in all of its presently existing and hereafter acquired or arising Collateral (as hereinafter defined) in order to secure the prompt payment and performance and observance of all of the Members’ Obligations. The Members acknowledge and affirm that such security interest in the Collateral has attached to all Collateral without further act on the part of the Master Trustee or the Members. By its signature hereto, the Members hereby consent to the foregoing grant of a security interest in the Collateral, regardless of where located. For purposes of this Master Indenture, the term “Collateral” shall mean, collectively, the following:

- (i) all Accounts;
- (ii) all Chattel Paper;

- (iii) all Licenses, Copyrights, Patents and Trademarks;
- (iv) all Documents;
- (v) all Equipment;
- (vi) all Fixtures;
- (vii) all General Intangibles;
- (viii) all Goods;
- (ix) all Instruments;
- (x) all Inventory;
- (xi) all Investment Property;
- (xii) all cash or cash equivalents;
- (xiii) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;
- (xiv) all Deposit Accounts with any bank or other financial institution;
- (xv) all Commercial Tort Claims; and
- (xvi) all accessions to, substitutions for and replacements, proceeds (including Stock Rights), rents, profits, proceeds (including insurance proceeds) and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing;

to secure the Members' prompt payment, performance and observance of the obligations of the Members under this Master Indenture, and any modifications, extensions or renewals thereof. Capitalized terms used in this Section 2.06(a) shall have the meanings given such terms in the California Uniform Commercial Code (the "UCC").

(b) The Members hereby authorize the Master Trustee to file financing statements perfecting the security interest granted in this Master Indenture in any jurisdiction, and if requested, will deliver financing statements and other documents to the Master Trustee and will take such other actions as may from time to time be requested by the Master Trustee in order to maintain a first perfected security interest in and, if applicable, control of, the Collateral for the Master Trustee. Any financing statement filed by the Master Trustee may be filed in any filing office in any jurisdiction and may (i) indicate the Collateral (1) as all assets of the Members or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC, or (2) by any other description which reasonably approximates the description contained in this Section, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (1) whether the Members are an organization, the type of organization and any organization identification number issued to the Members, and (2) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. The Members also agrees to furnish any such information described in the foregoing sentence to the Master Trustee promptly upon request.

(c) The Members will, if so requested by the Master Trustee, furnish to the Master Trustee, as often as the Master Trustee requests, statements and schedules further identifying and describing the Collateral and such other reports and information in connection with its Collateral as the Master Trustee may request, all in such reasonable detail as the Master Trustee may specify. The Members also agree to take any and all actions necessary to defend title to the Collateral against all persons and to defend the security interest of the Master Trustee in its Collateral and the priority thereof against any Lien not expressly permitted hereunder.

(d) The Members' exact legal name, state of organization, FEIN, if any, and charter or organizational identification number is accurately set forth in each Related Supplement. The Members' chief executive office is located at the address set forth in Section 8.08, and there are no other locations where any Member conducts business or Collateral is kept. The Members will not, without the prior written consent of the Master Trustee (which consent the Master Trustee shall not be obligated to provide absent the written direction of the Majority Obligation Holders), (i) change either of its names, entity types or ownership structures, (ii) reorganize or reincorporate under the laws of another jurisdiction, or (iii) change its address where Collateral is kept.

(c) The first paragraph of Section 3.01 of the Master Indenture is hereby replaced in its entirety with the following paragraph:

Section 3.01. Payment of Required Payments. Each Member jointly and severally covenants and agrees (a) to pay or cause to be paid promptly all Required Payments at the place, on the dates and in the manner provided herein, in any Related Supplement and in said Obligations, and (b) to faithfully observe and perform all of the conditions, covenants and requirements of this Master Indenture, any Related Supplement and any Obligation. Notwithstanding the foregoing, each Member jointly and severally covenants and agrees that, to the extent Required Payments are due with respect to Obligation No. 2 and any other Obligation on the same date, except to the extent any such Required Payment is paid pursuant to an Intercept, each Member will pay amounts due in respect of Obligation No. 2 before paying amounts due in respect of any other Obligation. Each Member acknowledges and agrees that the time of such payment and performance is of the essence of the obligations hereunder.

(d) The last paragraph of Section 3.01 of the Master Indenture is hereby replaced in its entirety with the following paragraph:

Notwithstanding anything in this Master Indenture to the contrary, the Master Trustee hereby covenants that it shall not take recourse against the Corporation, the Obligated Group Representative, or any of the Members with respect to the failure by the Corporation, the Obligated Group Representative or any of the Members to make any Required Payment under this Master Indenture and any Related Supplement except recourse to the Gross Revenues, the Collateral, and the amounts held in the funds and accounts created under the Related Bond Indenture (except the Rebate Fund) or hereunder, or to such other security as may from time to time be given for the payment of obligations arising out of this Master

Indenture, any Related Supplement or any other agreement securing the obligations of the Corporation or any of the Members with respect to the Bonds.

(e) Section 3.03 of the Master Indenture is hereby replaced in its entirety with the following:

Section 3.03. Insurance.

(a) (1) Each Member covenants and agrees that it will keep (or cause to be kept) insurance (including builder's all-risk insurance during any period of construction at a Facility) against loss or damage to any structure constituting any part of the Facilities by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. All insurance provided pursuant to this subsection shall be in an amount equal to the greater of (i) one hundred percent (100%) of the replacement cost (without deduction for depreciation) of all buildings, structures and fixtures constituting any part of the Facilities owned by such Member, or (ii) the principal amount of the Related Bonds then outstanding under any Related Bond Indenture, and shall be subject to a deductible not to exceed \$100,000 per occurrence.

(2) Each Member covenants and agrees to procure and maintain (or caused to be procured or maintained), throughout the term of any Related Bond Indenture, business interruption insurance or rent loss insurance to cover loss, total or partial, of the use of any structures constituting any part of the Facilities as the result of any of the hazards covered by the insurance required by, in an amount sufficient to pay the Required Payments for a period of at least twelve (12) months. Proceeds of such insurance in the amount of at least twelve (12) months of Required Payments shall be deposited into the "Insurance and Condemnation Proceeds Fund" created hereunder and applied to the payment of the Required Payments, in installments as the proceeds are paid to each Member.

(3) Each Member covenants and agrees that it will maintain (or caused to be maintained) (i) general liability insurance of no less than \$1,000,000 per occurrence and (ii) worker's compensation insurance as required by the laws of the State.

(4) An Insurance Consultant shall review the insurance requirements of each Member with respect to the Facilities from time to time (but not less frequently than once every five years) commencing July 1, 2021. If such review indicates that any Member should increase any of the coverages required hereof, each Member shall review such recommendation with the governing body of each Member and shall increase such coverage; provided, however, that such coverage is available from reputable insurance companies at a reasonable cost on the open market.

(5) Each Member hereby covenants that it will use its best efforts to apply for any grants, loans or other relief available from each state government, as applicable, or the federal government to obtain amounts necessary to rebuild any portion of the Facilities destroyed or damaged in connection with an uninsured or underinsured calamity

causing destruction or damage; provided, however, that each Member shall not be required to accept such amounts if doing so would jeopardize the integrity of each Member's programs.

(b) The insurance policies required by Section 3.03(a) hereof shall be carried by insurance companies which are rated at least "A" by A.M. Best and capable of fulfilling the requirements of such policies. All such policies (except liability policies) shall name each Member and the Master Trustee as loss payees or additional insureds as their interest may appear, as applicable. Each policy shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved and shall contain a provision to the effect that the insurer shall not cancel or substantially modify the policy provisions without first giving at least thirty (30) days written notice thereof to the Obligated Group Representative, the Government Issuer, the Related Bond Trustee and the Master Trustee. In lieu of separate policies, the Members may maintain blanket policies which cover any one or more risks required to be insured against so long as the minimum coverages required herein are met.

(c) (1) All proceeds of the insurance carried pursuant to Section 3.03(a)(1) hereof (except proceeds of the liability portion, if any, of such insurance), and proceeds of any condemnation awards with respect to any individual Facility, in each case, in excess of \$250,000 shall be paid immediately upon receipt by the Members or other named insured parties to the Master Trustee for deposit in the Insurance and Condemnation Proceeds Fund. In the event that the proceeds of any loss or damage to or condemnation of any Facility shall be less than \$250,000, each Member may retain such proceeds without any formality whatsoever, so long as no Event of Default shall have occurred and be continuing. In the event any of the Members elects to repair or replace the Facilities damaged, destroyed or taken, moneys in the Insurance and Condemnation Proceeds Fund shall be disbursed by the Master Trustee after deducting therefrom the reasonable charges and expenses of the Master Trustee in connection with the collection and disbursement of such moneys, for the purpose of repairing or replacing the Facilities damaged, destroyed or taken in the manner and subject to the conditions set forth in Section 3.03(d) hereof with respect to disbursements from the Insurance and Condemnation Proceeds Fund; provided, however, that no disbursement shall be made prior to receipt by the Master Trustee of written notice that after repair and replacement the Facilities will continue to be used for the purposes for which they were constructed or acquired by the Member.

(2) If any of the Members shall elect not to, or cannot, repair or replace the Facilities damaged, destroyed or taken, as provided in Section 3.03(c)(1), subject to Section 3.03(c)(3), the Master Trustee shall transfer all amounts in the Insurance and Condemnation Proceeds Fund on account of such damage, destruction or condemnation to the Related Bond Trustee for deposit in the applicable redemption account under the Related Bond Indenture.

(3) If all of the amounts on deposit in the Insurance and Condemnation Proceeds Fund pursuant to the first sentence of Section 3.03(c)(1) \$250,000, but are not sufficient to retire all Related Bonds (or allocable portion thereof) then outstanding with respect to such Facility, the Master Trustee shall not transfer said amounts to the applicable redemption account under the Related Bond Indenture unless the Obligated Group Representative shall file with the Master Trustee a report of an Independent

Consultant showing that Gross Revenues are projected to be at least equal to the Debt Service Requirement on all Related Bonds and ground rent obligations of the Members, if any, for each of the three full Fiscal Years immediately following such transfer after giving effect to the retirement of such Related Bonds (or allocable portion thereof) in accordance with the terms of the Related Bond Indenture.

(4) In the event the Obligated Group Representative shall file a report of an Independent Consultant that shows that projected Gross Revenues are projected to be at least equal to 1.10 times the Debt Service Requirement on all the Related Bonds and ground rent obligations of the Members for each of the three full Fiscal Years immediately following such transfer after giving effect to the retirement of such Related Bonds (or allocable portion thereof), the Members shall apply all amounts in the Insurance and Condemnation Proceeds Fund to the repair or replacement of the Facilities damaged, destroyed or taken, as provided in Section 3.03(c)(1) hereof; provided, however, that in the event the Obligated Group Representative shall file a further report of an Independent Consultant showing that even after making such repair and replacement, Gross Revenues are not projected to be at least equal to 1.10 times the Debt Service Requirement on all Related Bonds and ground rent obligations of the Members for each of the three full Fiscal Years immediately following the completion of such repair and replacement, the Master Trustee shall transfer all moneys in the Insurance and Condemnation Proceeds Fund to the applicable redemption account under the Related Bond Indenture as provided in Section 3.03(c)(2).

(d) The Master Trustee shall establish, maintain and hold in trust, when moneys are required to be deposited therein, a separate fund designated as the "Insurance and Condemnation Proceeds Fund," and administer said fund as set forth in this Section 3.03(d).

(1) Before any payment from the Insurance and Condemnation Proceeds Fund shall be made, the Obligated Group Representative shall file or cause to be filed with the Master Trustee a Request of the Obligated Group Representative stating: (1) the item number of such payment; (2) the name of the Person to whom each such payment is due, which may be the Obligated Group Representative in the case of reimbursement for costs of such repair or replacement theretofore paid by the Obligated Group Representative; (3) the respective amounts to be paid; (4) the purpose by general classification for which each obligation to be paid was incurred; (5) that obligations in the stated amounts have been incurred by the Obligated Group Representative and are presently due and payable and that each item thereof is a proper charge against the Insurance and Condemnation Proceeds Fund and has not been previously paid from the Insurance and Condemnation Proceeds Fund; and (6) that there has not been filed with or served upon the Obligated Group Representative any notice of claim of lien, or attachment upon, or claim affecting the right to receive payment of, any of the amounts payable to any of the persons named in such Request, for which adequate security for the payment of such obligation has been posted, or which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen's or mechanics' liens accruing by mere operation of law.

Within five (5) Business Days of receipt of a Request, the Master Trustee shall pay the amount set forth in such Request as directed by the terms thereof out of the Insurance and Condemnation Proceeds Fund. The Master Trustee may conclusively rely upon such Request and shall have no responsibility or duty to investigate any of the matters



set forth therein. The Master Trustee shall not make any such payment if it has received any written notice of claim of lien, attachment upon, or claim affecting the right to receive payment of, any of the moneys to be so paid, that has not been released or will not be released simultaneously with such payment, unless adequate security for the payment of such obligation has been posted.

(2) When the repair or replacement of damaged, destroyed or taken property shall have been completed, the Obligated Group Representative shall deliver to the Master Trustee a Certificate of the Obligated Group Representative stating the fact and date of such completion and stating that all of the costs thereof have been determined and paid (or that all of such costs have been paid less specified claims that are subject to dispute and for which a retention in the Insurance and Condemnation Proceeds Fund is to be maintained in the full amount of such claims until such dispute is resolved).

(f) Section 3.05 of the Master Indenture is hereby replaced in its entirety with the following:

Section 3.05. Limitations on Additional Indebtedness. Each Member covenants and agrees that it will not incur any Additional Indebtedness after the date hereof except as follows:

(a) Long-Term Indebtedness may be incurred if each Member obtains the prior written consent of the Majority Obligation Holders;

(b) Long Term Indebtedness may be incurred for the purpose of refunding any Outstanding Indebtedness, if such Long Term Indebtedness fully pays the Outstanding Obligations in full;

(c) Short Term Indebtedness may be incurred by any Member if such Member obtains the prior written consent of the Majority Obligation Holders;

(d) Indebtedness consisting of purchase money obligations with respect to any item of equipment related to the Facilities may be incurred in the aggregate principal amount of up to [\$\_\_\_\_\_];

(e) Indebtedness consisting of leases which are considered operating leases under generally accepted accounting principles may be incurred with the prior written consent of the Majority Obligation Holders;

(f) Subordinated Indebtedness may be incurred with the prior written consent of the Majority Obligation Holders; or

(g) No Member shall enter into a Financial Products Agreement.

(g) Section 3.06 of the Master Indenture is hereby replaced in its entirety with the following:

Section 3.06. Amendment of Leases. There shall be no amendment, modification or termination of any of the Leases without the prior written consent of the Master Trustee. The Master Trustee shall give such written consent only if:

(a) the Holders of a majority in principal amount of the related Tax-Exempt Bonds then Outstanding consent in writing to such amendment, modification or termination; and

(b) the Master Trustee shall receive an Opinion of Bond Counsel substantially to the effect that such amendment, modification or termination will not, in and of itself, adversely affect any exclusion of interest on the Related Bonds that are Tax-Exempt Bonds from gross income for purposes of federal income taxation.

(h) Section 3.08 of the Master Indenture is hereby replaced in its entirety with the following:

Section 3.08. Required Lease Covenants. Each Member covenants and agrees that each related Lease shall contain the following provisions, in substantially the following form:

(a) Extraordinary Monthly Rent. In the event that the Lessee under such Lease receives a notice (each an “Extraordinary Monthly Rent Notice”) from either the lessor under such Lease (the “Lessor”) or the Master Trustee stating the Master Trustee has not received the payment of Rent with respect to a Related Project on or before the date that such required payment is due, then Lessee shall pay the Extraordinary Monthly Rent to the Master Trustee within three (3) Business Days after Lessee’s receipt of such Extraordinary Monthly Rent Notice. The Lessor shall covenant in such Lease to immediately provide the Lessee with a copy of any Extraordinary Monthly Rent Notice received by Lessor pursuant to the terms of the Master Indenture.

(1) “Extraordinary Monthly Rent” shall mean the amount set forth in an Extraordinary Monthly Rent Notice, which shall be the Lessee’s Proportionate Share of the Extraordinary Monthly Rent.

(2) “Proportionate Share” shall mean the amount required to be paid by Lessee to ensure that all of the required Rent payments with respect to all of the Related Projects (as that term is defined in this Master Indenture) have been timely made.

(3) The definition of “Rent” set forth under each related Lease shall include, as one component, the “Extraordinary Monthly Rent.”

(b) Liquidity Covenant. The Lessee will calculate Consolidated Days Cash on Hand for the Obligated Group Schools as of the last day of each Fiscal Year, commencing with the Fiscal Year ending June 30, 2017, based upon its audited financial statements for such Fiscal Year and file such reports with Master Trustee. For each calculation date, the Lessee, on behalf of the Obligated Group Schools, will maintain Consolidated Days Cash on Hand as of the last day of each Fiscal Year equal to or greater than 45 days.

(1) “Consolidated Days Cash on Hand” means (i) the sum of Cash and Cash Equivalents of the Obligated Group Schools, excluding the proceeds of Indebtedness, as shown on the Lessee’s audited financial statements for each Fiscal Year (“Cash on Hand”); divided by (ii) the Average Daily Expenses for Obligated Group Schools (as calculated for the most recent Fiscal Year ending before such date).

(2) “Average Daily Expenses for Obligated Group Schools” means (A) cash requirements during such Fiscal Year related to or payable from revenues attributable to the schools operated by the Lessee under the Lease, which have been financed with Obligations issued under the Master Indenture (the “Obligated Group School”) (excluding from such calculation all depreciation and other non-cash items), and including within such calculation on behalf of the Obligated Group Schools in the aggregate (i) all Operating Expenses for such Fiscal Year for the Obligated Group Schools, and (ii) the maximum Base Rent payable under the Lease for the Obligated Group Schools between the Lessee and any Member of the Obligated Group for that year or any other year, divided by (B) 365.

(3) The Lessee will provide a certificate to the Lessor and Master Trustee at the time of delivery of its annual audited financial statements for each Fiscal Year indicating whether the Lessee, on behalf of the Obligated Group Schools, has met the requirement set forth above. If the certificate indicates that such cash balance requirement has not been met, the Lessee covenants to retain an Independent Consultant, at the expense of the Lessee, on behalf of the Obligated Group Schools, within 45 days, to make recommendations to increase such balances in the then-current Fiscal Year to the required level or, if in the opinion of the Independent Consultant the attainment of such level is impracticable, to the highest level attainable in such Fiscal Year. The Independent Consultant selected and appointed by the Lessee may be rejected upon the written request of the holders of not less than a majority in aggregate principal amount of the Related Bonds then Outstanding; if so rejected, the Lessee covenants to use its best efforts to appoint a new Independent Consultant within 45 days thereof. Any Independent Consultant will be required to submit its recommendations to the Lessors and Master Trustee within 90 days after being so retained. The Lessee, on behalf of the Obligated Group Schools, agrees to implement the recommendations of the Independent Consultant, to the extent permitted by law.

(4) No proceeds of any Indebtedness will be considered unrestricted available cash for purposes of such calculation.

(5) In the event the Lessee, on behalf of the Obligated Group Schools, fails to have such an amount on deposit, it will not be a default or Event of Default under the Lease.

(c) Lessee covenants and agrees to calculate for each Fiscal Year its Base Rent Coverage Ratio for each Lease based on its audited financial statements for such Fiscal year, and to provide a copy of such calculation for such period to the applicable Lessor and the Master Trustee annually commencing with the Fiscal Year ending June 30, 2017. The Lessee also covenants to maintain its Net Operating School Revenue so that its Base Rent Coverage Ratio at the end of the each Fiscal Year is not less than 1.10 to 1.00; provide that, except as provided below, the Lessee’s failure to achieve the required Base Rent Coverage

Ratio will not constitute an Event of Default under any Lease if the Lessee promptly engages an Independent Consultant to prepare a report, to be delivered to the Lessee, the Lessor and Trustee within 45 days of engagement, with recommendations for meeting the required Base Rent Coverage Ratio or, if in the opinion of the Independent Consultant the attainment of such level is impracticable, to the highest level attainable in such Fiscal Year. The Independent Consultant selected and appointed by the Lessee may be rejected upon the written request of the holders of not less than a majority in aggregate principal amount of the Related Bonds then Outstanding; if so rejected, the Lessee covenants to use its best efforts to appoint a new Independent Consultant within 45 days thereof. Any Independent Consultant will be required to submit its recommendations to the Lessors and Master Trustee within 90 days after being so retained. The Lessee, on behalf of the Obligated Group School, agrees to implement the recommendations of the Independent Consultant, to the extent permitted by law. Notwithstanding the foregoing, the Lessee's failure to achieve a Base Rent Coverage Ratio of 1.00 to 1.00 will constitute an Event of Default under the Lease.

“Additional Rent” means (i) all amounts required to reimburse the lessor under a Lease, or satisfy such lessor's obligations, for any fees, expenses, taxes, indemnities, assessments or other payments that the Borrower is obligated to pay under the terms of the Loan Agreement, including, but not limited to, such amounts as described in the Loan Agreement; and (b) any other amounts required to be paid by such lessor in order for the lessor to meet its obligations under the Bond Documents on a full and timely basis.

“Base Rent Coverage Ratio” means for any period of time the ratio determined by dividing (i) Net Operating School Revenue by (ii) the amount of scheduled Base Rent under the Lease plus debt service on all Indebtedness of the Lessee.

“Gross School Revenue” means all revenue, income, receipts and money received by or on behalf of the Lessee from all lawfully available sources attributable to its operation of the applicable Obligated Group School and to any other charter school operated by the Lessee in the property subject to the Lease, calculated in accordance with GAAP, consistently applied.

“Indebtedness of the Lessee” means all obligations for borrowed money, installment sales and capitalized lease obligations, incurred or assumed by a Lessee, including Guaranties, Long-Term Indebtedness, Short-Term Indebtedness or any other obligation for payments of principal and interest with respect to money borrowed or payments under leases treated as indebtedness under GAAP.

“Net Operating School Revenue” means the Lessee's Gross School Revenue (defined above) minus its Operating Expenses (defined below); provided, that no determination thereof will take into account: (a) any gain or loss resulting from either the early extinguishment or refinancing of Obligated Group School Indebtedness or the sale, exchange or other disposition of capital assets not made in the ordinary course of business; (b) gifts, grants, bequests, donations or contributions, and income therefrom, to the extent specifically permanently restricted by the donor or by law to a particular purpose inconsistent with their use for the payment of Operating Expenses; (c) the net proceeds of insurance (other than business interruption insurance) and condemnation awards; (d) adjustments to the value of assets or liabilities resulting from changes in GAAP; (e) unrealized gains or losses

that do not result in the receipt or expenditure of cash; and (f) nonrecurring items which involve the receipt, expenditure or transfer of assets.

“Obligated Group School Indebtedness” means Indebtedness (as such term is defined in the Master Indenture) related to or payable from revenues of the applicable Obligated Group School and to any other charter school operated by Encore Education in the Facility subject to the Lease.

“Operating Expenses” means except as provided below, all unrestricted expenses of the Lessee, attributable to operations of the applicable Obligated Group School and to any other charter school operated by the Lessee at the Facility, including maintenance, repair expenses, utility expenses, equipment lease and other rental expense (excluding the Base Rent and the Extraordinary Monthly Rent, if any, but including Additional Rent and Expenses as defined in the Lease), administrative and legal expenses, miscellaneous operating expenses, advertising and promotion costs, payroll expenses (including taxes), the cost of material and supplies used for current operations of the Lessee, the cost of vehicles, equipment leases and service contracts, taxes upon the operations of the Lessee not otherwise mentioned herein, charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which are such as may reasonably be expected to be incurred in accordance with GAAP, calculated in accordance with GAAP, consistently applied. “Operating Expenses” shall exclude, however, i) depreciation and amortization, and (ii) any expenses which are treated as extraordinary in accordance with GAAP.

(d) [Enrollment covenant, if any.]

(i) Section 3.10 of the Master Indenture is hereby replaced in its entirety with the following:

Section 3.10. Consolidation, Merger, Sale or Conveyance. Each Member covenants and agrees that it will not merge or consolidate with any other corporation, entity, or limited liability company not a Member or sell or convey all or substantially all of its assets to any Person not a Member unless:

(1) (1) After giving effect to the merger, consolidation, sale or conveyance, the successor or surviving corporation or limited liability company (hereinafter, the “Surviving Corporation”) will be the Member, or, if not, the Surviving Corporation shall be a corporation organized and existing under the laws of the United States of America or a State thereof and such Surviving Corporation shall become a Member pursuant to Section 3.13 and shall expressly assume in writing the due and punctual payment of all Required Payments of the disappearing corporation hereunder, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Master Indenture and all Obligations issued hereunder by the execution of a Related Supplement, delivered to the Master Trustee by such Surviving Corporation;

(2) The Master Trustee shall have received (i) an Independent Consultant’s report that the forecast debt service coverage ratios of the successor corporation, calculated in the same manner as the Debt Service Coverage Ratio, for the two Fiscal Years

immediately succeeding the proposed date of such merger, consolidation, sale or conveyance is expected to be greater than the forecast Debt Service Coverage Ratio for such periods had the consolidation or merger not occurred; or (ii) an Independent Consultant's or Accountant's report, or an Officer's Certificate, as appropriate, to the effect that the condition described in Subsection 3.05(a) hereof would be met for the incurrence of one dollar of additional Long-Term Indebtedness;

(3) The Master Trustee shall have received a report of an Accountant to the effect that the combined net assets of the Members, including the net assets of such successor corporation, calculated as of the end of the most recent Fiscal Year for which Obligated Group Financial Statements are available, will not be less than ninety percent (90%) of the combined net assets of the Members at the end of the most recent Fiscal Year for which Obligated Group Financial Statements are available;

(4) The Master Trustee shall have received an Opinion of Bond Counsel to the effect that such merger, consolidation, sale or other transfer will not, in and of itself, result in interest on any Related Bond that purports to be a Tax-Exempt Bond becoming includable in gross income for purposes of federal income taxation;

(5) The Master Trustee shall have received a duly executed and delivered Mortgage encumbering the Property, Plant and Equipment of the Surviving Corporation, for the benefit of the Master Trustee, subject only to Permitted Liens; and

(6) The Member shall have received the prior written consent of the Majority Obligation Holders.

(j) Section 3.13 of the Master Indenture is hereby replaced in its entirety with the following:

Section 3.13. Withdrawal from Obligated Group. Any Member may withdraw from the Obligated Group, and be released from further liability or obligation under the provisions of this Master Indenture, provided that prior to such withdrawal the Master Trustee receives:

(a) an Officer's Certificate to the effect that, immediately following withdrawal of such Member, no Member would be in default in the performance or observance of any covenant or condition of this Master Indenture;

(b) an Opinion of Bond Counsel to the effect that the withdrawal of such Member is in compliance with the conditions contained in this Section 3.14, and such withdrawal will not result in the inclusion of interest on any Related Bonds that purports to be a Tax-Exempt Bond in gross income for purposes of federal income taxation, nor cause this Master Indenture nor the Obligations issued under this Master Indenture to be subject to registration under the Securities Act of 1933, as amended, or the Trust Indenture Act of 1939, as amended (or unless such registration, if required, has occurred);

(c) an Officer's Certificate to the effect that, to the best of such Officer's knowledge, the withdrawal of such Member will not cause a downgrade or withdrawal of any

then-current rating on the Related Bonds outstanding hereunder by the related rating agency;  
and

- (d) prior written consent of the Majority Obligation Holders.

Upon compliance with the conditions contained in this Section 3.13 the Master Trustee shall execute any documents reasonably requested by the withdrawing Member to evidence the termination of such Member's obligations hereunder (including without limitation termination of the pledge of such Member's Gross Revenues) under any Related Supplements and under all Obligations (including, without limitation, reconveyance of the Mortgage encumbering such Member's Property, Plant and Equipment for the benefit of the Master Trustee).

(k) Section 4.01 of the Master Indenture is hereby replaced in its entirety with the following:

Section 4.01. Events of Default. Event of Default, as used herein, means any of the following events:

- (a) Failure on the part of the Obligated Group to make due and punctual payment of any Required Payment on an Obligation.

- (b) Failure on the part of the Obligated Group to observe and perform any other covenant or agreement under this Master Indenture (including covenants or agreements contained in any Related Supplement or Obligation) for a period of 60 days after the date on which written notice of such failure, specifying such default and requiring the same to be remedied, shall have been given to the Obligated Group Representative by the Master Trustee or to the Obligated Group Representative and the Master Trustee by the Holders of at least half in aggregate Principal Amount of Outstanding Obligations except that, in each case, if such failure can be remedied but not within such 60-day period, such failure shall not become an Event of Default if such failure can be remedied within an additional 30-day period (for a total cure period of 90 days).

- (c) Any Member shall default in the payment of Indebtedness for borrowed moneys with an aggregate principal amount exceeding \$100,000, whether such Indebtedness now exists or shall hereafter be created, and such default shall have continued for a period of sixty (60) days after written notice thereof.

- (d) (i) A court having jurisdiction shall enter a decree or order for relief in respect of any Member in an involuntary case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of any Member or for any substantial part of the property of any Member, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days and (ii) such Member does not withdraw from the Obligated Group in accordance with Section 3.13 hereof within 90 days of the original decree or order for relief.

(e) (i) Any Member shall commence a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of any Member or for any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due or shall take any corporate action in furtherance of the foregoing and (ii) such Member does not withdraw from the Obligated Group in accordance with Section 3.13 hereof within 90 days of the commencement of such case.

(f) An Event of Default (as defined in any related Bond Indenture) shall exist under any Related Bond Indenture and any applicable notice and/or cure period shall have expired.

(g) An Event of Default (as defined in any related Bond Indenture) shall occur under any security instrument provided to the Master Trustee from, on behalf, or for the benefit, of any Member of the Obligated Group (including, if applicable, the expiration of any grace period provided therein).

(h) An Event of Default (as defined in any Related Bond Indenture) shall exist under any Lease and any applicable notice and/or cure period shall have expired.

(l) Subsection (a) of Section 4.02 of the Master Indenture is hereby replaced in its entirety with the following:

(a) Upon the occurrence and during the continuation of an Event of Default hereunder, the Master Trustee may and, upon (i) the written request of the Holders of at least half in aggregate Principal Amount of Outstanding Obligations or of any Holder if any Event of Default under Section 4.01(a) hereof has occurred or (ii) the acceleration of any Obligation pursuant to the terms of the Related Supplement under which such Obligation was issued, shall, by notice to the Members, declare all Outstanding Obligations immediately due and payable, whereupon such Obligations shall become and be immediately due and payable, anything in the Obligations or herein to the contrary notwithstanding. In such event, there shall be due and payable on the Obligations an amount equal to the aggregate Principal Amount of all such Obligations, plus all interest accrued thereon.

(m) Section 4.04 of the Master Indenture is hereby replaced in its entirety with the following:

Section 4.04. Application of Revenues and Other Moneys After Default. During the continuance of an Event of Default all moneys received by the Master Trustee pursuant to any right given or action taken under the provisions of this Article, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, indemnities and advances incurred or made by the Master Trustee with respect thereto, including fees, expenses and advances of its attorneys, agents and advisors and after



payment of all other amounts owed to the Master Trustee hereunder, shall be applied as follows:

(a) Unless the principal of all Outstanding Obligations shall have become or have been declared due and payable:

First: To the payment to the Persons entitled thereto of all installments of interest or the interest portion related to payments then due on the Obligations in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the Persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the Persons entitled thereto of the unpaid principal installments or the principal portion related to payments of any Obligations which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Obligations due on any date, then to the payment thereof ratably, according to the amounts of principal installments due on such date, to the Persons entitled thereto, without any discrimination or preference;

(b) If the principal of all Outstanding Obligations shall have become or have been declared due and payable:

First: to the payment of the principal and interest and payments then due and unpaid upon Obligation No. 2, to the Persons entitled thereto without any discrimination or preference; and

Second: to the payment of the principal and interest and payments then due and unpaid upon any other Obligations without preference or priority, or of any installment over any other installment, or of any Obligation over any other Obligation, ratably, according to the amounts due, to the Persons entitled thereto without any discrimination or preference.

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

Whenever moneys are to be applied by the Master Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Master Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Master Trustee shall apply such moneys, it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Master Trustee

shall give such notices as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any unpaid Obligation until such Obligation and all unmatured coupons, if any, appertaining to such Obligation shall be presented to the Master Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

Whenever all Obligations and interest thereon have been paid under the provisions of this Section and all fees, expenses and charges of the Master Trustee have been paid, any balance remaining shall be paid to the Person entitled to receive the same; if no other Person shall be entitled thereto, then the balance shall be paid to the Members, their successors, or as a court of competent jurisdiction may direct.

(n) Section 6.01 of the Master Indenture is hereby replaced in its entirety with the following:

Section 6.01. Supplements Not Requiring Consent of Holders. The Obligated Group Representative, acting for itself and as agent for each Member, and the Master Trustee may, without the consent of any of the Holders, but with 21 days' prior written notice to the Holders, may enter into one or more Related Supplements for one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission herein;
- (b) To grant or confer ratably upon all of the Holders any additional rights, remedies, powers or authority, or to add to the covenants of and restrictions on the Members;
- (c) To qualify this Master Indenture under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect; and
- (d) To create and provide for the issuance of an Obligation or Series of Obligations as permitted hereunder.

**Section 3.** Issuance of Obligation No. 2. There is hereby created and authorized to be issued an Obligation in an aggregate principal amount of \_\_\_ Million \_\_\_ Hundred Thousand dollars (\$\_\_\_\_\_). This Obligation shall be dated as of May 1, 2022, shall be designated "Western Encore Properties Incorporated Obligation No. 2" and shall be payable in such amounts, at such times and in such manner and shall have such other terms and provisions as are set forth in the form of Obligation No. 2 as provided in Section 11 hereof.

The aggregate principal amount of Obligation No. 2 is limited to \_\_\_ Million \_\_\_ Hundred Thousand dollars (\$\_\_\_\_\_), except for any Obligation No. 2 authenticated and delivered in lieu of another Obligation No. 2 (as provided in Section 7 hereof), with respect to any Obligation No. 2 mutilated, destroyed, lost or stolen or, subject to the provisions of Section 6 of this Supplement No. 2, upon transfer of registration of Obligation No. 2.

**Section 4.** Purpose for Which Obligation No. 2 Is Being Issued. Obligation No. 2 is being issued to evidence the Members' obligation to ensure performance of the obligations of the Borrower arising under the Series 2022 Loan Agreement, including Additional Payments.

**Section 5.** Payments on Obligation No. 2; Credits.

(a) Principal of and interest and any applicable redemption premium on Obligation No. 2 are payable in any coin or currency of the United States of America which on the payment date is legal tender for the payment of public and private debts. Except as provided in subsection (b) of this Section with respect to credits, and Section 5 hereof regarding prepayment, payments on the principal of and premium, if any, and interest on Obligation No. 2 shall be made at the times and in the amounts specified in Obligation No. 2 by the Members (i) depositing the same with or to the account of the Series 2022 Bond Trustee at or prior to the opening of business on the day such payments shall become due or payable (or the next succeeding business day if such date is a Saturday, Sunday or bank holiday in the city in which the principal corporate trust office of the Series 2022 Bond Trustee is located), and (ii) giving notice to the Master Trustee and the Series 2022 Bond Trustee of each payment of principal, interest or premium on Obligation No. 2, specifying the amount paid and identifying such payment as a payment on Obligation No. 2.

(b) The Members shall receive credit for payment on Obligation No. 2, in addition to any credits resulting from payment or prepayment from other sources, as follows:

(i) On installments of interest on Obligation No. 2 in an amount equal to moneys deposited in the Interest Account created under the Series 2022 Bond Indenture which amounts are available to pay interest on the Series 2022 Bonds and to the extent such amounts have not previously been credited against payments on Obligation No. 2;

(ii) On installments of principal of Obligation No. 2 in an amount equal to moneys deposited in the Principal Account created under the Series 2022 Bond Indenture which amounts are available to pay principal of the Series 2022 Bonds and to the extent such amounts have not previously been credited against payments on Obligation No. 2;

(iii) On installments of principal and interest, respectively, on Obligation No. 2 in an amount equal to the principal amount of Series 2022 Bonds for the redemption or payment of which sufficient amounts (as determined by Section 10.03 of the Series 2022 Bond Indenture) in cash or securities are on deposit as provided in Section 10.03 of the Series 2022 Bond Indenture, to the extent such amounts have not previously been credited against such payments on Obligation No. 2, and the interest on such Series 2022 Bonds from and after the date fixed for payment at maturity or redemption thereof. Such credits shall be made against the installments of principal and interest on Obligation No. 2 which would have been used, but for such call for payment or redemption, to pay principal of and interest on such Series 2022 Bonds when due;

(iv) On installments of principal and interest, respectively, on Obligation No. 2 in an amount equal to the principal amount of Series 2022 Bonds acquired by any Member and surrendered to the Series 2022 Bond Trustee for cancellation or purchased by the Series 2022 Bond Trustee and canceled, and the interest on such Series 2022 Bonds from and after the date interest thereon has been paid prior to cancellation. Such credits shall be made against the installments of

principal of and interest on Obligation No. 2 which would have been used, but for such cancellation, to pay principal of and interest on such Series 2022 Bonds when due; and

(v) On amounts deposited with the Series 2022 Bond Trustee to satisfy any other payment obligations under the Series 2022 Loan Agreement but not transferred by the Series 2022 Bond Trustee to the Borrower pursuant to Section 5.02 of the Series 2022 Bond Indenture.

**Section 6.**     Prepayment of Obligation No. 2.

(a) So long as all amounts which have become due under Obligation No. 2 have been paid or credits for such payments have occurred, the Members shall have the right, at any time and from time to time, to pay in advance and in any order of due dates all or part of the amounts to become due under Obligation No. 2. Prepayments may be made by payments of cash or surrender of the Series 2022 Bonds, as contemplated by subsections 4(b)(iii) and (iv) hereof. All such prepayments (and the additional payment of any amount necessary to pay the applicable premium, if any, payable upon the redemption of the Series 2022 Bonds) shall be deposited and applied in the manner and subject to the terms and conditions set forth in the Series 2022 Bond Indenture. Notwithstanding any such redemption or surrender of the Series 2022 Bonds, as long as any Series 2022 Bonds remain Outstanding (as defined in the Series 2022 Bond Indenture) or any additional payments required to be made hereunder remain unpaid, the Members shall not be relieved of their obligations hereunder.

(b) Prepayments made under subsection (a) of this Section shall be credited against amounts to become due on Obligation No. 2 as provided in Section 4 hereof.

(c) The Members may also prepay all of their indebtedness under Obligation No. 2 by providing for the payment of Series 2022 Bonds in accordance with Article X of the Series 2022 Bond Indenture.

**Section 7.**     Registration, Number, Negotiability and Transfer of Obligation No. 2.

(a) Except as provided in subsection (b) of this Section, so long as any Series 2022 Bonds remain Outstanding, Obligation No. 2 shall consist of a single Obligation without coupons, registered as to principal and interest in the name of the Series 2022 Bond Trustee, and no transfer of Obligation No. 2 shall be permitted or shall be registered under the Master Indenture except for transfers to a successor Series 2022 Bond Trustee.

(b) Upon the principal of all Obligations then Outstanding being declared immediately due and payable upon and during the continuance of an Event of Default, Obligation No. 2 may be transferred, if and to the extent the Master Trustee requests that the restrictions of subsection (a) of this Section on transfers be terminated.

(c) Obligation No. 2 shall be registered on the register to be maintained by the Master Trustee as registrar for that purpose at the Corporate Trust Office of the Master Trustee and Obligation No. 2 shall be transferable only upon presentation of Obligation No. 2 at said Corporate Trust Office by the Holder or by the Holder's duly authorized attorney. Such transfer shall be without charge to the Holder thereof, but any taxes or other governmental charges required to be paid

with respect to the same shall be paid by the Holder requesting such transfer as a condition precedent to the exercise of such privilege. Upon any such transfer, the Obligated Group Representative shall execute and the Master Trustee shall authenticate and deliver in exchange for Obligation No. 2 a new registered Obligation without coupons, registered in the name of the transferee.

(d) Prior to due presentment of Obligation No. 2 for registration of transfer, the Members, the Master Trustee, any paying agent and any registrar with respect to Obligation No. 2 may deem and treat the person in whose name Obligation No. 2 is registered as the absolute owner hereof for all purposes; and neither the Members, any paying agent, the Master Trustee nor any Obligation registrar shall be affected by any notice to the contrary. All payments made to the registered owner hereof shall be valid, and, to the extent of the sum or sums so paid, sufficient to satisfy and discharge the liability for moneys payable on Obligation No. 2.

**Section 8.** Mutilation, Destruction, Loss and Theft of Obligation No. 2. If (a) Obligation No. 2 is surrendered to the Master Trustee in a mutilated condition, or the Obligated Group Representative and the Master Trustee receive evidence to their satisfaction of the destruction, loss or theft of Obligation No. 2, and (b) there is delivered to the Obligated Group Representative and the Master Trustee such security or indemnity as may be required by them to hold them harmless, then, in the absence of proof satisfactory to the Obligated Group Representative and the Master Trustee that Obligation No. 2 has been acquired by a bona fide purchaser and upon the Holder paying the reasonable expenses of the Obligated Group Representative and the Master Trustee, the Obligated Group Representative shall cause to be executed and the Master Trustee shall authenticate and deliver, in exchange for such mutilated Obligation No. 2 or in lieu of such destroyed, lost or stolen Obligation No. 2, a new Obligation No. 2 of like principal amount, date and tenor. If any such mutilated, destroyed, lost or stolen Obligation No. 2 has become or is about to become due and payable, Obligation No. 2 may be paid when due instead of delivering a new Obligation No. 2.

**Section 9.** Execution and Authentication of Obligation No. 2. Obligation No. 2 shall be executed for and on behalf of the Obligated Group Representative by its Authorized Representative and attested by its secretary, an assistant secretary or another Authorized Representative. The signatures of either or both of such officers may be mechanically or photographically reproduced on Obligation No. 2. If any officer whose signature appears on Obligation No. 2 ceases to be such officer before delivery thereof, such signature shall remain valid and sufficient for all purposes as if such officer had remained in office until such delivery. Obligation No. 2 shall be manually authenticated by an authorized signatory of the Master Trustee, without which authentication Obligation No. 2 shall not be entitled to the benefits hereof.

**Section 10.** Partial Prepayment of Obligation No. 2. Upon the selection and call for prepayment and the surrender of Obligation No. 2 for prepayment in part only, the Obligated Group Representative shall cause to be executed and the Master Trustee shall authenticate and deliver to, upon the written order of, the Holder thereof, at the expense of the Members, a new Obligation No. 2 in principal amount equal to the unredeemed portion of Obligation No. 2, which new Obligation No. 2 shall be a fully registered Obligation without coupons.

The Obligated Group Representative may agree with the Holder of Obligation No. 2 that such Holder may, in lieu of surrendering the Obligation for a new fully registered Obligation without coupons, endorse on the Obligation a notice of such partial prepayment, which notice shall set forth, over the signature of such Holder, the payment date, the principal amount redeemed and the principal

amount remaining unpaid. Such partial prepayment shall be valid upon payment of the amount thereof to the registered owner of Obligation No. 2 and the Members and the Master Trustee shall be fully released and discharged from all liability to the extent of such payment irrespective of whether such endorsement shall or shall not have been made upon the reverse of Obligation No. 2 by the Holder thereof and irrespective of any error or omission in such endorsement.

**Section 11.** Effect of Prepayment. On the date cash or securities (as and to the extent permitted by the Series 2022 Bond Indenture), or both, are deposited with the Trustee (for a corresponding amount of Series 2022 Bonds with respect to the Series 2022 Bonds to be redeemed on the date fixed for redemption all as provided in the Series 2022 Bond Indenture), Obligation No. 2 shall be deemed paid (in an amount corresponding to the Series 2022 Bonds to be redeemed on the date fixed for redemption) and such corresponding amount of Obligation No. 2 shall be deemed not to be outstanding, as defined in the Master Indenture, and shall no longer be entitled to the benefits of the Master Indenture.

**Section 12.** Form of Obligation No. 2. Obligation No. 2 shall be in substantially the form attached hereto as Exhibit A, with such necessary and appropriate omissions, insertions and variations as are permitted or required hereby or by the Master Indenture and are approved by those officers executing such Obligation on behalf of the Borrower and execution thereof by such officers shall constitute conclusive evidence of such approval.

**Section 13.** Event of Default. The Borrower and the Master Trustee hereby covenant to exercise any and all remedies available under any Lease and shall foreclose on the related Mortgage upon an Event of Default provided that the Master Trustee shall only exercise remedies under the Mortgages described in clause (1) of the definition thereof, set forth in the Master Indenture for the benefit of Obligation No. 2.

**Section 14.** Ratification of Master Indenture. As supplemented and amended hereby, the Master Indenture is in all respects ratified and confirmed and the Master Indenture as so supplemented hereby shall be read, taken and construed as one and the same instrument.

**Section 15.** Severability. If any provision of this Supplement No. 2 shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case and any jurisdiction or jurisdictions or in all jurisdictions, or in all cases, because it conflicts with any other provision or provisions hereof or any constitution, statute, rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses, sections or subsections contained in this Supplement No. 2 shall not affect the remaining portions of this Supplement No. 2 or any part thereof.

**Section 16.** Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for

convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

**Section 17. Miscellaneous.**

(a) No covenant or agreement contained in Obligation No. 2 or the Master Indenture shall be deemed to be a covenant or agreement of any officer, agent or employee of any Member or of the Master Trustee in an individual capacity, and no incorporator, member, officer or member of the governing board of any Member shall be liable personally on Obligation No. 2 or be subject to any personal liability or accountability by reason of the issuance of Obligation No. 2.

(b) The Master Trustee hereby acknowledges and agrees that the Leases provide for payment of rental directly to the Master Trustee for deposit in the Gross Revenue Fund established in Section 3.14 of the Master Indenture, and that only upon transfer of such funds by the Master Trustee to the Series 2022 Bond Trustee for deposit in the Revenue Fund established in the Series 2022 Bond Indenture shall such deposits constitute credits for purposes of Section 4 hereof.

(c) The Master Trustee hereby further acknowledges that the Members may approve amendments to the Leases subject to the limitations of Section 3.06 of the Master Indenture.

(d) The Borrower shall file with the Master Trustee, no later than July 1 of each year, commencing July 1, 2017, a Certificate stating that the Borrower has complied with Section 3.03 of the Master Indenture. The Master Trustee is entitled to rely on such Certificate as to the Borrower’s compliance with said Section 3.03, and the Master Trustee shall have no further duty to confirm the accuracy thereof.

**Section 18. Counterparts; Electronic Signatures.** This Supplement No. 2 may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument. Each party agrees, and acknowledges that it is such party’s intent, that if such party signs this Supplement No. 2 using an electronic signature, it is signing, adopting, and accepting this Supplement No. 2 and that signing this agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this Supplement No. 2 on paper. Each party acknowledges that it is being provided with an electronic or paper copy of this Supplement No. 2 in a usable format.

**Section 19. Governing Law.** This Supplement No. 2 shall be construed in accordance with and governed by the laws of the State of California.

**Section 20. Members.** As of the issuance of Obligation No. 2, the Members consist of:

- (a) Name: 16955 Lemon Street LLC
- State of Organization: California
- FEIN:
- CA Secretary of State File No.: 201606010180.

IN WITNESS WHEREOF, the Borrower, as Obligated Group Representative, has caused these presents to be signed in its name and on its behalf by an Authorized Representative and, to evidence its acceptance of the trusts hereby created, the Master Trustee has caused these presents to be signed in its name and on its behalf by a Responsible Officer, all as of the day and year first above written.

WESTERN ENCORE PROPERTIES  
INCORPORATED,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
[Name]  
[Title]

[Signature page of Supplemental Master Indenture]

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UMB BANK, N.A., as Master Trustee

By: \_\_\_\_\_  
Responsible Officer

[Signature page of Supplemental Master Indenture]

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## EXHIBIT A

### FORM OF OBLIGATION NO. 2

WESTERN ENCORE PROPERTIES INCORPORATED  
and  
THE LIMITED LIABILITY COMPANY  
LISTED ON APPENDIX A OF THE HEREINAFTER  
DEFINED MASTER INDENTURE,  
as Initial Member of the Obligated Group

Obligation No. 2

\$17,440,000

KNOW ALL BY THESE PRESENTS that WESTERN ENCORE PROPERTIES INCORPORATED (the “Borrower”), a nonprofit corporation organized and existing under the laws of the State of California, as Obligated Group Representative under the Master Indenture (as defined below), for value received hereby acknowledges itself and each Member of the Obligated Group (as such terms are defined in the Master Indenture) obligated to, and promises to pay to UMB Bank, N.A., as trustee (the “Series 2022 Bond Trustee”) under the Series 2022 Bond Indenture dated as of May 1, 2022 (the “Series 2022 Bond Indenture”), between the Series 2022 Bond Trustee and the California Enterprise Development Authority (the “Authority”), and any successor trustee under the Series 2022 Bond Indenture, or registered assigns, the principal sum of \_\_\_ Million \_\_\_ Hundred Thousand dollars (\$ \_\_\_\_\_), and to pay interest on the unpaid balance of said sum from the date hereof on the dates and in the manner hereinafter described.

This Obligation No. 2 is a single Obligation limited to \_\_\_ Million \_\_\_ Hundred Thousand dollars (\$ \_\_\_\_\_) in principal amount (except as provided in the Master Indenture), designated as “Western Encore Properties Incorporated Obligation No. 2” (“Obligation No. 2” and, together with all other obligations issued under the Master Indenture hereinafter identified, “Obligations”), issued under and pursuant to the Supplemental Master Indenture (Amendatory) for Obligation No. 2, dated as of May 1, 2022 (the “Supplemental Indenture”), supplementing and amending the Master Indenture of Trust, dated as of November 1, 2016 and as may be further restated, supplemented or amended, between the Borrower, the Initial Member (as defined therein) and UMB Bank, N.A., as trustee (the “Master Trustee”). The Master Indenture of Trust, as supplemented and amended in accordance with its terms, is hereinafter called the “Master Indenture.”

Principal hereof, interest hereon and any applicable redemption premium, are payable in any coin or currency of the United States of America which on the payment date is legal tender for the payment of public and private debts semiannually on May 25<sup>th</sup> and November 25<sup>th</sup> in an amount equal to the amount necessary for the Series 2022 Bond Trustee to make the transfers and deposits required pursuant to Section 5.02 of the Series 2022 Bond Indenture.

The Members shall receive credit for payment on Obligation No. 2, in addition to any credits resulting from payment or prepayment from other sources, as follows: (i) on installments of interest of Obligation No. 2 in an amount equal to moneys deposited in the Interest Account created under the Series 2022 Bond Indenture which amounts are available to pay interest on the Series 2022 Bonds and to the extent such amounts have not previously been credited against payments on

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Obligation No. 2; (ii) on installments of principal of Obligation No. 2 in an amount equal to moneys deposited in the Principal Account created under the Series 2022 Bond Indenture which amounts are available to pay principal on the Series 2022 Bonds and to the extent such amounts have not previously been credited against payments on Obligation No. 2; (iii) on installments of principal and interest, respectively, on Obligation No. 2 in an amount equal to the principal amount of Series 2022 Bonds for the redemption or payment of which sufficient amounts (as determined by Section 10.03 of the Series 2022 Bond Indenture) in cash or securities are on deposit as provided in Section 10.03 of the Series 2022 Bond Indenture, to the extent such amounts have not previously been credited against such payments on Obligation No. 2, and the interest on such Series 2022 Bonds from and after the date fixed for payment at maturity or redemption thereof. Such credits shall be made against the installments of principal and interest on Obligation No. 2 which would have been used, but for such call for payment or redemption, to pay principal of and interest on such Series 2022 Bonds when due; (iv) on installments of principal and interest, respectively, on Obligation No. 2 in an amount equal to the principal amount of Series 2022 Bonds acquired by any Member and surrendered to the Series 2022 Bond Trustee for cancellation or purchased by the Series 2022 Bond Trustee and canceled, and the interest on such Series 2022 Bonds from and after the date interest thereon has been paid prior to cancellation. Such credits shall be made against the installments of principal of and interest on Obligation No. 2 which would have been used, but for such cancellation, to pay principal of and interest on such Series 2022 Bonds when due; and (v) on amounts deposited with the Series 2022 Bond Trustee to satisfy any other payment obligations under the Series 2022 Loan Agreement.

The Borrower, as Obligated Group Representative, further acknowledges itself and the other Members obligated to, and promises to pay to the Authority, all amounts required to be paid by the Borrower to the Series 2022 Bond Trustee for deposit in the Bond Reserve Account established under the Series 2022 Bond Indenture. The Members shall receive credit for payment pursuant to this paragraph in an amount equal to moneys deposited with the Series 2022 Bond Trustee pursuant to the Series 2022 Bond Indenture.

Upon payment by the Members of a sum, in cash or securities (as specified in Article X of the Series 2022 Bond Indenture), or both, sufficient, together with any other cash and securities permitted by the Series 2022 Bond Indenture to be held by the Trustee and available for such purpose, to cause all outstanding Series 2022 Bonds to be deemed to have been paid within the meaning of Article X of the Series 2022 Bond Indenture and to pay all other amounts referred to in Article X of the Series 2022 Bond Indenture, accrued and to be accrued to the date of discharge of the Series 2022 Bond Indenture, Obligation No. 2 shall be deemed to have been paid and to be no longer outstanding under the Master Indenture.

Copies of the Master Indenture and the Supplemental Indenture are on file at the corporate trust office of the Master Trustee, in Los Angeles, California and reference is hereby made to the Master Indenture for the provisions, among others, with respect to the nature and extent of the rights of the holders of Obligations issued under the Master Indenture, the terms and conditions on which, and the purposes for which Obligations are to be issued and the rights, duties and obligations of the Members and the Master Trustee under the Master Indenture, to all of which the holder hereof, by acceptance of this Obligation No. 2, assents.

The Master Indenture permits the issuance of additional Obligations under the Master Indenture to be secured by the provisions of the Master Indenture, all of which, regardless of the times of issue or maturity, are to be of equal rank without preference, priority or distinction of any

Obligations issued under the Master Indenture over any other such Obligations except as expressly provided or permitted in the Master Indenture.

To the extent permitted by and as provided in the Master Indenture, modifications or changes to the Master Indenture, of any indenture supplemental thereto, and of the rights and obligations of the Members and of the holders of Obligations in any particular may be made by the execution and delivery of an indenture or indentures supplemental to the Master Indenture or any supplemental indenture. Certain modifications or changes that would affect the rights of the holder of this Obligation No. 2 may be made only with the consent of the holders of not less than a majority in aggregate principal amount of Obligations then outstanding under the Master Indenture. No modification or change shall be made which will (i) extend the stated maturity of or time for paying interest on any Obligation or reduce the principal amount of or the redemption premium or rate of interest payable on any Obligation without the consent of the holder of such Obligation; (ii) modify, alter, amend, add to or rescind any of the terms or provisions contained in Article IV of the Master Indenture in any manner which would materially and adversely affect the interests of holders of any Obligations in default as to payment to compel the Master Trustee to declare the principal of all Obligations to be due and payable, without the consent of the holders of all Obligations then outstanding; or (iii) reduce the aggregate principal amount of Obligations then outstanding the consent of the holders of which is required to authorize such modifications or changes without the consent of the holders of all Obligations then outstanding. Any such consent by the holder of this Obligation No. 2 shall be conclusive and binding upon such holder and all future holders and owners hereof irrespective of whether or not any notation of such consent is made upon this Obligation No. 2, unless such consent is revoked as provided in the Master Indenture.

Upon the occurrence of certain “Events of Default” (as defined in the Master Indenture), the principal of all Obligations then outstanding may be declared, and thereupon shall become, due and payable as provided in the Master Indenture.

The Holder of this Obligation No. 2 shall have no right to enforce the provisions of the Master Indenture, or to institute any action to enforce the covenants therein, or to take any action with respect to any default under the Master Indenture, or to institute, appear in or defend any suit or other proceeding with respect to any default under the Master Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Master Indenture.

Obligation No. 2 is issuable only as a registered Obligation without coupons.

Unless the principal of all Obligations then outstanding has been declared immediately due and payable, no transfer of this Obligation No. 2 shall be permitted except for transfers to a successor trustee under the Series 2022 Bond Indenture. This Obligation No. 2 shall be registered on the register to be maintained by the Master Trustee as registrar for the Members for that purpose at the principal corporate trust office of the Master Trustee and this Obligation No. 2 shall be transferable only upon presentation of this Obligation No. 2 at said office by the Holder or by the Holder’s duly authorized attorney and subject to the limitations, if any, set forth in the Supplemental Indenture. Such transfer shall be without charge to the Holder hereof, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the holder requesting such transfer as a condition precedent to the exercise of such privilege. Upon any such transfer, the Borrower, as Obligated Group Representative, shall execute and the Master Trustee shall authenticate and deliver in exchange for this Obligation No. 2 a new registered Obligation without coupons, registered in the name of the transferee.

Prior to due presentment hereof for registration of transfer, the Members, the Master Trustee, any paying agent and any registrar with respect to this Obligation No. 2 may deem and treat the Person in whose name this Obligation No. 2 is registered as the absolute owner hereof for all purposes; and neither the Members, any paying agent, the Master Trustee nor any Obligation registrar shall be affected by any notice to the contrary. All payments made to the registered owner hereof shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable on this Obligation No. 2.

No covenant or agreement contained in this Obligation No. 2 or the Master Indenture shall be deemed to be a covenant or agreement of any officer, agent or employee of any Member or of the Master Trustee in his individual capacity, and no incorporator, member, officer or member of the Governing Body of any Member shall be liable personally on this Obligation No. 2 or be subject to any personal liability or accountability by reason of the issuance of this Obligation No. 2.

This Obligation No. 2 shall not be entitled to any benefit under the Master Indenture, or be valid or become obligatory for any purpose, until this Obligation No. 2 shall have been manually authenticated by the execution by an authorized officer of the Master Trustee, or its successor as Master Trustee, of the Certificate of Authentication inscribed hereon.

IN WITNESS WHEREOF, the Borrower, as Obligated Group Representative, has caused this Obligation No. 2 to be executed in its name and on its behalf by the signature of an Authorized Representative all as of May 1, 2022.

WESTERN ENCORE PROPERTIES  
INCORPORATED,  
as Obligated Group Representative

By \_\_\_\_\_  
Authorized Representative

MASTER TRUSTEE'S AUTHENTICATION CERTIFICATE

The undersigned Master Trustee hereby certifies that this Obligation No. 2 is one of the Obligations described in the within-mentioned Master Indenture.

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

UMB BANK, N.A.,  
as Master Trustee

By \_\_\_\_\_  
Responsible Officer

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**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)**

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**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”).

**WITNESSETH:**

**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:

## ARTICLE I

### DEFINITIONS

**SECTION 1.01. 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.

**SECTION 1.02. Interpretation.** In this Loan Agreement, unless the context otherwise requires:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

## ARTICLE II

### FINDINGS, REPRESENTATIONS, COVENANTS AND WARRANTIES

**SECTION 2.01. 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.

### **SECTION 2.02. Representations and Warranties of the Authority.**

(a) 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.

(b) 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.

(c) 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.

(d) 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.

**SECTION 2.03. 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):

(a) 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.

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

(c) The Borrower Documents have been duly authorized, executed and delivered by the Borrower.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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].

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) 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].

(o) 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.

(p) 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.

(q) 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.

(r) 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.

(s) 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).

(t) 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.

(u) 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.

(v) 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.

(w) 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.

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

(y) 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.



(z) 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.

(aa) 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.

(bb) 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.

(cc) The Borrower hereby acknowledges receipt of an original counterpart of the Indenture and hereby approves the Indenture.

(dd) 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.

**SECTION 2.04. 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):

(a) 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.

(b) 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.

(c) This Loan Agreement has been duly authorized, executed and delivered by the Landlord.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

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

(l) 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.

(m) 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.

(n) 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.

(o) 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.

(p) 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.

## ARTICLE III

### LOAN FINANCING; LOAN REPAYMENTS; INDEMNIFICATION; CONSTRUCTION DRAWS

#### SECTION 3.01. Agreement to Issue Bonds and Application of Bond Proceeds.

(a) 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.

(b) 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.

(c) 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.

(d) 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.

#### SECTION 3.02. The Loan; Loan Repayments; Intercept; Additional Payments.

(a) 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.

(b) 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.

(c) 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.]

(d) 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:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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;

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

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

(vii) 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

(viii) 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.

(e) 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.

(f) Obligations of Borrower Unconditional.

(i) 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.

(ii) 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.

**SECTION 3.03. 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.

**SECTION 3.04. 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:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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;

(v) any defeasance or redemption, in whole or in part, of the Bonds;

(vi) 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;



(vii) 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.

**SECTION 3.05. 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.

**SECTION 3.06. Covenants to Prepay.**

(a) 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).

(b) 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.

## ARTICLE IV

### ADDITIONAL COVENANTS AND AGREEMENTS OF BORROWER

#### SECTION 4.01. Inspection of Books.

(a) 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.

(b) 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.

**SECTION 4.02. 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.

**SECTION 4.03. 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).

**SECTION 4.04. 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.

**SECTION 4.05. 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.

**SECTION 4.06. 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.

**SECTION 4.07. 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.

**SECTION 4.08. 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.

**SECTION 4.09. 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.

## ARTICLE V

### ADDITIONAL COVENANTS AND AGREEMENTS OF THE LANDLORD

#### SECTION 5.01. Inspection of Books.

(a) 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.

(b) 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.

**SECTION 5.02. 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.

**SECTION 5.03. 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.

**SECTION 5.04. 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.

**SECTION 5.05. 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.

**SECTION 5.06. 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.

**SECTION 5.07. 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.

## ARTICLE VI

### DEFAULTS AND REMEDIES

**SECTION 6.01. Events of Default.** Any one of the following which occurs and continues shall constitute an Event of Default hereunder:

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

(b) 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

(c) 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

(d) 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;

(e) 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;

(f) 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;

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

(h) 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

(i) 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.

### **SECTION 6.02. Remedies.**

(a) 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:

(i) 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;

(ii) 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

(iii) 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.

(b) 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.

**SECTION 6.03. 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.

**SECTION 6.04. 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.

**SECTION 6.05. 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.

**SECTION 6.06. 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.

**SECTION 6.07. Proofs of Claim.**

(a) 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,

(i) 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

(ii) 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.

(b) 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.

**SECTION 6.08. 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.

## ARTICLE VII

### PREPAYMENT

#### SECTION 7.01. Prepayment of the Loan.

(a) *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.

(b) *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.

(c) *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.

(d) *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.

**SECTION 7.02. 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.

**SECTION 7.03. 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.

## ARTICLE VIII

### MISCELLANEOUS

**SECTION 8.01. 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.

**SECTION 8.02. 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.

**SECTION 8.03. 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.

**SECTION 8.04. 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.

**SECTION 8.05. 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.

**SECTION 8.06. 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.

**SECTION 8.07. 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.

**SECTION 8.08. 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.

**SECTION 8.09. Non-Liability of Authority.**

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

**SECTION 8.10. 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.

**SECTION 8.11. 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.

**SECTION 8.12. 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.

**SECTION 8.13. 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.

**SECTION 8.14. 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.

**SECTION 8.15. 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.

**SECTION 8.16. 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





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**LEASE AGREEMENT**

by and between

**16955 LEMON STREET, LLC,**  
a California limited liability company

as Lessor

and

**ENCORE EDUCATION CORPORATION,**  
a California nonprofit public benefit corporation

as Lessee

dated for reference purposes only as of May 1, 2022

This Lease is for the use and occupation of the  
Premises by Encore High School for the Arts

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## LEASE AGREEMENT

### 1. **Basic Provisions.**

1.1 **Parties.** This Lease Agreement (“Lease”), dated for reference purposes only as of May 1, 2022, is made by and between 16955 LEMON STREET, LLC, a California limited liability company (“Lessor”), and ENCORE EDUCATION CORPORATION, a California nonprofit public benefit corporation (“Lessee”) (Lessee and Lessor being sometimes referred to herein collectively as the “Parties” and individually as a “Party”). This Lease is for the use and occupancy of the Premises by Encore High School for the Arts. This Lease amends and restates, effective as of the date of the funding of the Series 2022 Loan described in Section 1.5 below, that certain Lease Agreement dated as of November 1, 2016, as amended the First Amendment to Lease Agreement dated as of August 1, 2019, by and between Lessor and Lessee.

1.2 **Premises.** The real property and improvements commonly referred to as 16955 Lemon Street, Hesperia, California, 92345, legally described on Exhibit A attached hereto, is referred to herein as the “Premises.”

1.3 **Term.** The term of this Lease shall commence on the funding of the Series 2016 Loan described in Section 1.5 below (the “Commencement Date”) and shall end on June 30, 2052 (the “Initial Term”) (or such other later date if Lessee exercises its extension option) (such date, as it may be extended, the “Expiration Date”). (*See also* Section 3 below.) In accordance with the terms of the Loan Agreements (as defined in Section 1.5 below), this Lease may be terminated by Lessee by depositing with the Bond Trustees (as defined in Section 1.5 below) sufficient cash or securities to redeem or defease the entire principal amount of the Bonds (as defined in Section 1.5 below), together with accrued interest to the redemption date.

1.4 **Extension Option.** Lessee shall have two (2) options to extend the Initial Term for five (5) years each and a third option to extend the Lease Term for an additional four (4) years (each such extension term, an “Extension Term” and, collectively with the Initial Term, the “Term”) in accordance with Section 5 below with the Rent (as defined in Section 4 below) during an Extension Term to be set at an amount no less than the Fair Market Rent of the Premises at the date the option becomes exercisable. “Fair Market Rent” for purposes of this Section 1.4 shall be determined pursuant to Section 5 below.

1.5 **Rent.** Lessor and Lessee acknowledge that Lessor obtained a loan (the “Series 2016 Loan”) from the California School Finance Authority (the “Series 2016 Issuer”) as evidenced by a Loan Agreement dated as of November 1, 2016, by and between the Issuer and Lessor (the “Series 2016 Loan Agreement”, under which Lessor is sometimes referred to as “Borrower”). The Series 2016 Loan will be funded by the proceeds of the Series 2016 Issuer’s Charter School Revenue Bonds (Encore Education Obligated Group) Series 2016A and Series 2016B (Taxable) (collectively, the “Series 2016 Bonds”) pursuant to an Indenture dated as of November 1, 2016 (the “Series 2016 Indenture”) by and between the Series 2016 Issuer and UMB Bank, N.A., as successor bond trustee (the “Series 2016 Bond Trustee”). So long as the Series 2016 Loan is outstanding, the “Base Rent” shall be payable in accordance with the schedule set forth in Exhibit B attached hereto, subject to downward adjustment in the event of any prepayment of all or a

portion of the Series 2016 Loan and the redemption or defeasance of all or a portion of the Series 2016 Bonds.

Simultaneously with the execution and delivery of the Series 2016 Bonds, Lessee shall deliver or cause to be delivered the Intercept Notice, substantially in the form set forth in Exhibit E attached hereto (the "Intercept Notice"), to the State Controller (as defined in Exhibit E hereto). Amounts specified in the Intercept Notice for transfer to the Series 2016 Bond Trustee shall be limited to state apportionments (within the meaning of such term under Section 17199.4 of the Education Code of the State of California) (the "State Apportionments"). Lessee shall, not later than the twentieth (20th) calendar day of any month in which payment is scheduled, amend, supplement or restate the Intercept Notice and deliver such to the State Controller from time to time as necessary or appropriate (including without limitation as a result of redemption prior to maturity) to indicate transfers to the Series 2016 Bond Trustee to pay the amounts due under this Lease as they come due and to cure any delinquency in payment of such amounts. Lessee will cooperate with the Series 2016 Bond Trustee in any manner the Series 2016 Bond Trustee may request in connection with amending, supplementing or restating the Intercept Notice. If at any time the Intercept Notice is amended, supplemented or restated for any reason, Lessee shall promptly provide the Issuer, the Department of Education of the State of California and the Series 2016 Bond Trustee with a copy of such amended, supplemented or restated Intercept Notice. The Intercept Notice may provide additional amounts payable to the Series 2016 Bond Trustee for purposes set forth in the Indenture; provided, that Lessee shall not grant preference or any prior right of funding access or security in respect of the State Apportionment to any other payment indicated in the Intercept Notice or any other notice delivered pursuant to Section 17199.4 of the Education Code of the State of California. All deposits of moneys derived from the intercept hereunder shall be made at the corporate trust office of the Series 2016 Bond Trustee set forth in the Intercept Notice. Lessee shall timely amend, supplement or restate the Intercept Notice to require transfers to such other location as shall be designated in writing by the Series 2016 Bond Trustee to Lessee.

Lessor and Lessee acknowledge that Lessor obtained a loan (the "Series 2022 Loan" and, together with the Series 2016 Loan, the "Loans") from the California Enterprise Development Authority (the "Series 2022 Issuer" and, together with the Series 2016 Issuer, the "Issuers") as evidenced by a Loan Agreement dated as of May 1, 2022, by and between the Issuer and Lessor (the "Series 2022 Loan Agreement", and, together with the Series 2016 Loan Agreement, the "Loan Agreements"), under which Lessor is sometimes referred to as "Borrower"). The Series 2022 Loan will be funded by the proceeds of the Series 2022 Issuer's its Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable) (the "Series 2022 Bonds" and, together with the Series 2016 Bonds, the "Bonds") pursuant to an Indenture dated as of November 1, 2016 (the "Series 2022 Indenture" and, together with the Series 2016 Indenture, the "Indentures") by and between the Issuer and UMB Bank, N.A. as bond trustee (the "Series 2022 Bond Trustee" and, together with the Series 2016 Bond Trustee, the "Bond Trustees"). So long as the Series 2022 Loan is outstanding, the "Base Rent" shall be payable in accordance with the schedule set forth in Exhibit B attached hereto, subject to downward adjustment in the event of any prepayment of all or a portion of the Series 2022 Loan and the redemption or defeasance of all or a portion of the Series 2022 Bonds. In the event of the prepayment of the Loans in their entirety and the redemption or defeasance of all of the Bonds prior to the Expiration Date or termination of the Lease such that no Bonds remain outstanding under the Indentures, the Base

Rent shall be payable based upon the average of the debt service payments during the five (5) years immediately preceding such defeasance or prepayment.

Simultaneously with the execution and delivery of this Lease, Lessee shall deliver or cause to be delivered a notices (a "Payment Notice") to the San Bernardino County Office of Education ("SBCOE") directing SBCOE to make all payments of Gross School Revenues otherwise payable by such entity to Lessee to [UMB Bank, N.A., as Custodian under that certain Custody Agreement dated as of May \_\_, 2022, by and among UMB Bank. N.A, the Lessee and [the Master Trustee]. Lessee will cooperate with the Master Trustee in any manner the Master Trustee may request in connection with amending, supplementing or restating each Payment Notice. If at any time a Payment Notice is amended, supplemented or restated for any reason, Lessee shall promptly provide the Master Trustee with a copy of such amended, supplemented or restated Payment Notice. Lessee shall timely amend, supplement or restate each Payment Notice to require transfers to such other location as shall be designated in writing by the Master Trustee to Lessee.]

1.6 **Refinancing of Loan.** Upon any refinancing of the Loans, the term "Loan Agreements" thereafter shall refer to the agreement for the refinancing of the Loans, the term "Loans" thereafter shall refer to the refinancing loan, and the term "Issuers" thereafter shall refer to the conduit issuer making the refinancing loan, but otherwise all of the terms, covenants and conditions of this Lease shall remain unmodified and in full force and effect.

1.7 **Real Estate Brokers.** None.

1.8 **Incentive Payment.** On the effective as of the date of the funding of the Series 2022 Loan described in Section 1.5 above, Lessor shall pay Lessee \$ \_\_\_\_\_.

## 2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the Term, at the Rent (as defined below) and upon and subject to all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent is an approximation which the Parties agree is reasonable.

2.2 **Condition of Premises.** Lessee accepts the Premises in their current as-is condition.

2.3 **Compliance.** If the applicable building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances (the "Applicable Requirements") require, during the Term, the construction of an addition to or an alteration of the Premises or any portion of the building on the Premises (the "Building"), the remediation of any Hazardous Substance (as defined in Section 6.2(a) below), or the reinforcement or other physical modification of the Premises and/or the Building, Lessee hereby agrees to undertake and complete such construction, alteration, remediation, reinforcement or other modification (each, a "Capital Expenditure"), and the costs therefor shall be incurred solely by Lessee.

2.4 **Acknowledgements.** Lessee acknowledges that its acceptance of the Premises on the Commencement Date shall be conclusive evidence that it has made all investigations and



inspections as it deems necessary with respect to the suitability of the Premises as it relates to Lessee's occupancy thereof and the Premises' compliance with Applicable Requirements, and Lessee has satisfied itself as to such matters on the Commencement Date.

**2.5 Energy Use Disclosure Program.** Lessee hereby acknowledges that Lessor may be required to disclose certain information concerning the energy performance of the Building (the "Energy Disclosure Information") pursuant to California Public Resources Code Section 25402.10 and the regulations adopted pursuant thereto (collectively the "Energy Disclosure Requirements"). Lessee hereby acknowledges that Lessee is and has been responsible for the energy performance of the Premises, such that any Energy Disclosure Information provided by Lessor would be of no value to Lessee. If and to the extent not prohibited by applicable laws, Lessee hereby waives any right Lessee may have to receive the Energy Disclosure Information, including, without limitation, any right Lessee may have to terminate this Lease as a result of Lessor's failure to disclose such information. Further, Lessee hereby releases Lessor from any and all losses, costs, damages, expenses and/or liabilities relating to, arising out of and/or resulting from the Energy Disclosure Requirements, including, without limitation, any liabilities arising as a result of Lessor's failure to disclose the Energy Disclosure Information to Lessee prior to the execution of this Lease. Lessee's acknowledgment of the AS-IS condition of the Premises pursuant to the terms of this Lease shall be deemed to include the energy performance of the Building. Lessee further acknowledges that pursuant to the Energy Disclosure Requirements, Lessor may be required in the future to disclose information concerning Lessee's energy usage to certain third parties, including, without limitation, prospective purchasers, lenders and lessees of the Building (the "Energy Use Disclosure") and Lessee agrees to provide Lessor with all such information as Lessor may require in order to satisfy the Energy Disclosure Requirements. Lessee hereby (A) consents to all such Energy Use Disclosures, and (B) acknowledges that Lessor shall not be required to notify Lessee of any Energy Disclosure Information. Further, Lessee hereby releases Lessor from any and all losses, costs, damages, expenses and liabilities relating to, arising out of and/or resulting from any Energy Use Disclosure. The terms of this Section shall survive the expiration or earlier termination of this Lease.

**2.6 CASP Inspection for Accessibility.** Lessor hereby notifies Lessee that the Premises have not undergone an inspection by a Certified Access Specialist.

**2.7 Parking.** Lessee shall be provided with such number of parking spaces as Lessor and Lessee shall from time to time determine. For the avoidance of doubt, all parking spaces allocated to Lessee hereunder shall be deemed a part of the Premises leased hereunder and shall be subject to the terms hereof and any special rules and regulations promulgated by Lessor which relate specifically to parking.

### **3. Term.**

**3.1 Term.** The Commencement Date, Expiration Date and Term of this Lease are as specified in Section 1.3, provided that the commencement of Rent under this Lease shall commence on the first date set forth in the schedule of base rent payments attached hereto as Exhibit B (the "Rent Commencement Date").

#### 4. **Rent and Expenses.**

4.1 **Rent Defined.** Subject to the terms of this Lease, Base Rent, Expenses (as defined below), Additional Rent (as defined below), Extraordinary Monthly Rent (as defined below) and all other monetary obligations of Lessee to Lessor or to third parties arising under the terms of this Lease are deemed to be rent (“Rent”).

4.2 **Expenses.** Lessee shall be responsible for all Expenses (as defined herein below) applicable to the Premises which Lessee shall pay to Lessor within thirty (30) days after receiving a statement from Lessor itemizing (with reasonable description) all charges included thereon.

“**Expenses**” shall mean all costs and expenses of the ownership, operation, maintenance, repair or replacement, and insurance of the Premises, as determined by standard accounting practices, including, by way of illustration only, and not by way of limitation, to the extent they apply to the Premises:

- (i) Gross receipts taxes, whether assessed against Lessor or assessed against Lessee and collected by Lessor;
- (ii) Water, sewage, and waste or refuse removal charges;
- (iii) Gas, electricity, telephone and other utilities;
- (iv) Reasonable costs incurred in the day-to-day management (if any), including the cost of management personnel;
- (v) Air conditioning and heating;
- (vi) Elevator maintenance (if any);
- (vii) Supplies, materials, labor, equipment, and utilities used in or related to the operation and maintenance of the Premises;
- (viii) All maintenance, replacement and repair costs including, without limitation, janitorial, cleaning and repair services relating to the Premises and all improvements thereon, including, without limitation, air conditioning systems, landscaping, service areas, building exteriors (including painting), signs and directories, repairing and replacing roofs, walls, janitorial (if any is supplied), capital improvements and upgrades, and cost of compliance with applicable laws;
- (ix) Capital improvements made to the Premises (whether funded in full or amortized with reasonable financing charges) which may be required by any government authority or which will improve the operating efficiency of the Premises;
- (x) Real Property Taxes (as defined in Section 10.1 below) and personal property taxes (as described in Section 10.3 below), if any; and

(xi) Any other costs or expenses reasonably incurred by Lessor under this Lease and not otherwise reimbursed by Lessee or any other lessee of the Premises. Expenses shall not include depreciation on the buildings of which the Premises are a part.

4.3 **Additional Rent.** In addition to Base Rent and Expenses, Lessee shall be responsible for the payment of Additional Rent. Additional Rent shall be paid to Lessor on demand or, if such Additional Rent is ongoing and can be calculated on a periodic basis, on a monthly basis pursuant to a written schedule horn time to time delivered by Lessor.

“Additional Rent” shall include but not be limited to the following:

All amounts required to reimburse Lessor, or satisfy Lessor’s obligations, for any fees, expenses, taxes, indemnities, assessments or other payments that it pays under the terms of the Loan Agreements to or on behalf of the Issuers;

Amounts necessary to reimburse Lessor, or satisfy Lessor’s obligations, for any payments it makes as may be required under the Loan Agreements or this Lease; and

Amounts necessary to reimburse Lessor for payments it makes with respect to, Lessor’s reasonable general operating expenses, including Lessor’s payment of Lessor’s share of the reasonable general operating expenses of Lessor’s sole member.

4.4 **Extraordinary Monthly Rent.** In the event that Lessee receives a notice (each an “Extraordinary Monthly Rent Notice”) from either Lessor or the Master Trustee, as that term is defined herein, stating the Master Trustee has not received the payment of Rent with respect to a Related Project (as defined in the Master Indenture) on or before the date that such required payment is due, then Lessee shall pay the Extraordinary Monthly Rent to the Master Trustee within three (3) Business Days after Lessee’s receipt of the Extraordinary Monthly Rent Notice. Lessor covenants to immediately provide Lessee with a copy of any Extraordinary Monthly Rent Notice received by Lessor pursuant to the terms of the Master Indenture. The “Extraordinary Monthly Rent” shall mean the amount set forth in such Extraordinary Monthly Rent Notice, which shall be Lessee’s Proportionate Share of the Extraordinary Monthly Rent. “Proportionate Share” shall mean the amount required to be paid by Lessee to ensure that all of the required Rent with respect to all of the Related Projects have been timely made.

4.5 **Payment.** Lessee’s obligation to pay Rent shall commence on the Rent Commencement Date. Subject to payments made in accordance with the Intercept Notice or a Payment Notice, Lessee shall cause all Rent payable to Lessor under this Lease to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction. Rent for any period during the Term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent due to Lessor shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Subject to the terms of the Indentures, and so long as any of the Bonds or the Loans remains outstanding, Lessee shall: (a) through the Intercept Notice, cause the State Controller to transfer the portion of the State Apportionment attributable to the School to the Series 2016 Bond Trustee for deposit in the Revenue Fund (as defined in the Series 2016 Indenture); (b) cause the Series 2016 Bond Trustee to pay from such Revenue Fund a

portion of the Rent due to Lessor under the terms of this Lease; (c) through the Payment Notice, cause SBCOE to transfer Gross School Revenues payable by it to the [Custodian] for deposit in the Revenue Fund (as defined in the Series 2022 Indenture); (b) cause the Series 2022 Bond Trustee to pay from such Revenue Fund the remaining Rent due to Lessor under the terms of this Lease.

4.6 **Budgeting Rent.** The Lessee covenants to take such action as may be necessary to include all such payments of Rent due hereunder in its annual budgets, to make, as necessary, annual appropriations for all such payments and to take such action annually as shall be required to provide funds in such year for such payments of Rent.

4.7 **Accounting.** If Lessor so requests in writing, Lessee agrees to provide Lessor with an annual, or more frequent, accounting of the Expenses paid for the just-completed fiscal year.

4.8 **Source of Rent Payments.** As used in this Lease, "School" shall mean Encore High School for the Arts. Lessee hereby promises to timely pay all Rent, when due. All items of Rent shall be paid without any abatement, deduction, or setoff for any reason whatsoever. Lessee covenants and agrees to pay Rent in lawful money of the United States, to Lessor as directed in writing by Lessor. Lessee's covenant to pay Rent is independent of every other covenant in this Lease. Lessee's obligation to pay rent under this Lease shall be a secured obligation of the Lessee in accordance with Section 11 of Exhibit D hereto, pursuant to which the Lessee has pledged and granted a security interest in and to its Gross School Revenues as security for its obligation to pay Rent hereunder. As used herein, "Gross School Revenues" means all revenue, income, receipts and money received by or on behalf of the Lessee from all lawfully available sources and to any other charter school operated by the Lessee in the Premises, including without limitation per pupil revenues and other funding received from the State of California or by virtue of the charter granted to Lessee for the School and all gifts, grants, bequests and contributions (including income and profits therefrom) specifically restricted by the donor or maker thereof to the School or the Premises, to the extent not specifically restricted by the donor or maker thereof to a particular purpose inconsistent with their use for the payments required under the Loan Agreements. Gross School Revenues also includes net insurance or condemnation proceeds received or payable to the Lessee on account of damage or destruction of the Premises or other loss incurred by Lessee with respect to its operation of the School or the Premises.

4.9 **Guaranty.** As additional security for its obligations to pay rent, Lessee has delivered that certain Obligation Guaranty dated as of April 1, 2022, to the Master Trustee, whereby it is guaranteed the payment of Lessor's obligations under the Master Indenture.

5. **Option to Extend.** Lessor hereby grants to Lessee two (2) options to extend the term of this Lease for a period of five (5) years each and a third option to extend the Lease Term for an additional four (4) years (each, an "Extension Option"). The Extension Options must be exercised if at all by written notice (the "Option Notice") delivered by Lessee to Lessor not less than four (4) months prior to the then-scheduled Expiration Date, provided, however, that the Extension Options shall not be exercisable unless, as of the date of the Option Notice and at the then-scheduled Expiration Date, Lessee is not in default hereunder. Lessee hereby covenants that, so long as the Lessor has any obligations under the Loan Agreements or the Master Indenture (as defined herein), the Lessee will exercise each Extension Option under this Lease. In the event the

Term of this Lease shall be extended under this Section, then all of the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that:

(i) Each Extension Term shall commence immediately upon the expiration of the Initial Term or prior Extension Term, as applicable.

(ii) The Base Rent for the Extension Term shall be determined as follows. Within thirty (30) days after the exercise or deemed exercise of the Extension Option, Lessor shall notify Lessee in writing as to Lessor's determination, in Lessor's good faith judgment, of the fair market rent of comparable space (including square footage, location and quality of the Premises) to the Premises (the "Fair Market Rent") together with reasonable back-up material supporting Lessor's determination. Lessee shall have twenty (20) days from receipt of Lessor's determination of the Fair Market Rent accept or reject Lessor's determination.

(iii) Notwithstanding any terms herein to the contrary, so long as any Loan is outstanding, in no event shall the Base Rent for the Extension Term be less than the debt service of the Loans or the Base Rent payable during the month preceding the commencement of the applicable Extension Term. Until the Fair Market Rent has been agreed upon, the initial Base Rent for the Extension Term shall be the Base Rent payable during the month preceding the commencement of the applicable Extension Term. In the event the Fair Market Rent is determined to be greater than such amount, then Lessee shall promptly pay Lessor any balance due.

(iv) If Lessee timely objects to Lessor's determination of Fair Market Rent, Lessor and Lessee shall diligently attempt in good faith to agree on the Fair Market Rent within ten (10) days of Lessee's notice of objection ("Outside Agreement Date"). If Lessor and Lessee fail to reach agreement by the Outside Agreement Date, each shall make a separate determination of the Fair Market Rent within five (5) days of the Outside Agreement Date. Such determination shall then be submitted to arbitration in accordance with subsection (v) below.

(v) Within fifteen (15) days of the Outside Agreement Date, the parties shall agree upon an arbitrator who shall decide whether the parties will use Lessor's or Lessee's submitted Fair Market Rent and shall promptly notify Lessor and Lessee of its decision. If the parties are unable to agree upon the arbitrator within fifteen (15) days of the Outside Agreement Date, within five (5) days thereafter, Lessor and Lessee shall each appoint an arbitrator and give notice to the other party of such arbitrator's name and business address. The arbitrator must be a licensed real estate broker or appraiser who has been active in the leasing or appraising of commercial properties in the San Bernardino County High Desert area for at least five years. If each party appoints an arbitrator, the two appointed arbitrators shall, within ten (10) days after the appointment of the second arbitrator, agree on and appoint a third similarly qualified arbitrator and promptly provide notice to Lessor and Lessee of such arbitrator's name and business address. Within thirty (30) days after the appointment of the third arbitrator, the three (3) arbitrators shall decide whether the parties will use Lessor's or Lessee's submitted Fair Market Rent and shall

promptly notify Lessor and Lessee of their decision. The decision of the majority of the three (3) arbitrators shall be binding on Lessor and Lessee.

(vi) Such Base Rent for the Extension Term as so determined shall be paid during the Extension Term in installments at the times and in the manner specified in this Lease.

6. Use.

6.1 **Use.** Lessee shall use and occupy the Premises only for “educational facilities” as defined in Section 17173(f) of the Education Code of the State of California in order to operate a charter school that is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code (the “Code”) as an organization described in Code Section 501(c)(3) and that qualifies as an “educational organization” as described under Code Section 170(b)(1)(A)(ii) (the “Agreed Use”), and for no other purpose, provided that Lessee shall not rent the Premises as residential rental property to others, or permit any subtenant to rent the Premises as residential rental property to others. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs other tenants on the Premises or causes damage to neighboring premises or properties. Subject to the foregoing. Lessee may, without Lessor’s prior written consent, operate the School with such grade levels as Lessee may from time to time determine in its reasonable judgment and, if so requested by Lessee, Lessor will cooperate with Lessee, and execute any applications or other documentation reasonably required, for the purpose of obtaining a change in any zoning or other use restriction, including any conditional use permit currently or thereafter applicable to the Premises, to permit Lessee to use or operate the Premises for additional or different grades, provided, that Lessee shall reimburse Lessor for any reasonable expenses incurred in connection therewith.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term “**Hazardous Substance**” as used in this Lease shall mean (a) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Premises or to persons on or about the Premises or (ii) cause the Premises to be in material violation of any Environmental Regulation (as defined herein); (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) any chemical, material or substance defined as or included in the definition of “waste,” “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any Environmental Regulation including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.* the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the California Hazardous Waste Control Law (“HWCL”), CAL. HEALTH & SAFETY CODE § 25100 *et seq.*; the Hazardous Substance Account Act (“HSAA”), CAL. HEALTH & SAFETY CODE § 25300 *et seq.*; the Underground Storage of Hazardous Substances Act, CAL. HEALTH & SAFETY CODE § 25280 *et seq.*; the Porter-Cologne Water Quality

Control Act (the “Porter-Cologne Act”), CAL. WATER CODE § 13000 *et seq.* the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or agency or may or could pose a hazard to the health and safety of the occupants of the Premises or the owners and/or occupants of property adjacent to or surrounding the Premises, or any other person coming upon the Premises or adjacent property; or (e) any other chemical, materials or substance which may or could pose a hazard to the environment. The term “**Environmental Regulations**” means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances or chemical waste, materials or substances. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee’s expense) with all Applicable Requirements. “**Reportable Use**” shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing or anything herein to the contrary, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor, Issuer or Lessee to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements).

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee’s expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the Term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor and its managing member, and the agents, employees, officers, and directors of either of them, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement. The provisions of this Section 6.2(d) shall survive the termination of this Lease.

(e) **Lessor Indemnification.** Lessor shall indemnify, defend and hold Lessee and its agents, employees, officers, and directors harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises (by a party other than Lessee) prior to the Commencement Date (provided, however, that Lessor shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessor). No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessor from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessee in writing at the time of such agreement.

(f) **Hazardous Substance Condition Remediation.** If Lessee becomes aware of a Hazardous Substance Condition occurring during the Term of this Lease, then Lessee shall notify Lessor and Lessor shall make the investigation and remediation thereof required by the Applicable Requirements, the costs relating thereto constituting an Expense for which Lessee is responsible and this Lease shall continue in full force and effect, but subject to Lessor's rights under Section 6.2(d); provided, however, that if a Hazardous Substance Condition occurs as a result of Hazardous Materials that are brought on the Premises (by a party other than Lessee) prior to the Commencement Date, then Lessor shall be solely responsible for making the investigation and remediation thereof at its sole cost and expense, and this Lease shall continue in full force and effect. "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Section 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the such Applicable Requirements, without regard to whether such Applicable Requirements are now in effect or become effective after the Commencement Date. Lessee shall, within ten (10) days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any



threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

## 7. **Maintenance; Repairs.**

7.1 **Lessee's Obligations.** Subject to the provisions of Sections 7.2 (Lessor's Obligations), 9 (Damage or Destruction) and 13 (Condemnation), Lessee shall, at Lessee's sole expense, keep the interior, exterior and structural elements of the Premises in good order, condition and repair; and keep the exterior, structural and major utility components of the Premises and other portions of the Premises in good order, condition and repair, including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Subject to the provisions of Sections 9 (Damage or Destruction) and 13 (Condemnation) herein, it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of Lessee. It is the intention of the Parties that the terms of this Lease shall govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.2 **Lessor's Obligations.** Subject to the provisions of Section 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 13 (Condemnation), Lessor shall keep the common facilities and areas and other portions of the Premises not covered in Section 7.1 above in good order, condition and repair. All costs and expenses incurred by Lessor in connection with the aforesaid maintenance and repair shall be deemed "Expenses" hereunder. Lessor's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair, and the costs relating thereto shall be deemed an "Expense" hereunder.

## 7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Section 7.4(a) below.

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent, except as provided herein. Lessee may make

non-structural Alterations or Utility Installations and may make structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, and will not affect the electrical, plumbing, HVAC, and/or life safety systems. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications.

(c) **Liens.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof upon written request of the Lessor or the Master Trustee.

#### 7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** All Alterations and Utility Installations made by Lessee shall be the property of Lessee. All Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, at the option of Lessor, (i) be removed by Lessee or (ii) become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Surrender and Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises), even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely

vacate the Premises pursuant to this Section 7.4(b) without the express written consent of Lessor shall constitute a holdover under the provisions of Section 23 below.

## 8. Insurance; Indemnity.

8.1 **Liability.** Lessee shall keep in force such liability insurance policies and in such amounts as set forth in Exhibit C attached hereto. The premium for such insurance shall be deemed an “Expense” hereunder.

8.2 **Premises.** Lessee shall obtain and keep in force a policy or policies of property insurance in the name, and for the benefit, of Lessor, with loss payable to Lessor and to any lender insuring loss or damage to the Premises. The amount of such insurance shall be as set forth in Exhibit C attached hereto. The premium for such insurance shall be deemed an “Expense” hereunder.

8.3 **Rental Interruption.** Lessee shall also obtain and keep in force, for the benefit of Lessor, rental interruption insurance insuring Lessor for the amounts of Base Rent arising from an interruption of the payment of the Base Rent, Expenses and Additional Rent otherwise payable by Lessor hereunder, as set forth in Exhibit C attached hereto. The premium for such insurance shall be deemed an “Expense” hereunder.

8.4 **Waiver of Subrogation.** Without affecting any other rights or remedies. Lessee and Lessor each hereby releases and relieves the other, and waives its entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.5 **Indemnity.** Except for Lessor’s negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, partners, members, directors, and officers from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys’ and consultants’ fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee’s expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified. The provisions of this Section 8.5 shall survive the termination of this Lease.

8.6 **Exemption of Lessor from Liability.** Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee’s employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances,

plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or from other sources or places.

8.7 **Master Indenture.** The foregoing notwithstanding, for so long as any Loan is outstanding, Lessee shall be deemed to meet its insurance obligations as set forth in Section 8, if it carries, and it hereby agrees to carry, the insurance required under the terms of Section 3.03 of the Master Indenture of Trust between Lessor, the Initial Members of the Obligated Group, and Master Trustee, dated November 1, 2016 (the “Master Indenture”), as such requirements may change from time to time as provided in the Loan Agreements. For so long as any Loan is outstanding, Lessee shall cause the Master Trustee, the Bond Trustees and Lessor to be named as additional insureds on Lessee’s liability and property insurance policies.

## 9. **Damage or Destruction.**

9.1 **Definitions.** “Damage” shall mean damage or destruction to the improvements on the Premises.

(a) **“Insured Loss”** shall mean Damage which was caused by an event required to be covered by the insurance described in Section 8.2 hereof, irrespective of any deductible amounts or coverage limits involved.

(b) **“Replacement Cost”** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

9.2 **Damage—Insured Loss.** Subject to the terms of the Loan Agreements, Lessor shall be entitled to any and all insurance proceeds that are available as a result of the Damage. If Damage that is an Insured Loss occurs, then Lessee shall be entitled to use the insurance proceeds that are actually collected as a result of the Damage to repair the Damage as soon as reasonably possible and this Lease shall continue in full force and effect. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to affect such repair, Lessee shall promptly contribute the shortage in proceeds as and when required to complete said repairs.

9.3 **Damage—Uninsured Loss.** If Damage that is not an Insured Loss occurs, Lessee shall repair such damage as soon as reasonably possible at Lessee’s expense, and this Lease shall continue in full force and effect.

9.4 **Waive Statutes.** Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

## 10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term “Real Property Taxes” shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other

than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises, Lessor's right to other income therefrom; and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the address of the Premises and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises is located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the Term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

**10.2 Payment of Taxes.** Lessee shall timely file for exemption against any Real Property Taxes and shall maintain such exemption during the Term. Whether or not any exemption is granted, Lessee shall pay, before all Real Property Taxes become past due, the Real Property Taxes applicable to the Premises during the Term to the extent any such Real Property Taxes are charged, levied, assessed or imposed.

**10.3 Personal Property Taxes.** Lessee shall timely file for exemption against any taxes on Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee and shall maintain such exemption during the Term. Lessee shall pay, prior to delinquency, all such taxes to the extent they are charged, levied, assessed or imposed after an exemption for such taxes is filed as required hereunder.

## **11. Assignment and Subletting.**

**11.1 By Lessee.** Lessee shall not sublease, assign, mortgage, pledge, hypothecate or encumber this Lease or any of Lessee's interest hereunder without the prior written consent of Lessor (which shall not be unreasonably withheld) and of Master Trustee, and Lessor's disapproval shall be deemed reasonable if based on Master Trustee's disapproval. Lessee acknowledges that the financing of the Premises through the tax-exempt Bonds may restrict the assignees which could be approved by Lessor.

**11.2 By Lessor.** Lessee acknowledges that the Premises are subject to a deed of trust and assignment of rents in favor of the Master Trustee and that the Lease is assigned to the Master Trustee as security for the Loans. Lessor shall not assign sublease, assign, mortgage, pledge, hypothecate or encumber this Lease or any of Lessor's interests hereunder without the prior written consent of the Master Trustee.

**11.3 Attornment.** If any deed of trust applicable to the Premises is foreclosed or any power of sale is exercised or a conveyance in lieu of foreclosure is made for any reason, Lessee shall attorn to and become the tenant of Lessor's successor in interest at the option of such successor in interest. If any deed of trust is foreclosed or any power of sale is exercised, or Lessor's interest under this Lease is conveyed or transferred in lieu of foreclosure, neither the beneficiary of any deed of trust, nor any person or entity acquiring title to the Property as a result of foreclosure, exercise of power of sale or conveyance in lieu of foreclosure, nor any successor or assign of either of the foregoing, shall be: (a) liable for any default by Lessor; (b) bound by or liable for any payment of Rent which may have been made more than thirty (30) days before the due date of

such installment; (c) subject to any defense or offset which Lessee may have to the payment of Rent or other performance under this Lease arising from any default by Lessor; or (d) bound by any amendment or modification to this Lease made without the consent of any beneficiary of a deed of trust if the consent of such beneficiary to such amendment or modification is required.

## 12. **Default; Breach; Remedies.**

12.1 **Default; Breach.** A “Default” is defined as a failure by Lessee to comply with or perform any of the terms, covenants or conditions under this Lease. A “Breach” is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

- (a) The abandonment of the Premises;
- (b) The failure of Lessee to make any payment of Rent required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, and solely with respect to Rent other than Base Rent, where such failure continues for a period of five (5) business days following written notice to Lessee;
- (c) Any material representation or warranty made in this Lease, or in any report, certificate, financial statement, or instrument furnished in connection with this Lease, proves to have been false or misleading when made, in any material respect;
- (d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, other than those described in subsections (a) through (c) above, where such Default continues for a period of thirty (30) days after written notice; provided, however, that if the nature of Lessee’s Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion so long as such cure period does not exceed ninety (90) days;
- (e) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a “**debtor**” as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 90 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee’s assets located at the Premises or of Lessee’s interest in this Lease, where possession is not restored to Lessee within sixty (60) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee’s assets located at the Premises or of Lessee’s interest in this Lease, where such seizure is not discharged within sixty (60) days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions;
- (f) The discovery that any financial statement of Lessee given to Lessor or to the Master Trustee was or is materially false;

(g) The Charter pursuant to which the School is operated is revoked, suspended, terminated or not renewed or replaced or the Lessee ceases operations on the Premises or the Lessee repudiates this Lease

(h) The Lessee shall:

(i) fail to maintain the Consolidated Days Cash on Hand for any two consecutive Testing Dates;

(ii) fail to maintain a Debt Service Coverage Ratio of at least 1.0:1.0 for any Fiscal Year; or

(iii) fail to maintain an Enrollment of at least [6xx] students;

(i) The Lessee shall fail to comply with the provisions of Exhibit C and of Sections [ ] of Exhibit D hereto;

(j) 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 the Lessee, and the Lessee 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 GAAP; or.

(k) Failure of the Lessee to pay any other Indebtedness of the Lessee not evidenced by this Lease, if the principal amount of such Indebtedness exceeds \$100,000.

12.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations (other than compliance with the covenants set forth in Exhibit D attached hereto), within fifteen (15) days after written notice (or, in the case of those duties and obligations that cannot reasonably be performed within fifteen (15) days after notice, to commence and diligently prosecute such duties and obligations to completion), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, including Lessee's failure to comply with the covenants set forth in Exhibit D attached hereto, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be

reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees of Lessor, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the district within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under this Section 11.2. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Section 12.1 above was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Section 12.1 above. In such case, the applicable grace period required by Section 12.1 above and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect Lessor's interests, shall not constitute a termination of Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under this Lease, including under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

**12.3 Interest.** Any monetary payment due Lessor hereunder not received by Lessor when due as to scheduled payments (such as Base Rent) or within thirty (30) days following the date on which it was due for non-scheduled payments, shall bear interest from the date when due as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to any late charges and default rate interest under the Loan Agreements.

**13. Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs, and Expenses thereafter shall be limited to those applying to the remaining Premises subject to this Lease. Subject to the terms of the Loan Agreements, in the event that there is a Condemnation of less than all of the Premises, and such portion so taken is material to Lessee's use and quiet enjoyment of the Premises as a whole, then



all available Condemnation awards and/or payments shall be used first, to restore the remaining portion of the Premises to a usable whole, and second, to reduce the balance of any loan made to Lessor and secured by the Premises in proportion to the portion taken or sold. Any portion of the award and/or payment that remains after the foregoing purposes have been satisfied shall be the property of Lessor. Subject to the terms of the Loan Agreements, if the entirety of the Premises is taken, then the Condemnation awards and/or payments shall be the property of Lessor.

14. **Estoppel Certificates.** Each Party (as “Responding Party”) shall within ten (10) days after written notice from the other Party (the “Requesting Party”) execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current “Estoppel Certificate” form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

15. **Definition of Lessor.** The term “Lessor” as used herein shall mean the owner or owners at the time in question of the fee title to the Premises. Upon any transfer of its fee title to the Premises, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by Lessor shall be binding only upon Lessor as hereinabove defined.

16. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

17. **Days.** Unless otherwise specifically indicated to the contrary, the word “days” as used in this Lease shall mean and refer to calendar days.

18. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease.

19. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

20. **No Prior or Other Agreements.** Subject to the terms of the Loan Agreements and other documents relating to the Bonds, this Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Each Party represents and warrants that the execution of the Lease will not, to the best of the Party’s knowledge, constitute a violation under any material agreements to which such Party is a party.

21. **Notices.**

21.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by email or facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Section. The addresses for the Parties are set forth below and shall constitute the

respective addressed for delivery or mailing of notices. Either Party may, by written notice to the others, specify a different address for notice. Upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice unless Lessee notifies Lessor otherwise. A copy of all notices to Lessor or Lessee shall be concurrently transmitted to such party or parties at such addresses as Lessor or Lessee, respectively, may from time to time hereafter designate in writing.

## 21.2 Addresses.

Lessor: 16955 Lemon Street, LLC  
c/o Western Encore Properties 3666 University Ave.  
Riverside, California 92501 Attn: Denise Griffin

Lessee: Encore Education Corporation  
16955 Lemon Street  
Hesperia, California 92345 Attn: Denise Griffin

Series 2016 Issuer (during the time the Series 2016 Loan is outstanding):

California School Finance Authority  
State Treasurer's Office  
304 South Broadway, Suite 550  
Los Angeles, California 90013  
Attention: Executive Director  
Telecopy: (213) 620-6309

Series 2022 Issuer (during the time the Series 2022 Loan is outstanding):

California Enterprise Development Authority  
2150 River Plaza Drive, Suite 275  
Sacramento, California 95833  
Attention: Executive Director  
Telecopy:

Master Trustee (during the time any Loan is outstanding):

UMB Bank, N.A.  
120 South Sixth Street  
Suite 1400  
Minneapolis, Minnesota 55402  
Attn: Katie Carlson

**21.3 Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown; the postmark thereon. If sent by regular mail the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by U.S. Postal Service Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices

transmitted by email, facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation by responding email or report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day. Refusal of delivery shall constitute acceptance of notice

22. **Waivers.** No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof.

23. **No Right to Hold Over.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 110% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

24. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

25. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

26. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the County of San Bernardino.

27. **Additional Covenants.** For so long as any Loan is outstanding and has not been paid or for so long as Lessor shall have obligations under any Loan Agreement, the provisions of Exhibit D shall be applicable for the benefit of Lessor and the Issuers.

28. **Lessor's Access; Showing Premises; Repairs.** Lessor shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times after twenty-four hours' prior notice for the purpose of inspecting the Premises, verifying compliance by Lessee with this Lease, showing the Premises to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises as long as there is no material adverse effect to Lessee's use of the Premises.

29. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this

Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the Term hereof.

30. **Counterparts.** This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

31. **Amendments.** Subject to the terms of the Master Indenture, this Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a lender in connection with the obtaining of normal financing or refinancing of the Premises.

32. **Limitation of Rights to Parties.** Nothing in this Lease expressed or implied is intended or shall be construed to give to any person other than Lessor and Lessee any legal or equitable right, remedy or claim under or in respect of this Lease or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of Lessor and Lessee.

*(Signature page of Lease Agreement)*

The Parties hereto have executed this Lease as of the day and year first above written.

**By LESSOR:**

16955 Lemon Street, LLC,  
a California limited liability company

By: Western Encore Properties, Incorporated,  
its sole and managing member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**By LESSEE:**

Encore Education Corporation,  
a California nonprofit public benefit  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

The Master Trustee consents to this Lease as of the day and year first above written.

UMB Bank, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **Description of Premises**

That real property situated in the City of Hesperia, State of California, County of San Bernardino, and described as follows:

#### **PARCEL 1:**

LOT "D", BLOCK 178, TOWN OF HESPERIA, IN THE CITY OF HESPERIA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12 PAGES 21 TO 27, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TOGETHER WITH THAT PORTION OF C AVENUE AS VACATED BY RESOLUTION OF THE BOARD OF SUPERVISORS, COUNTY OF TULARE, STATE OF CALIFORNIA, DATED SEPTEMBER 16, 1912, ADJOINING SAID PROPERTY ON THE EAST, WHICH WOULD PASS BY OPERATION OF LAW WITH A CONVEYANCE OF SAID PROPERTY, A CERTIFIED COPY OF SAID RESOLUTION RECORDED IN BOOK "V", PAGE 201 OF MISCELLANEOUS RECORDS.

EXCEPT THEREFROM AN UNDIVIDED 1/2 INTEREST IN AND TO ALL OIL, GAS AND MINERALS LYING AND BEING MORE THAN 200 FEET BELOW THE RESPECTIVE PRESENT SURFACE ELEVATIONS OF THE ABOVE DESCRIBED PROPERTY PROVIDED, HOWEVER, THAT SUCH EXCEPTED OWNERSHIP OF SUCH 1/2 INTEREST IN AND TO SUCH OIL, GAS AND MINERALS DOES NOT INCLUDE AND SHALL NOT BE CONSTRUED TO INCLUDE ANY RIGHT OF ENTRY UPON ANY PART OF THE SURFACE OF THE HEREIN DESCRIBED PROPERTY FOR THE PURPOSE OF EXPLORATION, DEVELOPMENT, DRILLING, STORAGE OR OTHER ACTIVITY ANCILLARY TO THE REMOVAL OF SUCH OIL, GAS OR MINERALS, AS EXCEPTED IN THAT CERTAIN DEED FROM APPLETON LAND WATER AND POWER COMPANY, TO N.K. MENDELSON, ET AL., RECORDED JUNE 11, 1954 IN BOOK 3400 OF OFFICIAL RECORDS, PAGE 409, RECORDS OF SAN BERNARDINO COUNTY.

#### **PARCEL 2:**

THE NORTH ONE-HALF OF THE WEST ONE-HALF OF LOT C BLOCK 178, TOWN OF HESPERIA, AS PER MAP RECORDED IN BOOK 12 PAGE 21 TO 27 INCLUSIVE OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST IN OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER, WITHOUT THE RIGHT BY THE GRANTOR TO ENTER UPON THE SURFACE OF, IN, UNDER OR ACROSS THE SAME, AND SUB-SURFACE TO A DEPTH OF 200 FEET MEASURED IN A VERTICAL DIRECTION FROM THE EARTH'S SURFACE OF SAID LAND FOR THE EXPLORATION, DEVELOPING, EXTRACTING, OR REMOVING OF ANY OIL, GAS OR OTHER HYDROCARBONS OR MINERALS FOUND THEREIN, AS RESERVED IN THE DEED BY APPLETON LAND, WATER AND POWER

COMPANY TO N. K. MENDELSON, ET AL., BY DEED RECORDED JUNE 11, 1954 IN BOOK 3400 PAGE 409, OFFICIAL RECORDS.

PARCEL 2A:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE EASTERLY 30 FEET OF THE SOUTH ONE-HALF OF THE WEST ONE-HALF OF LOT C BLOCK 178 TOWN OF HESPERIA, AS PER MAP RECORDED IN BOOK 12 PAGES 21 TO 27 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 0410-011-06-0-000 (Parcel 1) and 0410-011-29-0-000 (Parcel 2)

## **EXHIBIT B**

### **Schedule of Base Rent Payments<sup>1</sup>**

**[TBD]**

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<sup>1</sup> Notwithstanding the effective date of this Lease, this Schedule shall be effective retroactively as of July 1, 2021, and Lessee shall make up any deficiency in Base Rent due prior to the effective date of this Lease within 30 days of the effective date of this Lease.



## EXHIBIT C

### Insurance Coverage

Lessee shall obtain and maintain the following insurance coverages:

(a) Property insurance (including builder's all-risk insurance during the period of construction, if any) against loss or damage to any structure constituting any part of the Premises by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. All insurance provided pursuant to this paragraph shall be in an amount equal to the lesser of (i) 100% of the replacement cost (without depreciation) of all improvements constituting any part of the Premises or (ii) the principal amount of the Loans then outstanding, and shall be subject to a deductible not to exceed \$100,000 per occurrence;

(b) Business interruption or rental interruption insurance to cover loss, total or partial, of rental income to Lessor for any reason whatsoever, in an amount sufficient to pay the maximum Rent under the Lease for a period of at least 12 months;

(c) (i) General liability insurance of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (ii) cyber intrusion insurance in providing coverage of not less than \$1,000,000 per occurrence, and (iii) employment practices insurance [TBD]; and

(d) Workers' compensation insurance necessary to comply with California state law.

(e) The Lessee covenants and agrees to consult with an Insurance Consultant to review the insurance requirements of the Lessee with respect to the Premises from time to time (but not less frequently than once every three (3) years) commencing no later than June 30, 2023. If such review indicates that the Lessee should increase any of the coverages required by this Exhibit C, the Lessee shall increase such coverage. As used in this Exhibit C, "Insurance Consultant" shall mean an Independent Consultant who is skilled in insurance coverage or risk management or is an insurance broker or an insurance agent (which may be a consultant, firm, broker or agent with whom the Lessee regularly transacts business) selected by the Lessee. "Independent Consultant" means a Person which (i) is in fact independent, (ii) does not have any direct financial interest or any material indirect financial interest in the Lessee or any affiliate thereof and (iii) is not connected with the Lessee or any affiliate thereof as an officer, employee, promoter, underwriter, trustee, partner, director or Person performing similar functions, and designated by the Lessee, qualified to pass upon questions relating to the affairs of facilities of the type or types operated by the Lessee and having a favorable reputation for skill and experience in the affairs of such facilities, whether financial, operational, insurance, marketing or academics.

(f) The Lessee covenants and agrees to obtain and maintain and cause to be obtained and maintained during the term of this Lease Agreement such other insurance policies covering such other risks and in such amounts as (i) the Insurance Consultant engaged pursuant to subsection (e) of this Exhibit C states are customarily maintained by educational institutions

similar to the Lessee in the ordinary course of their business, and (ii) the Master Trustee request (acting at the direction of the Majority Obligation Holders, as such term is defined in the Master Indenture).

## EXHIBIT D

### Additional Covenants

For so long as any Loan is outstanding and has not been defeased or for so long as Lessor shall have obligations under any Loan Agreement or the Master Indenture, the following provisions of Exhibit D shall be applicable for the benefit of Lessor and the Bond Trustees. Capitalized terms not otherwise defined in Exhibit D shall have the meanings ascribed to such terms in the Lease, the Loan Agreements, and Master Indenture, provided that "School" shall mean the School operated by Lessee on the Premises.

1. **General Covenants.** Lessee covenants and agrees:

(a) **School's Charter.** To maintain the Charter for the School with a sponsoring entity and to take or cause to be taken any and all actions required to renew or extend the term of such Charter with a sponsoring entity. Within seven (7) days, Lessee covenants to provide Lessor and the Master Trustee with a copy of any notice received with regards to any sponsoring entity's intent to renew or extend the term of such Charter or any notice of any issues which, if not corrected or resolved, could lead to termination or nonrenewal of such Charter. Further, Lessee shall maintain accreditation status under the Charter Schools Act of 1992, as amended (constituting Part 26.8 of Division 4 of Title 2 of the California Education Code) and related administrative rules and, to the extent required to maintain the approval of the Charter petition for the School by the sponsoring entity, meet the student performance accountability standards stated in its Charter petition.

(b) **Limitation on Disposition of Property, Plant and Equipment.** Without the consent of the Bond Trustees, not to dispose or transfer any property, plant and equipment consisting of all or any part of the Premises, except for disposition or transfers:

- (i) of property, plant and equipment no longer necessary for the operation of the Premises;
- (ii) of property, plant and equipment replaced by property, plant and equipment of similar type and/or of substantially equivalent function with a substantially equivalent value; or
- (iii) of property, plant and equipment sold or disposed of at a price equal to their fair market value.

2. **Financial Reporting.** Lessee agrees to provide Lessor, and upon written request, the Bond Trustees, the following information:

- (a) annual budgets of the School within 30 days of their adoption,
- (b) annual financial and operating covenant reports as required in this Exhibit D-1 within 30 days of approval of the audited financial statements of Lessee by the governing board of the Lessee,

(c) the results of any federal or State of California testing of the students attending the School within 30 days of receipt by the governing board of Lessee,

(d) within 14 days of receipt, any notification or report of any potential or alleged violation of the Charter for the School,

(e) statement of Obligated Group Representative that all terms, conditions and covenants of the Master Indenture of Trust have been met by all Members, or if not met, then a list of which Members are in default and why, and

(f) such other information as may be reasonably requested by Lessor or Lessor on behalf of the Bond Trustees.

3. **Lessee Representations and Warranties.** Lessee represents, warrants, and covenants that:

(a) it is an organization described in Section 501(c)(3) and Section 170(b)(1)(A)(ii) of the Code, and except for unrelated business income taxable under Section 511 of the Code, it is exempt from federal income tax under Section 501(a) of the Code;

(b) it will not take any action or omit to take any action that, if taken or omitted, would cause: (x) it to lose its current federal income tax status as exempt from federal income taxation under Section 501(a) of the Code as an organization described in Code Section 501(c)(3) and as an organization described in Code Section 170(b)(1)(A)(ii), or (y) Lessor to be viewed, for federal income tax purposes, as other than disregarded as an entity separate from its sole member pursuant to Treasury Regulation Section 301.7701-3(b);

(c) it has not and will not divert a substantial part of its corpus or income for a purpose or purposes other than the purpose or purposes for which it is organized or operated and will use Bond proceeds solely for the charitable purposes of Lessee;

(d) it 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) (l)(c)(3) of the Treasury Regulations, including, but not limited to, promoting or attempting to influence legislation by propaganda or otherwise as a substantial part of its activities;

(e) it shall not use any of the proceeds of the Bonds to: (A) carry on propaganda, or otherwise attempt to influence legislation, within the meaning of Section 4945(d)(1) or Section 501(c)(3) of the Code, or the corresponding provisions of any subsequent federal tax laws; or (B) participate in, or intervene in (including publishing or distributing of any statements), any political campaign on behalf of any political candidate for public office or attempt to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive, within the meaning of Section 4945(d)(2) or Section 501(c)(3) of the Code, or corresponding provisions of any subsequent federal tax laws, and not make any grant which does not comply with the requirements of Section 4945(d)(3) or Section 4945(d)(4) of the Code, or corresponding provisions of any subsequent federal tax laws, or which violates the provisions of Section 4945(d)(5) of the Code, or corresponding provisions of any subsequent federal tax laws;

(f) none of its directors, officers, organizers or incorporators, or any Person controlled by Lessee, or any other Person having a private or professional interest in the activities of the Lessee has acquired or received nor will such Persons be allowed to acquire or receive, directly or indirectly, without due compensation, goods, or services therefor, or any of the income or assets of Lessee, in any form;

(g) it is not a “private foundation” within the meaning of Section 509(a) of the Code;

(h) it has not received any indication or notice to the effect that its exemption from federal income taxation under Section 501(a) of the Code has been revoked or modified, or that the Internal Revenue Service is considering revoking or modifying such exemption, and such exemption is still in full force and effect;

(i) it will timely file with the Internal Revenue Service all requests for determination, reports, and returns required to be filed by them to maintain its status as organizations described in Section 501(c)(3) of the Code, and such requests for determination, reports, and returns have not omitted or misstated any material fact;

(j) it has not devoted nor will it 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;

(k) its Charter is in full force and effect; and

(l) to the best of its knowledge, it is in material compliance with the terms, including financial covenants, of all leases and loan agreements to which it is a party.

**4. Assignment to Bond Trustees; Deposit of Rental Payments.** Lessee hereby acknowledges and consents to the assignment by Lessor of Lessor’s rights hereunder to the Bond Trustees under the Indentures and covenants and agrees to deposit all Base Rent and Additional Rent with the Bond Trustees under the Indentures. Lessee hereby covenants to pay to the respective Bond Trustees the Base Rent and Additional Rent due hereunder on or before the fifteenth (15th) day of each month. In accordance with the terms of Section 1.5 of the Lease, Lessee also agrees to provide an Intercept Notice to the State Controller requesting that the amounts specified therein be transferred to the Series 2016 Bond Trustee and to provide a Payment Notice requesting that the amounts specified therein be transferred to the Custodian.

**5. Limitation on Liens on Gross School Revenues.** Except as expressly set forth in this Lease, the Lessee covenants and agrees that it will not create, assume or suffer to exist any lien upon the Gross School Revenues. The Lessee may create or assume upon the Gross School Revenues a subordinate security interest, provided that the Lessee shall make or cause to be made effective a provision whereby the obligations of the Lessee under this Lease will be secured prior to any such indebtedness or other obligation secured by such subordinate security interest and that all revenues required by the Intercept Notice to be deposited with the Series 2016 Bond Trustee under the Series 2016 Bond Indenture or under any other direction to a public Person to intercept or deposit revenues in favor of the Series 2016 Bond Trustee or the Custodian will continue to be first deposited. The Lessee may create or assume upon the Gross School Revenues a security interest on parity with the payment obligations of the Lessee under this Lease only in connection

with (a) the issuance of Additional Bonds under the Indentures, (b) the incurrence of Short-Term Indebtedness for working capital purposes, provided that in no event will the Lessee create a lien on Gross School Revenues in connection with Short-Term Indebtedness in the actual maximum amount of advance apportionment and principal apportionment due to the School in any fiscal year that is deferred at any time or subject to deferral pursuant to Section 14041.6 of the California Education Code or any subsequent legislation authorizing deferrals of such apportionments, or (c) unsecured indebtedness in the aggregate not to exceed \$150,000. **[TBD]**. “Short Term Indebtedness” means all School Indebtedness having an original maturity less than or equal to eighteen months and not renewable at the option of the Lessee.

6. **Consolidated Days Cash on Hand.** The Lessee will calculate Consolidated Days Cash on Hand for the Obligated Group Schools as of the last day of each Fiscal Year, commencing with the Fiscal Year ending June 30, 2017, based upon its audited financial statements for such Fiscal Year and file such reports with the Master Trustee. For each calculation date, the Lessee will maintain Consolidated Days Cash on Hand as of the last day of each Fiscal Year equal to or greater than 45 days or, while any of the Series 2022 Bonds remain outstanding 20 days.

(a) “Consolidated Days Cash on Hand” means (i) the sum of Cash and Cash Equivalents of the Lessee, as shown on the Lessee’s audited financial statements for each Fiscal Year (“Cash on Hand”); divided by (ii) the Average Daily Expenses for Lessee (as calculated for the most recent Fiscal Year ending before such date).

(b) “Average Daily Expenses for Obligated Group Schools” means (A) the sum of (i) all Operating Expenses for such Fiscal Year for the Lessee, and (ii) the maximum Base Rent payable under the Lease for that year or any other year, divided by (B) 365.

(c) The Lessee will provide a certificate to the Lessor and Master Trustee at the time of delivery of its annual audited financial statements for each Fiscal Year indicating whether the Lessee, on behalf of the Obligated Group Schools, has met the requirement set forth above. If the certificate indicates that such cash balance requirement has not been met, the Lessee covenants to retain an Independent Consultant, at the expense of the Lessee, on behalf of the Obligated Group Schools, within 45 days, to make recommendations to increase such balances in the then-current Fiscal Year to the required level or, if in the opinion of the Independent Consultant the attainment of such level is impracticable, to the highest level attainable in such Fiscal Year. The Independent Consultant selected and appointed by the Lessee may be rejected upon the written request of the holders of not less than a majority in aggregate principal amount of the Related Bonds then Outstanding; if so rejected, the Lessee shall appoint a new Independent Consultant within 45 days thereof. Any Independent Consultant will be required to submit its recommendations to the Lessors and Master Trustee within 90 days after being so retained. The Lessee, on behalf of the Obligated Group Schools, agrees to implement the recommendations of the Independent Consultant, to the extent permitted by law.

(d) No proceeds of any Indebtedness will be considered unrestricted available cash for purposes of such calculation.

7. **Base Rent Coverage Ratio.** Lessee covenants and agrees to calculate for each Fiscal Year its Base Rent Coverage Ratio based on its audited financial statements for such Fiscal year, and to

provide a copy of such calculation for such period to the applicable Lessor and the Master Trustee annually commencing with the Fiscal Year ending June 30, 2017. The Lessee also covenants to maintain its Net Operating School Revenue so that its Base Rent Coverage Ratio at the end of the each Fiscal Year is not less than 1.10 to 1.00; provide that, except as provided below, the Lessee's failure to achieve the required Base Rent Coverage Ratio will not constitute an Event of Default under any Lease if the Lessee promptly engages an Independent Consultant to prepare a report, to be delivered to the Lessee, the Lessor and Trustee within 45 days of engagement, with recommendations for meeting the required Base Rent Coverage Ratio. The Independent Consultant selected and appointed by the Lessee may be rejected upon the written request of the holders of not less than a majority in aggregate principal amount of the Related Bonds then Outstanding; if so rejected, the Lessee shall appoint a new Independent Consultant within 45 days thereof. Any Independent Consultant will be required to submit its recommendations to the Lessors and Master Trustee within 90 days after being so retained. The Lessee agrees to implement the recommendations of the Independent Consultant, to the extent permitted by law. Notwithstanding the foregoing, the Lessee's failure to achieve a Base Rent Coverage Ratio of 1.00 to 1.00 will constitute an Event of Default under the Lease.

(a) "Additional Rent" means (i) all amounts required to reimburse the lessor under a Lease, or satisfy such lessor's obligations, for any fees, expenses, taxes, indemnities, assessments or other payments that the Borrower is obligated to pay under the terms of the Loan Agreements, including, but not limited to, such amounts as described in the Loan Agreements; and any other amounts required to be paid by such lessor in order for the lessor to meet its obligations under the Bond Documents on a full and timely basis.

(b) "Base Rent Coverage Ratio" means for any period of time the ratio determined by dividing (i) Net Operating School Revenue by (ii) debt service on Lessee Indebtedness for such Fiscal Year.

(c) "Expenses" shall mean all costs and expenses of the ownership, operation, maintenance, repair or replacement, and insurance of the Facility, as determined by standard accounting practices.

(d) "Net Operating School Revenue" means the Lessee's Gross School Revenue (defined above) minus its Operating Expenses (defined below); provided, that no determination thereof will take into account: (a) any gain or loss resulting from either the early extinguishment or refinancing of Lessee Indebtedness or the sale, exchange or other disposition of capital assets not made in the ordinary course of business; (b) gifts, grants, bequests, donations or contributions, and income therefrom, to the extent specifically permanently restricted by the donor or by law to a particular purpose inconsistent with their use for the payment of Operating Expenses; (c) the net proceeds of insurance (other than business interruption insurance) and condemnation awards; (d) adjustments to the value of assets or liabilities resulting from changes in generally accepted accounting principles; (e) unrealized gains or losses that do not result in the receipt or expenditure of cash; and (f) nonrecurring items which involve the receipt, expenditure or transfer of assets.

(e) "Lessee Indebtedness" means Indebtedness (as such term is defined in the Master Indenture) of the Lessee.

(f) “Operating Expenses” means except as provided below, all unrestricted expenses of the Lessee, including maintenance, repair expenses, utility expenses, equipment lease and other rental expense (excluding the Base Rent and the Extraordinary Monthly Rent, if any, but including Additional Rent and Expenses as defined in the Lease), administrative and legal expenses, miscellaneous operating expenses, advertising and promotion costs, payroll expenses (including taxes), the cost of material and supplies used for current operations of the Lessee, the cost of vehicles, equipment leases and service contracts, taxes upon the operations of the Lessee not otherwise mentioned herein, charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which are such as may reasonably be expected to be incurred in accordance with generally accepted accounting principles, all in such amounts as reasonably determined by the Lessors. “Operating Expenses” shall exclude, however, (i) depreciation and amortization, and (ii) any expenses which are treated as extraordinary in accordance with generally accepted accounting principles.

#### 8. **Limitations on Obligated Group School Indebtedness.**

The Lessee covenants that it will not incur, assume or guarantee (“incur”), any Lessee Indebtedness (secured or unsecured), except Lessee Indebtedness with respect to purposes specifically benefiting the Lessee, and except (a) if the Holders of a majority in principal amount of the Bonds then Outstanding consent in writing to such Indebtedness, or (b) unsecured or secured, as permitted by Section 5 of this Exhibit D, as provided below.

(a) *Nonrecourse School Indebtedness.* To the extent permitted by applicable law and if no Event of Default under the Lease, or an event that with the giving of notice or passage of time or both would constitute an Event of Default under the Lease, has occurred and is continuing, the Lessee may incur or assume Nonrecourse School Indebtedness (as defined below), Short-Term School Indebtedness (as defined below), and Interim Indebtedness (as defined below) to a total aggregate principal amount outstanding at any time not in excess of the greater of: (1) 25% of Operating Expenses in any Fiscal Year, or (2) the maximum amount of advance apportionment and principal apportionment due to the Obligated Group School in any fiscal year that is deferred at any time or subject to deferral pursuant to Section 14041.6 of the California Education Code or Sections 16325.5 and 16326 of the California Government Code, or any subsequent legislation authorizing additional deferrals of such apportionments (collectively “Maximum Deferred Apportionment”).

“Nonrecourse School Indebtedness” means all Obligated Group School Indebtedness with respect to which the obligee is prevented by applicable law or contractual arrangement from exercising recourse, or any other right or remedy exercisable by a creditor, against all or any part of the Premises or the Improvements in order to pay, satisfy or discharge all or any part of the Obligated Group School Indebtedness.

(b) *Short-Term School Indebtedness,* the Lessee may incur Short-Term School Indebtedness (as defined below) for working capital purposes as in its judgment is deemed expedient, provided that in no event will the Lessee incur Short-Term School Indebtedness, together with outstanding Nonrecourse School Indebtedness and Interim Indebtedness (defined below) in excess of the greater of (i) for any such Obligated Group School



Indebtedness incurred in the Fiscal Year ended June 30, 2020, \$4,000,000; (ii) for any such Obligated Group School Indebtedness incurred in the Fiscal Year ended June 30, 2021, \$2,250,000; and (iii) beginning July 1, 2021, the greater of (1) 25% of Operating Expenses in any Fiscal Year, or (2) the Maximum Deferred Apportionment.

“Short-Term School Indebtedness” means all Obligated Group School Indebtedness having an original maturity less than or equal to one year and not renewable at the option of the Lessee for a term greater than one year from the date of original incurrence or issuance; provided however, that any Short Term Indebtedness that has been issued as revenue anticipation notes (“RANS”) will not be included or counted as Short Term Indebtedness to the extent that the RANS are secured by deferred state apportionment revenues expressly pledged and deposited in an intercept account to pay such RANS; and provided further that, notwithstanding any other provision of the Lease, the Lessee’s 2016 Revenue Anticipation Notes, Series A are permitted thereunder as Short-Term School Indebtedness.

(c) *Interim Indebtedness.* The Lessee may incur Interim Indebtedness (as defined below) to finance or refinance existing capital needs as in its judgment is deemed expedient, provided that in no event will the Lessee incur Interim Indebtedness, together with outstanding Nonrecourse School Indebtedness and Short-Term School Indebtedness, on a combined basis, is in excess of the greater of: (1) 25% of Operating Expenses in any Fiscal Year, or (2) the Maximum Deferred Apportionment.

“Interim Indebtedness” means all Obligated Group School Indebtedness having an original maturity less than or equal to five years and not renewable at the option of the Lessee for a term greater than five years from the date of original incurrence or issuance.

(d) *Charter School Revolving Fund Loan Program.* Notwithstanding the foregoing limitations on Obligated Group School Indebtedness, the Lessee shall be permitted to obtain loans with respect to the Obligated Group School pursuant to the Charter School Revolving Loan Program established under California Education Code Sections 41365 through 41367 (“Charter School Start-up Loans”) and any such Charter School Start-up Loans existing with respect to any School will not be taken into account in applying the foregoing limitations on Non-Recourse Indebtedness, Short-Term School Indebtedness, and Interim Indebtedness.

(e) *Financial Product Agreements.* The Lessee shall not enter into any Financial Product Agreements (as such term is defined in the Master Indenture).

9. **Subordination of Collection of Educational Management Fees.** So long as the Bonds remain outstanding, an educational management fee, if any, paid to the Lessee in connection with management services provided and related to or payable from revenues attributable to the applicable Obligated Group School and to any other charter school operated by the Lessee in the property subject to the Lease, shall be subordinate to the payment of Rent due under any Lease.

10. [Reserved].

11. **Gross School Revenue Pledge.** The Lessee hereby pledges and, to the extent permitted by law, grants a security interest to the Lessor and the Master Trustee in all of the Gross School Revenues of the Borrower to secure the payment of all Rent (as defined in Section 4.1 of this Lease) payable under this Lease and the performance by the Borrower of all other obligations under this Lease. The Lessee shall execute and cause to be filed Uniform Commercial Code financing statements, shall execute and cause to be sent to the Lessor and to the Master Trustee a notice of the security interest granted hereunder and shall execute and deliver such other documents (including, but not limited to, control agreements and continuation statements) as may be necessary or reasonably requested by the Lessor or Master Trustee in order to perfect or maintain as perfected such security interest or give public notice thereof. Notwithstanding anything to the contrary contained herein, neither the Master Trustee nor any other Person (other than the Borrower) shall be responsible for any initial filings of any financing statements, or the information contained therein (including the exhibits thereto), the perfection or priority of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any continuation statements, modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code. The Borrower authorizes the Master Trustee to file continuation statements on behalf of the Borrower, and such costs associated therewith shall be deemed Additional Rent under this Lease, and Lessor shall collect such amounts from Lessee and pay the same over to the Master Trustee, provided that the Trustee shall have no obligation to file any continuation statements on behalf of the Lessee in any circumstance.

The Lessee's exact legal name is accurately set forth in Section 21.2 of the Lease. The Lessee's chief executive office is located at the address set forth in Section 21.2 of the Lease. The Lessee will not, without the prior written consent of the Trustee (which consent the Trustee shall not be obligated to provide absent the written direction of a majority of the Bondholders), (i) change its names, entity types or ownership structures or (ii) reorganize or reincorporate under the laws of another jurisdiction.

12. **Intercompany Borrowing.** The Gross School Revenues shall not fund any intercompany loans or be used to pay any lease expenses of the Lessee other than facilities leases benefiting the School or as otherwise permitted under this Lease.

13. **Enrollment Covenant.** (a) The Lessee shall maintain enrollment of 700 students at the School, commencing [October 15, 2022] (the "October Count Date") occurring in 2022-23 and tested annually as of each October Count Date thereafter, with such enrollment to be based on the count of the full-time equivalent ("FTE") students as reported to the California Department of Education.

(b) Commencing in 2023, the Lessee shall report to the Trustee and post to EMMA its enrollment for each [October Count Date] by November 1 of each year.

(c) In the event the enrollment at the School is less than the amounts set forth above as of any October Count Date, the Lessee shall engage an Independent Consultant, which Person shall deliver a written report within ninety (90) days of engagement to the Trustee, the Beneficial Owners, and the Lessee containing recommendations concerning the Lessee's operations, marketing, academics, teacher training and retention, management practices, including the use of

consultants, governance and administration practices, and other factors relevant to increasing enrollment, improving academics and retaining students and teachers. The Independent Consultant selected and appointed by the Lessee may be rejected upon the written request of the holders of not less than a majority in aggregate principal amount of the Related Bonds then Outstanding; if so rejected, the Lessee shall appoint a new Independent Consultant within 45 days thereof. The Lessee, on behalf of the Obligated Group School, agrees to implement the recommendations of the Independent Consultant, to the extent permitted by law. Notwithstanding the foregoing, the Lessee’s failure to achieve enrollment as of the October Count Date of [6xx] (the “Enrollment Default Level”) will constitute an Event of Default under this Lease.

(d) Upon submission of the Independent Consultant's report, the Lessee is required to arrange for payment of the amount owed to the Independent Consultant and issue a written certificate to the Trustee indicating its acceptance of the recommendations of the consultant within thirty (30) days of receiving the report of the Independent Consultant. So long as the Lessee is otherwise in full compliance with its obligations under this Lease, including following the recommendations of the Independent Consultant, it shall not constitute an Event of Default under this Lease if the enrollment of the School is less than the required amount, so long as such enrollment is above the Enrollment Default Level.

14. **Deposit Account Control Agreement.** (a) [TBD based upon whether DACA in place or not.]

(b) In the event the Borrower wishes to change its Primary Depository Bank, the Borrower may do so, so long as no Event of Default shall have occurred or be continuing. In order to implement this change, the Borrower shall (i) first provide the Trustee thirty (30) days' prior written notice of such change, with the proposed effective date of such change, and (ii) execute a new Deposit Account Control Agreement with such bank in a form substantially similar to the Deposit Account Control Agreement, as approved by the Master Trustee acting at the direction of the Majority Obligation Holders (provided that the Master Trustee shall in no instance be obligated to approve any Deposit Account Control Agreement which, in its sole judgment, adversely affects it).Gross School Revenues shall not fund any intercompany loans or be used to pay any lease expenses of the Lessee other than facilities leases benefiting the School or as otherwise permitted under this Lease.

15. **All Assets Security Interest.** (a) In addition to the security interest in Gross School Revenues granted under Section 11 of this Exhibit D, the Lessee hereby grants to the Lessor and to the Master Trustee a continuing security interest in all of its presently existing and hereafter acquired or arising Collateral (as hereinafter defined) in order to secure the Lessee’s prompt payment, performance and observance of the obligations under this Lease, and any modifications, extensions or renewals thereof. The Lessee acknowledges and affirms that, subject to the provisions of subsection (e), such security interest in the Collateral has attached to all Collateral without further act on the part of the Master Trustee or the Lessor. By its signature hereto, the Lessee hereby consents to the foregoing grant of a security interest in the Collateral, regardless of where located. For purposes of this Lease, the term “Collateral” shall mean, collectively, the following:

- (i) all Accounts;

- (ii) all Chattel Paper;
- (iii) all Licenses, Copyrights, Patents and Trademarks;
- (iv) all Documents;
- (v) all Equipment;
- (vi) all Fixtures;
- (vii) all General Intangibles;
- (viii) all Goods;
- (ix) all Instruments;
- (x) all Inventory;
- (xi) all Investment Property;
- (xii) all cash or cash equivalents;
- (xiii) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;
- (xiv) all Deposit Accounts with any bank or other financial institution;
- (xv) all Commercial Tort Claims; and
- (xvi) all accessions to, substitutions for and replacements, proceeds (including Stock Rights), rents, profits, proceeds (including insurance proceeds) and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing;

Capitalized terms used in this Section 15 of Exhibit D to the Lease shall have the meaning set forth in the California Uniform Commercial Code (the "UCC").

(b) The Lessee hereby authorizes the Lessor or the Master Trustee to file financing statements perfecting the security interest granted in this Lease in any jurisdiction, and if requested, will deliver financing statements and other documents to the Lessor or Master Trustee and will take such other actions as may from time to time be requested by the Lessor or Master Trustee in order to maintain a first perfected security interest in and, if applicable, control of, the Collateral for the Lessor and Master Trustee. Any financing statement filed by the Trustee may be filed in any filing office in any jurisdiction and may (i) indicate the Collateral (1) as all assets of the Lessee or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC, or (2) by any other description which reasonably approximates the description contained in this Section, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (1) whether the Lessee is an organization, the type

of organization and any organization identification number issued to the Lessee, and (2) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. The Lessee also agrees to furnish any such information described in the foregoing sentence to the Lessor or the Master Trustee promptly upon request.

(c) The Lessee will, if so requested by the Lessor or Master Trustee, furnish to the Lessor or Master Trustee, as often as the Lessor or Master Trustee requests, statements and schedules further identifying and describing the Collateral and such other reports and information in connection with its Collateral as the Lessor or Master Trustee may request, all in such reasonable detail as the Lessor or Master Trustee may specify. The Lessee also agrees to take any and all actions necessary to defend title to the Collateral against all persons and to defend the security interest of the Lessor or Master Trustee in its Collateral and the priority thereof against any Lien not expressly permitted hereunder.

(d) The Lessee's exact legal name and state of organization is accurately set forth in Section 1.1 of this Lease. The Lessee's FEIN is 47-5411291, and the and charter identification number of the School is 36-75044-0116707. The Lessee's chief executive office is located at the address set forth in Section 21.2 of this Lease, and there are no other locations where Grantor conducts business or Collateral is kept. The Lessee will not, without the prior written consent of the Master Trustee (which consent the Master Trustee shall not be obligated to provide absent the written direction of the Majority Obligation Holders), (i) change either of its names, entity types or ownership structures, (ii) reorganize or reincorporate under the laws of another jurisdiction or (iii) change its address where Collateral is kept.

(d) The Lessee's exact legal name and state of organization is accurately set forth in Section 1.1 of this Lease. The Lessee's FEIN is 47-5411291, and the and charter identification number of the School is 36-75044-0116707. The Lessee's chief executive office is located at the address set forth in Section 21.2 of this Lease, and there are no other locations where Grantor conducts business or Collateral is kept. The Lessee will not, without the prior written consent of the Master Trustee (which consent the Master Trustee shall not be obligated to provide absent the written direction of the Majority Obligation Holders), (i) change either of its names, entity types or ownership structures, (ii) reorganize or reincorporate under the laws of another jurisdiction or (iii) change its address where Collateral is kept.

(e) From time to time, Lessee may own or hold funds or other assets subject to a statutory, regulatory, grantor-imposed or donor-imposed restriction on use that prohibits the use of such funds or assets to satisfy the obligations of Lessee under this Lease and/or prohibits the encumbrance of such funds or assets to secure such obligations. No security interest granted in this Lease shall encumber, attach to, or transfer any funds or assets of Lessee to the extent that any transfer of such funds or assets to or for the benefit of such holder would violate any such restriction on the use of such funds or assets.

**16. Prepayment of Base Rent.** Until the Series 2022 Bonds are paid or defeased in full, (a) within 5 business days of receiving any [2021-22 "hold harmless" funding] or [Employee Retention Tax Credit payments], Lessee shall prepay Base Rent due under this Lease in an amount equal to the amount received and (b) in each Fiscal Year ending on or after June 30, 2023, if the Days Cash On Hand (DCOH) covenant test submitted at the time of the Annual Report of Borrower

filed on EMMA including the final audited financial statements (expected on or around December 15) shows over 45 DCOH, Lessee shall prepay Base Rent due under this Lease in amounts equal to Lessee's Consolidated Days Cash on Hand as of the last day of the prior Fiscal Year in excess of 45 days, provided that an Independent Consultant report shows that the Lessee is projecting positive cash balances in each month for the current and subsequent Fiscal Years after the prepayment (and, if not, the prepayment shall be reduced to the amount that maintains positive cash in each month). In the event that the DCOH covenant test submitted at the time of the Annual Report filed on EMMA including the final audited financial shows over 45 DCOH, Lessee will obtain the report of the Independent Consultant and submit the report and confirmation of the amount of the rent prepayment to the Lessor and the Series 2022 Bond Trustee within 30 days of the filing of the Annual Report. The Series 2022 Bond Trustee shall not intercept these amounts; instead, the Series 2022 Bond Trustee will transfer funds to Lessee and Lessee will transfer the rent prepayments to the Series 2022 Bond Trustee for the account of Lessor separately. Such prepayments shall be applied by Lessor to Base Rent attributable to debt service on the Series 2022 Bonds in the inverse order of maturity and shall be applied by the Series 2022 Bond Trustee to the redemption of Series 2022 Bonds, in inverse order of maturity. Assuming a 30-day redemption notice, Lessee would be responsible for delivering cash to the Series 2022 Bond Trustee by 5 business days prior to the redemption date.

17. **Capital Improvements.** Until the Series 2022 Bonds are paid or defeased in full, Lessee agrees to retain an Independent Consultant, at the expense of the Lessee, to provide Lessee on or before May 1, 2023, with a five-year plan for capital improvements so that Lessee can develop reasonable capital improvements budgets for Fiscal Year ending on or after June 30, 2024. Lessee shall not make any capital improvement expenditures in excess of the capital improvement budget without the prior written approval of the Majority Obligation Holders.

18. **Operating Budget.** Until the Series 2022 Bonds are paid or defeased in full, in the event audited actual expenditures for the any fiscal year ending on or after June 30, 2023, exceed budgeted expenditures in the audited year's Second Interim Budget, determined at the time Lessee prepares the report issued pursuant to Section 2(b) of this Exhibit D, Lessee agrees to retain Independent Consultant to perform a budgetary control analysis report to be received by April 1 of the year following the audit year. School agrees to incorporate recommendations of the Independent Consultant's report in development of the operating budget for the upcoming fiscal year.

19. **Back-Office Services Provider; Auditors.** Lessee agrees to seek proposals from qualified backoffice services and accounting firms for the 2023-24 fiscal year on, with the intent (but not obligation) of replacing existing backoffice and auditors. Final selection decision of most qualified firms is up to Lessee's Board, and may include existing firms. Lessee covenants to provide a report to Bondholders by April 1, 2023 describing how the proposed combination of school staff, backoffice providers and audit firms selected are qualified and able to remedy each area that has been a previous concern, including but not limited to budget controls, purchasing controls, student services accounting, attendance accounting, and consolidated audit and Form 990 filings for both Lessee and Borrower (including Lessor). If either firm selected is the same firm as currently providing such services, by April 15, 2023, Majority Obligation Holders will have the right to reject the initial proposed selection of backoffice providers and/or audit firms if, in the opinion of Majority Obligation Holders, such existing firms are not qualified to perform the necessary

functions. In the case of rejection of either or both existing backoffice provider and/or audit firm, Lessee will then select alternate new qualified providers for each function rejected, and will provide a revised report by July 1, 2023 describing how the aforementioned services will instead be performed by the alternate new provider(s). Majority Obligation Holders will not have right of rejection on alternate providers.

20. **Members of Board of Directors.** Lessee will work earnestly to diversify the experience of the members of its board of directors and to expand the number of directors serving from five to seven members, with a goal of finding members who have legal or finance experience. If the board has not been expanded to at least five members by January 1, 2023, Lessee covenants to retain a qualified board consultant to assist in the board member search. Once expanded, all board members will be required to undergo board training in best practices for directors of nonprofit educational institutions.

**EXHIBIT D-1**

**FORM OF REPORT FOR ANNUAL FILING OF CERTAIN FINANCIAL AND OPERATING COVENANTS**

Defined terms used in this report and not defined herein shall have the meaning granted to such terms in the Master Trust Indenture. The information contained below is unaudited.

1. The undersigned authorized representative of [Lessee/CMO] (“Lessee/CMO”) is familiar with the provisions of the Leases, and based on such review and familiarity, Lessee/CMO has fulfilled all of its obligations thereunder throughout Fiscal Year preceding the date hereof, and there have been no Defaults or Events of Default under the Leases (or, if there has been a Default or Event of Default in the fulfillment of any such obligation in such Fiscal Year, attached hereto as Exhibit D-2 is additional information specifying each such Default or Event of Default known to the undersigned and the nature and status thereof and the actions taken or being taken to correct such Default or Event of Default).

2. Obligated Group – Financial Covenants As of June 30, 20\_\_ :

- (a) The Rent Coverage Ratio pursuant to Section \_\_\_ of the Master Trust Indenture for the Fiscal Year ended June 30, 20\_\_ was \_\_\_x.
- (b) Consolidated Days Cash on Hand pursuant to Section \_\_\_ of the Master Trust Indenture for the Fiscal Year ended June 30, 20\_\_ was \_\_\_ days.

3. Individual School Tenants – Financial Covenants (To be completed for each Individual School Tenant) As of June 30, 20\_\_ :

- (a) Base Rent Coverage Ratio was \_\_\_x which [does/does not] comply with the Base Rent Coverage Ratio covenant in Section \_\_\_ of Exhibit D of the Lease.
  - (i) To meet this covenant, Lessee/CMO [has]/[has not] exercised its right to use any unrestricted cash above 5% of Lessee/CMO System Gross Revenue in the calculation of Net Income Available for Lease and Debt Payments.

4. The following information with respect to the Schools:

- (a) Enrollment by Grade Level (Actual for Prior + Projected for Two Following Years) (To be completed for each Individual School Tenant)

Grade Level	20__-20__	20__-20__	20__-20__
Kindergarten			
1 <sup>st</sup> Grade			
2 <sup>nd</sup> Grade			
3 <sup>rd</sup> Grade			
4 <sup>th</sup> Grade			
5 <sup>th</sup> Grade			
6 <sup>th</sup> Grade			
7 <sup>th</sup> Grade			
8 <sup>th</sup> Grade			
9 <sup>th</sup> Grade			
10 <sup>th</sup> Grade			



11 <sup>th</sup> Grade			
12 <sup>th</sup> Grade			
<b>Totals</b>			

(b) Student Retention (Prior Year) (To be completed for each Individual School Tenant)

School Year 20__-20__	Re-Enrolled	Did Not Re-Enroll	% Re-Enrolled
<b>Totals</b>			

This certificate is being provided by Lessee/CMO on a date which is [within]/[outside] of 30 days from the governing board's approval.

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

**[LESSEE/CMO]**

\_\_\_\_\_

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

Its: \_\_\_\_\_

**EXHIBIT E**

**Form of Intercept Notice**

*\*\*This Notice shall be provided not later than the date of issuance of the Bonds. \*\**

**Notice to the State Controller Pursuant to Education Code Section 17199.4**

\_\_\_\_\_, 2016

Re: California School Finance Authority Charter School Revenue Bonds (Encore Education Obligated Group), Series 2016A and California School Finance Authority Charter School Revenue Bonds (Encore Education Obligated Group), Series 2016B (Taxable)

WHEREAS, Western Encore Properties Incorporated (the “Borrower”) has entered into a Loan Agreement, dated as of November 1, 2016, with the California School Finance Authority (the “Issuer”), providing for a loan (the “Loan”) for the acquisition and construction of charter school facilities to be owned by 16955 Lemon Street, LLC, a California limited liability company, the sole member of which is the Borrower, and leased to Encore Education Corporation, a California nonprofit public benefit corporation (the “Lessee”), for use by Encore High School for the Arts, a school established pursuant to the Charter Schools Act of 1992, as amended, constituting Part 26.8 (commencing with Section 47600) of Division 4 of Title 2 of the Education Code of the State of California (CDS # 36-75044-0116707); and

WHEREAS, the Issuer has issued its above-referenced revenue bonds (the “Bonds”) to fund the Loan;

NOW THEREFORE, NOTICE IS HEREBY GIVEN PURSUANT TO SECTION 17199.4 OF THE EDUCATION CODE OF THE STATE OF CALIFORNIA TO THE STATE CONTROLLER OF THE STATE OF CALIFORNIA (the “State Controller”), that:

1. The governing board of the Lessee has elected, pursuant to a resolution adopted on \_\_\_\_\_ and Section 17199.4 of the Education Code, to direct the State Controller to make transfers at the times and in the amounts (or such lesser amounts as are available to transfer) in the “State Intercept” column set forth on Schedule I attached hereto, directly to U.S. Bank National Association, as trustee (the “Trustee”), for the Bonds. If the amount transferred on any transfer date is less than the amount in the “State Intercept” column set forth on Schedule I attached hereto, then such deficiency shall be added to subsequent transfers until no deficiency remains.

2. Transfers pursuant to paragraph 1 above shall be paid by wire transfer of immediately available funds to:

U.S. Bank National Association

Attention:

Telephone Number: \_\_\_\_\_

ABA Routing Number: \_\_\_\_\_

Account Title/Owner: \_\_\_\_\_

Account Number: \_\_\_\_\_

**ENCORE EDUCATION CORPORATION**  
a California nonprofit public benefit corporation

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

Name:

Its:

Schedule I

Intercept Payment Amounts and Dates

*(Remainder of page intentionally left blank)*

**INDENTURE**

between

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**

and

**UMB BANK, N.A.**

Dated as of May 1, 2022

Relating to:

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY  
CHARTER SCHOOL REVENUE BONDS  
(ENCORE EDUCATION CORPORATION)  
SERIES 2022 (TAXABLE)**

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**THIS INDENTURE**, made and entered into as of May 1, 2022, by and between the **CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**, a joint exercise of powers authority organized and existing under the laws of the State of California (as hereinafter in Section 1.01 further defined, the “Authority”), and **UMB BANK, N.A.**, a national banking association, being qualified to accept and administer the trusts hereby created (as hereinafter in Section 1.01 further defined, the “Bond Trustee”).

**WITNESSETH:**

**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 is authorized by the Act to issue bonds, notes or other evidences of indebtedness, or certificates of participation in leases or other agreements, or enter into loan agreements to, among other things, finance or refinance facilities owned and/or leased and operated by organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”); and

**WHEREAS**, Western Encore Properties Incorporated (the “Borrower”), a California nonprofit public benefit corporation has applied for a loan of proceeds of revenue bonds of the Authority to finance working capital for the Borrower;

**WHEREAS**, the Authority is authorized under the Act and the Joint Powers Agreement to issue its revenue bonds for the purposes aforesaid and the Authority has determined that the public interest will be best served and that the purposes of the Act can be more advantageously obtained by the Authority’s issuance of bonds in order to loan the funds to the Borrower as a means of accomplishing the foregoing, with such loan to be evidenced by the Loan Agreement (as defined below); and

**WHEREAS**, the Authority has entered into a loan agreement of even date herewith (the “Loan Agreement”) with the Borrower, which Loan Agreement is approved and acknowledged by the Landlord (as defined herein), of even date herewith, specifying the terms and conditions of a loan by the Authority to the Borrower to finance working capital for the Borrower and of the payment by the Borrower to the Authority of amounts sufficient for the payment of the principal and redemption price, if any, of, and interest on the Bonds and certain related expenses;

**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 16955 Lemon Street, LLC (the “Lessor” and “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 School;

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

**WHEREAS**, the Authority has authorized the issuance of its California Enterprise Development Authority Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable) (the “Bonds”) in the aggregate principal amount specified in Section 2.01 of this Indenture to fund the loan to the Borrower under the Loan Agreement to finance working capital of the Borrower;

**WHEREAS**, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal and redemption price, if any, thereof, and the interest thereon, the Authority has authorized the execution and delivery of this Indenture;

**WHEREAS**, the Bonds, the certificate of authentication and registration to be executed thereon and the form of assignment to appear thereon are to be in substantially the form set forth in Exhibit A hereto and made a part hereof with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture; and

**WHEREAS**, the Authority has determined that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Bond Trustee and duly issued, the valid, binding, and legal limited obligations of the Authority, and to constitute this Indenture a valid and binding agreement 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 Indenture have been in all respects duly authorized;

**NOW, THEREFORE, THIS INDENTURE WITNESSETH**, that in order further to secure the payment of the principal and redemption price, if any, of, and interest on, all Bonds at any time issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Holders thereof, and for other valuable consideration, the receipt whereof is hereby acknowledged, the Authority does hereby covenant and agree with the Bond Trustee, for the equal and proportionate benefit of the Holders from time to time of the Bonds, as follows:

## **ARTICLE I**

### **DEFINITIONS**

**SECTION 1.01. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Indenture and of any indenture supplemental hereto, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

“**Act**” means the Joint Exercise of Powers Act, comprising Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State, as now in effect and as it may from time to time hereafter be amended or supplemented.

“**Additional Payments**” shall have the meaning given such term in Section 3.02(d) of the Loan Agreement.

“**Administration Fund**” means the fund by that name established pursuant to Section 5.11 hereof.

“**Administrative Fees and Expenses**” means any application, commitment, financing or similar fee charged, or reimbursement for administrative or other expenses incurred, by the Authority or the Bond Trustee in connection with the Bonds, including Additional Payments.

“**Authority**” means the California Enterprise Development Authority, a joint exercise of powers authority formed by the Joint Powers Agreement pursuant to the provisions of the Act, and its successors and assigns.

“**Authority Annual Fee**” means \$ \_\_\_\_\_, payable annually in advance on July 1 of each year, commencing July 1, 2022.

“**Authority Issuance Fee**” means \$ \_\_\_\_\_.

“**Authorized Borrower Representative**” means the Chief Executive Officer, Chief Operating Officer, President or such other person as may be designated by any of such officials to sign for the Borrower, by written certificate furnished to the Authority and the Bond Trustee, as a person authorized to act on behalf of the Borrower. Such certificate shall contain the specimen signature of such person, shall be signed on behalf of the Borrower by any officer of the Borrower and may designate an alternate or alternates.

“**Authorized Denominations**” means \$250,000 and any integral multiple of \$5,000 in excess thereof, subject to Section 2.03 hereof.

“**Authority Indemnified Party**” or “**Authority Indemnified Parties**” means the Authority, its past, present and future members, officers, counsel (other than bond counsel or external issuer’s counsel), advisors and agents, individually and collectively. For the avoidance of doubt, the Placement Agent is not an Authority Indemnified Party hereunder nor an agent of the Authority.

“**Authorized Signatory**” means the Chair or the Vice Chair of the Authority, or any other person designated as an Authorized Signatory of the Authority pursuant to a resolution adopted by the Authority.

“**Beneficial Owner**” means (i) when used with reference to the book entry only system, the person who is considered the beneficial owner of the Bonds and with respect to the Bonds pursuant to the arrangements for book entry determination of ownership applicable to the Depository and, (ii) for purposes of Section 6.08 hereof, any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds and with respect to the Bonds (including persons holding such through nominees, depositories or other intermediaries) or (b) is treated as the owner of any Bonds and, with respect to the Bonds for federal income tax purposes.

“**Bondholder**” or “**Holder**” means, with respect to any Bond, the person in whose name such Bond is registered.

“**Bond Placement Agreement**” means the Bond Placement Agreement, dated April \_\_, 2022, by and among the Placement Agent, the Authority, the Borrower and the Lessee.

“**Bond Proceeds Fund**” means the fund by that name established pursuant to Section 3.02 hereof.

“**Bond Trustee**” means UMB Bank, N.A., as trustee hereunder, or the successor as Trustee hereunder as provided in Section 8.01 or 8.02 of this Indenture.

“**Bonds**” means the California Enterprise Development Authority Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable).

“**Borrower**” means Western Encore Properties Incorporated, a California nonprofit public benefit corporation, its successors and assigns.

“**Borrower Documents**” means the Master Indenture of Trust, the Supplemental MTI for Obligation No. 2, the Loan Agreement, the Intercreditor and Collateral Agency Agreement, the Bond Placement Agreement, and the Borrower Resolution.

“**Borrower Resolution**” means the resolution or other authorizing action adopted by the Borrower authorizing the Loan and execution and delivery of the Borrower Documents.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banking institutions in the city in which the Principal Corporate Trust Office is located are authorized or obligated by law or executive order to be closed.

“**Certificate of the Authority,**” “**Consent of the Authority,**” “**Order of the Authority,**” “**Request of the Authority**” or “**Requisition of the Authority**” mean, respectively, a written certificate, consent, order, request or requisition of the Authority signed by or on behalf of the Authority by an Authorized Signatory authorized by the Authority to execute such a document on its behalf.

“**Certificate of the Borrower,**” “**Consent of the Borrower,**” “**Request of the Borrower,**” “**Requisition of the Borrower**” or “**Statement of the Borrower**” mean, respectively, a written certificate, request, requisition or statement of the Borrower executed on its behalf by an Authorized Borrower Representative.

“**Charter School Law**” means the Charter Schools Act of 1992, constituting Part 26.8, commencing with Section 47600 of Division 4 of Title 2 of the Education Code of the State, as now in effect and as it may from time to time hereafter be amended or supplemented.

“**Closing Date**” shall mean May \_\_, 2022, the date of original issuance and delivery of the Bonds.

“**Code**” means the Internal Revenue Code of 1986, or any successor code or law, and any regulations in effect or promulgated thereunder.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement, dated as of November 1, 2016, among the Borrower, the Lessee, and the Dissemination Agent, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

**“Costs of Issuance”** means all items of expense directly or indirectly payable by or reimbursable to the Authority or the Borrower and related to the original authorization, execution, sale and delivery of the Bonds, including but not limited to costs of preparation and reproduction of documents, fees and expenses of the Authority, the State Treasurer’s Office, the Bond Trustee, the Master Trustee, legal fees and charges of bond counsel, special counsel, purchaser’s counsel, disclosure counsel and Master Trustee’s and Bond Trustee’s counsel, underwriters’ or placement agents’ fees and expenses, rating agency fees and any other costs, charges or fees in connection with the original delivery of the Bonds.

**“Costs of Issuance Fund”** means the fund by that name established pursuant to Section 5.09 hereof.

**“County”** means the County of San Bernardino, California.

**“Debt Service”** means, for any period of time, the sum of (a) the interest payable during such period on all Outstanding Bonds, (b) that portion of the principal amount of all Outstanding Bonds maturing on each principal payment date during such period, and (c) that portion of the principal amount of all Outstanding Bonds which are Term Bonds required to be redeemed or paid from Sinking Fund Installments during such period (together with the redemption premiums, if any, thereon).

**“Depository”** means The Depository Trust Company and its successors and assigns, or any other depository selected as set forth in Section 2.10 hereof which agrees to follow the procedures required to be followed by such depository in connection with the Bonds.

**“Dissemination Agent”** means UMB Bank, N.A., as dissemination agent under the Continuing Disclosure Agreement.

**“Education Code”** means the Education Code of the State of California.

**“Electronic Notice”** means notice through telecopy, telegraph, telex, facsimile, transmission, internet, e-mail or other electronic means of communication, capable of making a written record.

**“Eligible Securities”** means any of the following obligations as and to the extent that such obligations are at the time legal investments of moneys held hereunder and then proposed to be invested therein and shall be the sole investments in which amounts on deposit in any fund or account created hereunder or under the Loan Agreement shall be invested:

(1) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America or any Federal Reserve Bank and CATS and TIGRS) or obligations the timely payment of the principal of and interest on which are unconditionally guaranteed by the United States of America;

(2) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies, provided that such obligations are backed by the

full faith and credit of the United States of America (stripped securities shall constitute Eligible Securities only if they have been stripped by the agency itself); U.S. Export-Import Bank, Farmers Home Administration, Federal Financing Bank, General Services Administration, U.S. Maritime Administration, U.S. Department of Housing and Urban Development, Government National Mortgage Association, and Federal Housing Administration;

(3) Bonds, debentures, notes, or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities shall constitute Eligible Securities only if they have been stripped by the agency itself): Federal Home Loan Bank System, Federal Home Loan Mortgage Corporation (“FHLMC”), Federal National Mortgage Association (“FNMA”), Student Loan Marketing Association, Resolution Funding Corporation or Farm Credit System;

(4) Bonds or notes issued by any state or municipality which are rated by S&P, Fitch and Moody’s in one of the three highest rating categories assigned by such agencies;

(5) repurchase agreements with an entity that is, at the time of execution of the agreement, rated “A-” or better by S&P or any other nationally recognized rating service, provided that (a) the Trustee or third party acting solely as agent for the Trustee has possession of the collateral, (b) the collateral is valued weekly and the market value of the collateral is maintained at an amount equal to at least 104% (or, if the collateral consists of obligations of FHLMC or FNMA, 105%) of the subject to the (c) failure to maintain the requisite collateral levels will require the Trustee to liquidate the collateral, (d) the repurchase securities are either obligations of, or fully guaranteed as to principal and interest by, the United States or any federal agency backed by the full faith and credit of the United States, (e) the repurchase securities are free and clear of any third-party lien or claim;

(6) investment agreements, including guaranteed investment contracts (“GICs”) with providers, which, at the time of execution of the agreement, is in one of the three highest rating categories at the time of purchase without regard to gradations or modifiers within such category by a nationally recognized rating service;

(7) money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having, at the time of purchase, a rating by S&P of “AAAm-G”, “AAA-m”, or “AA-m” and if rated by Moody’s rated “Aaa”, “Aa1” or “Aa2”, including such funds advised, managed or sponsored by the Trustee or any of its affiliates;

(8) certificates of deposit secured at all times by collateral described in (1) and/or (2) above, issued by commercial banks, savings and loan associations or mutual savings banks relating to collateral held by a third party, and in which collateral the Trustee on behalf of the Bondholders has a perfected first security interest;

(9) certificates of deposit, savings accounts, deposit accounts or money market deposits with domestic commercial banks (including the Trustee and its affiliates) which (a) have a rating on the date of purchase in one of the two highest short-term rating categories (without regard to qualifier) of at least two nationally recognized rating agencies or (b) are fully insured by FDIC, including BIF and SAIF, or collateralized by investments described in clause (1) or clause (2) hereof;

(10) commercial paper rated, at the time of purchase, “Prime-1” by Moody’s and “A-1” or better by S&P;

(11) federal funds or bankers acceptances with a maximum term of one year of any bank which have, at the time of purchase, an unsecured, uninsured and unguaranteed obligation rating of “Prime-1” or “A-3” or better by Moody’s and “A-1” or “A” or better by S&P;

(12) obligations of a bank or other financial institution rated, at the time of purchase, at least “A3” or the equivalent by a nationally recognized rating service;

(13) shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State which invests exclusively in investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the Government Code of the State as it may be amended;

(14) the State of California’s Pooled Money Investment Account; and

(15) the State of California’s Local Agency Investment Fund.

“**EMMA**” means the Electronic Municipal Market Access website funded and operated by the Municipal Securities Rulemaking Board.

“**Encore Education**” means Encore Education Corporation, a California nonprofit public benefit corporation, its successors and assigns.

“**Environmental Regulations**” means any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, Hazardous Substances or chemical waste, materials or substances.

“**Event of Default**” means any of the events specified in Section 7.01 of this Indenture.

“**Facility**” means all the real property at 16955 Lemon Street, Hesperia, California, together with the improvements thereon.

“**Fiscal Year**” means, with respect to the Borrower, the twelve-month period beginning July 1 and ending on June 30, or such other twelve month period as may be designated in a written Statement of the Borrower delivered to the Authority and the Bond Trustee.

“**Fitch**” means Fitch Ratings, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, or, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Borrower.

“**Government Obligations**” means noncallable and nonprepayable direct obligations of the United States of America or obligations which as to full and timely payment of principal and interest constitute full faith and credit obligations of the United States of America (excluding therefrom unit investment trusts and money market funds comprised of such securities).

“**Gross Revenues**” has the meaning ascribed to it in the Master Indenture of Trust.



**“Hazardous Substances”** means (a) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Facility or to persons on or about the Facility or (ii) cause the Facility to be in violation of any Environmental Regulation; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) any chemical, material or substance defined as or included in the definition of “waste,” “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any Environmental Regulation including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 USC §§ 9601 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 USC §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq.; the Federal Water Pollution Control Act, 33 USC §§ 1251 et seq.; the California Hazardous Waste Control Law (“HWCL”), Cal. Health & Safety Code §§ 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), Cal. Health & Safety Code §§ 25300 et seq.; the Underground Storage of Hazardous Substances Act, Cal. Health & Safety Code §§ 25280 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), Cal. Water Code §§ 13000 et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); and Title 22 of the California Code of Regulations, Division 4, Chapter 30; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or agency or may or could pose a hazard to the health and safety of the occupants of the Facility or the owners and/or occupants of property adjacent to or surrounding the Facility, or any other person coming upon the Facility or adjacent property; or (e) any other chemical, materials or substance which may or could pose a hazard to the environment.

**“Indenture”** means this indenture, as originally executed or as it may from time to time be supplemented, modified or amended by any supplemental indenture entered into pursuant to the provisions hereof.

**“Independent Consultant”** means a Person that (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in the Borrower or any affiliate thereof and (3) is not connected with the Borrower or any affiliate thereof as an officer, employee, promoter, trustee, partner, director or Person performing similar functions, and designated by the Borrower, qualified to pass upon questions relating to the financial affairs of facilities of the type or types operated by the Borrower and having a favorable reputation for skill and experience in the financial affairs of such facilities.

**“Insurance and Condemnation Proceeds Fund”** means the fund by that name established pursuant to the Master Indenture of Trust.

**“Intercreditor and Collateral Agency Agreement”** means that certain Intercreditor and Collateral Agency Agreement, dated as of May 1, 2022, by and among the Borrower, the Lessee, UMB Bank, N.A., as collateral agent thereunder, the Bond Trustee, and the 2016 Bond Trustee.

**“Interest Account”** means the account by that name in the Revenue Fund established pursuant to Section 5.02.

**“Interest Payment Date”** means each June 1 and December 1, commencing June 1, 2022.

***“Irrevocable Deposit”*** means the irrevocable deposit in trust, with any trustee or escrow agent authorized to act in such capacity, of cash in an amount (or Government Obligations the principal of and interest on which will be in an amount), and under terms sufficient to pay all or a portion of the principal of and/or premium, if any, and interest on, as the same shall become due, of any indebtedness of the Borrower which would otherwise be considered Outstanding. The Bond Trustee with whom such deposit is made may be any trustee or escrow agent authorized to act in such capacity.

***“Joint Powers Agreement”*** means the Joint Exercise of Powers Agreement, dated June 1, 2006, relating to the formation of the Authority, among the cities of Eureka, Lancaster and Selma and other public agencies who have and may subsequently become associate members of the Authority.

***“Landlord”*** and ***“Lessor”*** means 16955 Lemon Street, LLC.

***“Lease”*** means the Lease Agreement by and between the Lessor and the Lessee, dated for reference purposes only as of November 1, 2016, as amended by (i) the First Amendment to Lease Agreement, dated as of August 1, 2019, by and between the Lessor and the Lessee, and (ii) the Second Amendment to Lease Agreement, dated as of May 1, 2022, by and between the Lessor and the Lessee, and as it may be amended from time to time in accordance with the terms thereof, pursuant to which the Lessee leases the Facility, at which the School is located, from the Lessor.

***“Lessee”*** means Encore Education Corporation, a California nonprofit public benefit corporation, its successor and assigns.

***“Lien”*** means any mortgage or pledge of, security interest in or lien or encumbrance upon any assets of the Lessee or Obligated Group Members or upon the Gross Revenues.

***“Loan”*** means the loan of Bond proceeds from the Authority to the Borrower pursuant to the Loan Agreement.

***“Loan Agreement”*** means that certain loan agreement, dated as of May 1, 2022, between the Authority and the Borrower, as originally executed or as it may from time to time be supplemented, modified or amended subject to and in accordance with the terms thereof and of Section 6.06(b) of this Indenture.

***“Loan Repayments”*** has the meaning given such term in Section 3.02(b) of the Loan Agreement.

***“Majority Bondholders”*** means Beneficial Owners of a majority in Outstanding principal amount of the Bonds.

***“Mandatory Sinking Account Payment”*** means the amount so designated which is established pursuant to Section 5.04 of this Indenture with respect to the Bonds.

***“Master Indenture of Trust”*** means that certain Master Indenture of Trust, dated as of November 1, 2016, among the Obligated Group Members and the Master Trustee named therein, as originally executed and as the same may be amended and supplemented from time to time in accordance with its terms.

**“Master Trustee”** means UMB Bank, N.A., as successor master trustee under the Master Indenture of Trust.

**“Moody’s”** means Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, or, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Borrower.

**“Obligated Group Members”** means, as applicable, each “Member” as identified in the Master Indenture of Trust.

**“Obligation No. 2”** means that certain Obligation, dated as of the date of Issuance of the Bonds, issued pursuant to the Master Indenture under the Supplemental MTI for Obligation No. 2.

**“Opinion of Bond Counsel”** means an Opinion of Counsel by a nationally recognized bond counsel firm experienced in matters relating to the exclusion from gross income for federal income tax purposes of interest payable on obligations of state and political subdivisions.

**“Opinion of Counsel”** means a written opinion of counsel (which may be counsel for the Authority) approved by the Authority or the Trustee.

**“Optional Redemption Account”** means the account by that name in the Redemption Fund established pursuant to Section 5.06.

**“Outstanding,”** when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 11.09 hereof) all Bonds theretofore, or thereupon being, authenticated and delivered by the Bond Trustee under this Indenture except (a) Bonds theretofore canceled by the Bond Trustee or surrendered to the Bond Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.02 of this Indenture; and (c) Bonds for the transfer or exchange of which, or in lieu of or in substitution for which, other Bonds shall have been authenticated and delivered by the Bond Trustee pursuant to this Indenture.

**“Payments”** means (i) all moneys, if any, received by the Bond Trustee directly from, or on behalf of, the Borrower, pursuant to the Loan Agreement (excluding Additional Payments not directed to be deposited into any fund or account created and held under the Indenture) or Obligation No. 2, and (ii) all income derived from the investment of any money in any fund or account established pursuant to this Indenture.

**“Person”** means an individual, corporation, firm, association, partnership, trust or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**“Placement Agent”** means Stifel, Nicolaus & Company, Incorporated, its successors and assigns.

**“Post-Default Rate”** means the lesser of (i) the sum of the then applicable interest rate on the Bonds, plus 5.00 percent, and (ii) the maximum rate of interest allowed by law.

**“Principal Account”** means the account by that name in the Revenue Fund established pursuant to Section 5.02 hereof.

**“Principal Corporate Trust Office”** means for the Bond Trustee originally appointed hereunder, the corporate trust office of UMB Bank, N.A., which at the date of execution of this Indenture is that specified in Section 11.07 of this Indenture, provided however, that for purposes of presentation of Bonds for payment or for registration of transfer and exchange such term shall mean the office or agency of the Bond Trustee at which, at any particular time, its corporate trust agency business shall be conducted.

**“Principal Payment Date”** means the principal and Mandatory Sinking Account Payment dates for the Bonds, which dates occur on June 1 of each year, commencing [June 1, 2023].

**“Private Placement Memorandum”** means the Private Placement Memorandum relating to the Bonds, dated \_\_\_\_\_, 2022 (the “Private Placement Memorandum”)

**“Property”** means any and all rights, titles and interests in and to any and all property of the Borrower whether real (including the Facility) or personal, tangible or intangible and wherever situated whether currently owned or acquired in the future.

**“Property, Plant and Equipment”** means all Property that is considered property, plant and equipment under generally accepted accounting principles.

**“Qualified Institutional Buyer”** shall have the meaning given to a “qualified institutional buyer” under Rule 144A of the Securities Act of 1933.

**“Rating Agency”** means, at any time, any nationally recognized rating agency including Fitch, Moody’s or S&P, then rating the Bonds at the request of the Authority or the Borrower.

**“Rating Category”** means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Record Date”** means, with respect to the Interest Payment Date for the Bonds, the fifteenth day of the calendar month immediately preceding such Interest Payment Date, whether or not such day is a Business Day.

**“Redemption Fund”** means the fund by that name established pursuant to Section 5.06 of this Indenture.

**“Remittance Address”** means, (i) for payment of the Authority Annual Fee by check, California Enterprise Development Authority, 2150 River Plaza Drive, Suite 275, Sacramento, California 95833, or such other address designated by the Authority as such from time to time, or (ii) for payment of the Authority Annual Fee by wire transfer with wire instructions provided by the Authority from time to time.

**“Rental Payments”** means the amounts payable by the Lessee to the Lessor pursuant to any Lease for the use and occupancy of the Facility, excluding Expenses (as defined in the Lease).

**“Reserve Account”** means the account by that name in the Revenue Fund established pursuant to Section 5.02.

**“Reserve Account Requirement”** means as of any date of calculation, an amount which shall be equal to the least of (a) ten percent (10%) of the initial principal amount of the Bonds; (b) maximum annual Debt Service with respect to the Bonds Outstanding, (c) one hundred twenty-five percent (125%) of average annual Debt Service with respect to the Bonds, or (d) for the last Bond Year only, the total Debt Service with respect to the Bonds Outstanding. Maximum Annual Debt Service and average annual Debt Service, for purposes of this definition, shall be calculated on the basis of twelve-month periods ending on June 30 of any year in which Bonds are Outstanding.

**“Responsible Officer”** of the Bond Trustee means and includes a duly authorized officer of the Bond Trustee, with regular responsibility for the administration of matters related to this Indenture.

**“Retained Authority Rights”** means the Authority’s right to payment of the Administrative Fees and Expenses and any Additional Payments; any right to immunity from and limitation of liability; any right to enforce venue; any right to be indemnified, held harmless or defended; any right to receive information, reports, certifications or other documents; and any right to notice, consent, approval or inspection hereunder or under the Loan Agreement.

**“Revenue Fund”** means the fund by that name established pursuant to Section 5.01(d) of this Indenture.

**“S&P”** means S&P Global Ratings, a division of S&P Global Inc., a corporation organized and existing under the laws of the state of New York, its successors and their assigns, or, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Authority.

**“School”** means the public charter school operated by the Lessee and located at the Facility pursuant to the Lease.

**“Securities Depositories”** means The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099 Attention: Call Notification Department, Fax (212) 855-7232 or to such other addresses and/or such other securities depositories as the Authority may designate to the Bond Trustee in writing.

**“Sinking Fund Installment”** means, with respect to any Term Bonds, each amount so designated for such Term Bonds requiring payments by the Borrower from the Payments to be applied to the retirement of such Bonds on and prior to the stated maturity date thereof.

**“Special Record Date”** means the date established by the Bond Trustee pursuant to Section 2.02(c) of this Indenture as a record date for the payment of defaulted interest on Bonds.

**“Special Redemption Account”** means the account by that name in the Redemption Fund established pursuant to Section 5.06.

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

**“State School Fund”** means the fund established and maintained in the general fund of the State pursuant to Articles 1 and 2 of Chapter 1 of Part 9 of Division 1 of Title 1 of the Education Code.

**“Supplemental Indenture”** or **“Indenture supplemental hereto”** means any indenture hereafter duly authorized and entered into between the Authority and the Bond Trustee in accordance with the provisions of this Indenture.

**“Supplemental MTI for Obligation No. 2”** means that certain Supplemental Master Indenture for Obligation No. 2, dated as of May 1, 2022, between the Obligated Group Members and the Master Trustee named therein, as originally executed and as the same may be amended supplemented from time to time in accordance with its terms.

**“Term Bonds”** means Bonds which are payable on or before their specified maturity dates from Mandatory Sinking Account Payments established for that purpose and calculated to retire such Bonds on or before their specified maturity dates.

**“2016 Bonds”** means those certain California School Finance Authority Charter School Revenue Bonds (Encore Education Obligated Group) Series 2016A and Series 2016B (Taxable), issued pursuant to the 2016 Indenture.

**“2016 Bond Trustee”** means that certain UMB Bank, N.A., as successor trustee under the 2016 Indenture.

**“2016 Indenture”** means that certain Loan Agreement, dated as of November 1, 2016, between California School Finance Authority and the 2016 Bond Trustee.

**“2016 Loan Agreement”** means that certain Loan Agreement, dated as of November 1, 2016, between California School Finance Authority and the Borrower.

**SECTION 1.02. Content of Certificates and Opinions.** Every certificate (other than the certificate provided for in Section 11.05 hereof) or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the person or persons making or giving such certificate or opinion have read such condition or covenant and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such condition or covenant has been complied with; and (d) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

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

the certificate or opinion or representations with respect to the matters upon which his or her opinion may be based as aforesaid are erroneous or in the exercise of reasonable care should have known that the same were erroneous.

Any written representation of the Authority or determination of the Bond Trustee given in accordance with Section 6.06 (regarding the amendment of the Loan Agreement) or Article IX (regarding amendment of the Indenture) may, at the option of such party, be based solely on the written representation of a financial consultant or advisor selected by such party and not objected to by the other such party.

**SECTION 1.03. Article and Section Headings and References.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

**SECTION 1.04. Construction.** The parties hereto acknowledge that each such party and its respective counsel have participated in the drafting and revision of this Indenture. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Indenture or any amendment or supplement or exhibit hereto.

## ARTICLE II

### THE BONDS

**SECTION 2.01. Authorization of Bonds.** (a) There shall be issued under and secured by this Indenture two series of bonds of the Authority constituting the Bonds. The Bonds are hereby authorized to be issued hereunder and designated generally as the “California Enterprise Development Authority Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable), respectively.” The aggregate principal amount of the Bonds that may be issued under this Indenture shall not exceed \_\_\_\_ Million \_\_\_\_ Hundred Thousand dollars (\$ \_\_\_\_\_), exclusive of temporary Bonds executed and authenticated as provided in Section 2.08 hereof.

(b) This Indenture constitutes a continuing agreement with the Bond Trustee and the Holders of all of the Bonds Outstanding, subject to the covenants, agreements, provisions and conditions herein contained.

#### **SECTION 2.02. Terms of Bonds.**

(a) *Terms of the Bonds.*

(i) The Bonds shall be issued as registered bonds in Authorized Denominations. The Bonds shall be dated their date of issuance. Each Beneficial Owner of the Bonds shall be a Qualified Institutional Buyer. Interest on the Bonds shall be calculated on the basis

of a 360-day year of twelve 30-day months and shall be payable in arrears on each Interest Payment Date.

(ii) The Bonds shall mature on June 1 in each of the years and in the principal amounts and shall bear interest at the rates as follows:

<i>Year (June 1)</i>	<i>Principal Amount</i>	<i>Date of Issuance to June 30, 2026</i>	<i>Interest Rate</i>	
			<i>July 1, 2026 to June 30, 2028</i>	<i>July 1, 2028 and thereafter</i>
		8.00%	10.00%	12.00%

provided that, during the occurrence and continuance of an Event of Default, the Bonds shall bear interest at the Post-Default Rate.

(b) *General Terms of the Bonds.*

(i) The Bonds, when issued, will be registered in the name of Cede & Co., as nominee of the Depository, and shall be evidenced by one Bond for each maturity in the total aggregate principal amount of the Bonds of such maturity. Registered ownership of the Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 2.10 hereof. So long as Cede & Co. is the registered owner of the Bonds, as nominee of the Depository, references herein to the Bondholders, holders or registered owners shall mean Cede & Co. as aforesaid and shall not mean the “beneficial owners” of the Bonds.

The principal and redemption price of and interest on the Bonds shall be payable in lawful money of the United States of America upon surrender at the Principal Corporate Trust Office. The interest on any Bond shall be payable to the person whose name appears on the registration books of the Bond Trustee as the registered owner thereof as of the close of business on the Record Date for the Interest Payment Date, such interest to be paid by check mailed by first class mail, postage prepaid, on the Interest Payment Date, to the registered owner at his or her address as it appears on such registration books. Notwithstanding the foregoing, however, any Holder of \$1,000,000 or more in an aggregate principal amount of the Bonds shall be entitled to receive payments of interest on the Bonds held by it by wire transfer of immediately available funds to such bank or trust company located within the United States of America as such other Holder shall designate in writing to the Bond Trustee by the applicable Record Date for such payment. So long as Cede & Co. is the registered owner of the Bonds, principal of and interest on the Bonds are payable in same day funds by the Bond Trustee to Cede & Co., as nominee for the Depository, and the payment of principal or redemption price shall be made without presentment.

(ii) Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Bondholder on such Record Date and shall be paid to the person in whose name the Bond is registered at the close of business on a Special Record Date for the payment of such defaulted interest. The Special Record Date shall be fixed by the Bond Trustee, notice thereof being given to the Bondholders not less than 10 days prior to such Special Record Date.

**SECTION 2.03. Restrictions on Registration and Transfer of the Bonds.**

(a) Notwithstanding any other provision hereof, the Bonds may not be registered in the name of, or transferred to, and the Beneficial Owner cannot be, any person except a Qualified Institutional



Buyer; provided however, that pursuant to Section 2.10 hereof, Bonds registered in the name of the Depository or its nominee shall be deemed to comply with this Section so long as each beneficial owner of the Bonds is a Qualified Institutional Buyer. Each initial Beneficial Owner [and any subsequent transferee] shall provide to the Authority and the Bond Trustee an executed Investor Letter in substantially the form attached as Exhibit C hereto.

**SECTION 2.04. Execution of Bonds.** The Bonds shall be signed in the name and on behalf of the Authority with the manual or facsimile signature of its Chairperson. The Bonds shall then be delivered to the Bond Trustee for registration and authentication by it. In case any of the officers who shall have signed any of the Bonds shall cease to be such officer or officers before the Bonds so signed shall have been authenticated or delivered by the Bond Trustee or issued by the Authority, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though those who signed and attested the same had continued to be such officers of the Authority. Also, any Bond may be signed on behalf of the Authority by such persons as on the actual date of the execution of such Bond shall be the proper officers although on the nominal date of such Bond any such person shall not have been such officer. Only such of the Bonds as shall bear thereon a certificate of authentication and registration in substantially the form set forth in Exhibit A hereto, manually executed by the Bond Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Bond Trustee shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

**SECTION 2.05. Transfer of Bonds.** The registration of any Bond may, in accordance with its terms, be transferred, upon the books required to be kept pursuant to the provisions of Section 2.07 of this Indenture, by the person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Bond Trustee, duly executed. The Bond Trustee shall require the payment by the Holder requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, and there shall be no other charge to any Holder for any such transfer. The Bond Trustee shall not be required to register the transfer of any Bond which has been selected for redemption in whole or in part, from and after the day of mailing of a notice of redemption of such Bond selected for redemption in whole or in part as provided in Section 4.01 hereof or Section 4.02 hereof or during the period established by the Bond Trustee for selection of Bonds for redemption.

**SECTION 2.06. Exchange of Bonds.** Bonds may be exchanged at the Principal Corporate Trust Office of the Bond Trustee for a like aggregate principal amount of the Bonds of the same maturity of other authorized denominations. The Bond Trustee shall require the payment by the Holder requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange, and there shall be no other charge to any Holder for any such exchange. No exchange of Bonds shall be required to be made during the period established by the Bond Trustee for selection of Bonds for redemption and after a Bond has been selected for redemption.

**SECTION 2.07. Bond Register.** The Bond Trustee shall keep or cause to be kept, at its Principal Corporate Trust Office, sufficient books for the registration of transfer of the Bonds, which shall at all reasonable times during normal business hours upon reasonable notice be open to inspection by the Authority; and, upon presentation for such purpose, the Bond Trustee shall, under

such reasonable regulations as it may prescribe, register the transfer or cause to be registered the transfer, on said books, of Bonds as hereinbefore provided.

**SECTION 2.08. Temporary Bonds.** The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denomination as may be determined by the Authority, shall be in registered form and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority and authenticated by the Bond Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds, it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the Principal Corporate Trust Office of the Bond Trustee, and the Bond Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations, of the same maturity or maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

**SECTION 2.09. Bonds Mutilated, Lost, Destroyed or Stolen.** If any Bond shall become mutilated, the Authority, at the expense of the Holder of said Bond, shall execute, and the Bond Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Bond Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Bond Trustee shall be canceled by it and delivered to, or upon the order of, the Authority. If any Bond issued hereunder shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Bond Trustee and, if such evidence be satisfactory to it and indemnity satisfactory to it shall be given, the Authority, at the expense of the Holder, shall execute, and the Bond Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. If any Bond mutilated, lost, destroyed or stolen shall have matured, instead of issuing a substitute Bond the Bond Trustee may pay the same without surrender upon receipt of indemnity satisfactory to the Bond Trustee. The Authority may require payment from the Holder of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Authority and the Bond Trustee. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Indenture with all other Bonds secured by this Indenture.

**SECTION 2.10. Use of Depository.** Notwithstanding any provision of this Indenture to the contrary:

(a) The Bonds initially shall be registered as provided in Section 2.02 hereof. Registered ownership of the Bonds, or any portion thereof, may not thereafter be transferred except:

(i) To any successor of the Depository or its nominee, or to any Substitute Depository designated pursuant to clause (ii) of this subsection (a) (“Substitute Depository”); provided that any successor of the Depository or Substitute Depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(ii) To any Substitute Depository designated by the Authority (at the direction of the Majority Bondholders) and not objected to by the Bond Trustee, upon (1) the resignation of the Depository or its successor (or any Substitute Depository or its successor) from its functions as depository or (2) a determination by the Authority (at the direction of the Majority Bondholders) that the Depository or its successor (or any Substitute Depository or its successor) is no longer able to carry out its functions as depository; provided that any such Substitute Depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of the Depository or its successor (or Substitute Depository or its successor) from its functions as depository; provided that no Substitute Depository which is not objected to by the Bond Trustee can be obtained or (2) a determination by the Authority (with the concurrence of the Majority Bondholders) that it is in the best interests of the Authority to remove the Depository or its successor (or any Substitute Depository or its successor) from its functions as depository.

(b) In the case of any transfer pursuant to clause (i) or clause (ii) of subsection (a) hereof, upon receipt of the Outstanding Bonds by the Bond Trustee, together with a Request of the Authority to the Bond Trustee, a single new Bond for each maturity shall be executed and delivered in the aggregate principal amount of the Bonds of such maturity then Outstanding, registered in the name of such successor or such Substitute Depository, or their nominees, as the case may be, all as specified in such Request of the Authority. In the case of any transfer pursuant to clause (iii) of subsection (a) hereof, upon receipt of the Outstanding Bonds by the Bond Trustee, new Bonds shall be executed and delivered in such denominations numbered in consecutive order from R-1 up and registered in the names of such persons as are requested in such a Request of the Authority, subject to the limitations of Section 2.02 hereof, provided the Bond Trustee shall not be required to deliver such new Bonds within a period less than sixty (60) days from the date of receipt of such a Request of the Authority.

(c) In the case of an advance refunding of the Bonds, if any, evidencing all or a portion of the principal amount then Outstanding, the Depository shall make an appropriate notation on the Bonds indicating the date and amounts of such reduction in principal.

(d) The Authority and the Bond Trustee shall be entitled to treat the person in whose name any Bond is registered as the Bondholder thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Bond Trustee or the Authority; and the Authority and the Bond Trustee shall have no responsibility for transmitting payments to, communication with, notifying, or otherwise dealing with any beneficial owners of the Bonds. Neither the Authority nor the Bond Trustee shall have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party including the Depository or its successor (or Substitute Depository or its successor), except for the Holder of any Bond.

(e) So long as the outstanding Bonds are registered in the name of Cede & Co. or its registered assigns, the Authority and the Bond Trustee shall cooperate with Cede & Co., as sole registered Bondholder, and its registered assigns in effecting payment of the principal of and interest on the Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

**SECTION 2.11. Validity of Bonds.** The validity of the authorization and issuance of the Bonds is not dependent on and shall not be affected in any way by any proceedings taken by the

Authority or the Bond Trustee with respect to or in connection with the Loan Agreement. The recital contained in the Bonds that the same are issued pursuant to the Act and the Constitution and laws of the State shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

**ARTICLE III**

**ISSUANCE OF BONDS; ESTABLISHMENT OF CERTAIN FUNDS AND APPLICATION OF PROCEEDS**

**SECTION 3.01. Authentication and Delivery of Bonds.** At any time after the execution of this Indenture, the Authority may execute the Bonds, and the Bond Trustee, upon the Order of the Authority, shall authenticate and deliver the Bonds in accordance with Article II of this Indenture, in each case exclusive of the Bonds executed and authenticated as provided in Section 2.08 hereof.

**SECTION 3.02. Application of Proceeds of Bonds and Certain Other Moneys.** (a) The Bond Trustee hereby agrees to establish and maintain hereunder, in trust, the funds described in Article V herein and the Bond Proceeds Fund.

(b) The Bond Trustee shall accept a portion of the proceeds received from the sale of the Bonds for deposit into the Bond Proceeds Fund in the amount of \$ \_\_\_\_\_ (consisting of the par amount of the Bonds of \$ \_\_\_\_\_, less an original issue discount of \$ \_\_\_\_\_).

(c) The Bond Trustee shall accept an equity contribution of the Borrower for deposit into the Bond Proceeds Fund in the amount of \$ \_\_\_\_\_, to be deposited into the Reserve Account and the Costs of Issuance Fund, as set forth below.

(d) The Bond Trustee shall deposit the amounts received pursuant to Section 3.02(b) and Section 3.02(c) hereof in the Bond Proceeds Fund and as soon as practical transfer such amounts in the following funds and accounts in the following amounts:

*Section 3.02(b) Funds      Section 3.02(c) Funds*

Working Capital Fund  
Costs of Issuance Fund  
Reserve Account  
Total

(e) Upon the transfers made pursuant to Section 3.02(c), the Trustee shall close the Bond Proceeds Fund.

## ARTICLE IV

### REDEMPTION OF THE BONDS

#### SECTION 4.01. Special Redemption.

(a) **Extraordinary Optional Redemption from Insurance and Condemnation Proceeds.** The Bonds are subject to redemption prior to their respective stated maturities, at the option of the Borrower, as a whole or in part on any date from moneys required to be transferred from the Insurance and Condemnation Proceeds Fund to the Special Redemption Account at a redemption price equal to the principal amount thereof together with interest accrued thereon to the date fixed for redemption, without premium.

(b) **Extraordinary Mandatory Redemption due to Change of Use.** The Bonds are subject to redemption prior to their respective stated maturities, as a whole on any date from Loan prepayment made by the Borrower pursuant to Section 7.01(d) of the Loan Agreement at a redemption price equal to the principal amount thereof together with interest accrued thereon to the date fixed for redemption, without premium.

**SECTION 4.02. Optional Redemption.** The Bonds maturing on or before June 1, 2022 are not subject to redemption prior to their stated maturities. The Bonds maturing on or after June 1, 2023 are subject to redemption prior to their stated maturities, at the option of the Borrower, in whole or in part on any date on or after June 1, 2022 at a redemption price equal to 100% of the principal amount of the Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

**SECTION 4.03. Mandatory Sinking Account Redemption.** The Bonds are subject to redemption prior to their respective stated maturities in part, by lot, from Mandatory Sinking Account Payments pursuant to Section 5.04(c) hereof. In the event of a redemption pursuant to Section 4.01 and 4.02, the Borrower shall provide the Bond Trustee with a revised sinking fund schedule giving effect to the optional redemption so completed.

**SECTION 4.04. Notice of Redemption.** In connection with the redemption of Bonds pursuant to Section 4.01, Section 4.02 and Section 4.03 herein, the Borrower shall give notice of redemption to the Bond Trustee (with a copy to the Authority) not less than thirty-five (35) days prior to the redemption date (or such shorter notice as the Bond Trustee may approve). Notice of redemption of any Bonds shall be given by the Bond Trustee upon such written request of the Borrower. Notice of any redemption of Bonds shall be mailed postage prepaid by the Bond Trustee, not less than thirty (30) days nor more than sixty (60) days prior to the redemption date by first-class mail to the respective Holders thereof at the addresses appearing on the bond registration books described in Sections 2.07. Each notice of redemption shall contain all of the following information:

- (a) the date of such notice;
- (b) the name of the Bonds and the date of issue of the Bonds;
- (c) the redemption date;
- (d) the redemption price;

- (e) the dates of maturity of the Bonds to be redeemed;
- (f) if less than all of the Bonds of any maturity are to be redeemed, the distinctive numbers of the Bonds of each maturity to be redeemed;
- (g) in the case of Bonds redeemed in part only, the respective portions of the principal amount of the Bonds of each maturity to be redeemed;
- (h) the CUSIP number, if any, of each maturity of Bonds to be redeemed;
- (i) a statement that such Bonds must be surrendered by the Holders at the Principal Corporate Trust Office of the Bond Trustee, or at such other place or places designated by the Bond Trustee;
- (j) a statement that if it is an optional redemption, such redemption is conditioned upon the receipt by the Bond Trustee, on or prior to the redemption date, of moneys sufficient to pay the redemption price or upon the happening of such other event as shall be specified therein, and if such moneys shall not have been so received said notice shall be rescinded and the redemption shall be cancelled;
- (k) a statement that any such redemption notice can be rescinded as provided in the Indenture; and
- (l) notice that further interest on such Bonds, if any, will not accrue from and after the designated redemption date.

Such redemption notices may state that no representation is made as to the accuracy or correctness of the CUSIP numbers provided therein or on the Bonds. If money is not received as described in Section 4.04(j), the Bond Trustee, within a reasonable time after the date on which such redemption was to occur, shall give notice to the persons and in the manner in which the notice of redemption was given, that such moneys were not so received and that there will be no redemption of the Bonds pursuant to the notice of redemption. Failure of the Bond Trustee to give such notice or any defect therein shall not in any way impair or affect the validity of the proceedings for redemption.

Any notice of optional redemption may state that such redemption shall be conditioned (“Conditional Notice”) upon the receipt by the Bond Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of and premium, if any, and interest on such Bonds to be redeemed or upon the occurrence of such other event or condition as shall be set forth in such Conditional Notice, and that, if such moneys shall not have been so received, or if such other event or condition shall have occurred or failed to occur (as the case may be), such Conditional Notice shall be of no force and effect and the redemption of the Bonds specified in the Conditional Notice shall no longer be required. The Bond Trustee shall within a reasonable time thereafter give notice, in the manner in which the original Conditional Notice was given, of the cancellation of such redemption.

Notwithstanding the foregoing, in connection with the redemption of any Bonds held through the book-entry-only system of the Depository Trust Company (“DTC”), in the event of any conflict

between the notice requirements of this Indenture and the requirements and procedures of DTC, the requirements and procedures of DTC shall control.

**SECTION 4.05. Effect of Notice.** A certificate of the Bond Trustee or the Borrower that notice of call and redemption has been given to Holders as herein provided shall be conclusive as against all parties. The actual receipt by the Holder of any Bond or any other party of notice of redemption shall not be a condition precedent to redemption, and failure to receive such notice, or any defect in the notice given, shall not affect the validity of the proceedings for the redemption of such Bonds or the cessation of interest, if any, on the date fixed for redemption.

Notice of redemption having been given, and the redemption price of the Bonds called for redemption being on deposit or otherwise available to the Bond Trustee, the Bonds designated for redemption shall become due and payable on the specified redemption date and interest, if any, shall cease to accrue thereon as of the redemption date, and upon presentation and surrender of such Bonds at the place specified in the notice of redemption, such Bonds shall be redeemed and paid at the redemption price thereof out of the money provided therefor. The Holders of such Bonds so called for redemption after such redemption date shall look for the payment of such Bonds and the redemption premium thereon, if any, only to the moneys held by the Bond Trustee for such purpose. All Bonds redeemed shall be cancelled forthwith by the Bond Trustee and shall not be reissued.

**SECTION 4.06. Right to Rescind Notice.** Upon written notice from the Borrower that the Borrower has cured the conditions that caused the Bonds to be subject to extraordinary redemption, the Borrower may rescind any extraordinary redemption and notice thereof on any date prior to the date fixed for redemption by causing the Bond Trustee to send written notice of the rescission to the Holders of the Bonds so called for redemption. Notice of rescission of redemption shall be given in the same manner in which notice of redemption was originally given. The actual receipt by the Holder of any Bond of notice of such rescission shall not be a condition precedent to rescission, and failure to receive such notice or any defect in such notice shall not affect the validity of the rescission.

**SECTION 4.07. Funds for Redemption.** Prior to or on the redemption date of any Bonds there shall be available in the Redemption Fund, or held in trust for such purpose as provided by law, monies for the purpose and sufficient to redeem, at the premiums payable as in this Indenture provided, the Bonds designated in said notice of redemption. Such monies so set aside in the Redemption Fund or in the escrow fund established for such purpose shall be applied on or after the redemption date solely for payment of principal of and premium, if any, on the Bonds to be redeemed upon presentation and surrender of such Bonds, provided that all monies in the Redemption Fund shall be used for the purposes established and permitted by law. Any interest due on or prior to the redemption date shall be paid from the Redemption Fund, unless otherwise provided for to be paid from an escrow fund established for such purpose. If, after all of the Bonds have been redeemed and cancelled or paid and cancelled, there are monies remaining in the Redemption Fund or otherwise held in trust for the payment of redemption price of the Bonds, said monies shall be held in or returned or transferred to the Redemption Fund for payment of any outstanding Bonds of the Borrower payable from said fund; provided, however, that if said monies are part of the proceeds of refunding Bonds of the Borrower, said monies shall be transferred to the fund created for the payment of principal of and interest on such Bonds. If no such refunding Bonds of the Borrower are at such time outstanding, said monies shall be transferred to the general fund of the Borrower as provided and permitted by law.

**SECTION 4.08. Selection of Bonds for Redemption.** When any redemption is made pursuant to any of the provisions of this Indenture and less than all of the Outstanding Bonds are to be redeemed, the Bond Trustee shall select the Bonds to be redeemed from the Outstanding Bonds not previously called for redemption, by lot within the single maturity of Bond issued hereunder. In no event shall Bonds be redeemed in amounts other than whole multiples of Authorized Denominations. For purposes of redeeming Bonds in denominations greater than minimum Authorized Denominations, the Bond Trustee shall assign to such Bonds a distinctive number for each such principal amount and, in selecting Bonds for redemption by lot, shall treat such amounts as separate Bonds. The Bond Trustee shall promptly notify the Authority and the Borrower in writing of the numbers of the Bonds selected for redemption.

## ARTICLE V

### PLEDGE AND ASSIGNMENT; ESTABLISHMENT AND APPLICATION OF FUNDS AND ACCOUNTS

**SECTION 5.01. Pledge and Assignment.** (a) Subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, there are hereby pledged to secure the payment of the principal of and interest on the Bonds in accordance with their terms and the provisions of this Indenture, all of the Payments, all of the Authority's right, title and interest in and to Obligation No. 2, and all amounts held in any fund or account established pursuant to this Indenture. Said pledge shall constitute a lien on and security interest in such assets and shall attach and be valid and binding from and after delivery of the Bonds, without any physical delivery thereof or further act.

(b) The Authority hereby assigns to the Bond Trustee, for the benefit of the Holders from time to time of the Bonds, all of the Payments and other amounts pledged in paragraph (a) of this Section and all of the right, title and interest of the Authority in, to and under the Loan Agreement (except for the Retained Authority Rights), and all of the Authority's right, title and interest in and to Obligation No. 2. The Bond Trustee shall be entitled to and shall receive all of such assigned Payments, and any such Payments collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Bond Trustee and shall forthwith be paid by the Authority to the Bond Trustee. The Bond Trustee also shall be entitled to and shall (subject to the provisions of this Indenture) take all steps, actions and proceedings following any event of default under the Loan Agreement or Obligation No. 2 reasonably necessary in its judgment, or as directed in writing by the Holder, to enforce, either jointly with the Authority or separately, all of the rights of the Authority assigned to the Bond Trustee and all of the obligations of the Borrower under the Loan Agreement or of the Obligated Group Members under Obligation No. 2.

(c) All Payments shall be promptly deposited by the Bond Trustee upon receipt thereof in a special fund designated as the "Revenue Fund" which the Bond Trustee is hereby directed to establish, maintain and hold in trust. All Payments shall be held in trust for the benefit of the Holders from time to time of the Bonds but shall nevertheless be disbursed, allocated and applied solely for the uses and purposes hereinafter in this Article V set forth.

(d) The Bonds are not and shall not be deemed to constitute a debt or liability of the State, or any political subdivision thereof, and are not and shall not be deemed to be a pledge of the faith and credit of the State, or any political subdivision thereof, other than the Authority, which



shall only be obligated to pay the Bonds solely from the Payments and funds herein provided therefor. The issuance of the Bonds shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatsoever for the Bonds or to make any appropriation for their payment. Nothing in this Indenture, the Act or otherwise is an undertaking by the Authority or the State or any political subdivision thereof to make funds available to the Lessee in any amount or at any time.

**SECTION 5.02. Allocation of Revenues.** Promptly upon receipt, the Bond Trustee shall deposit the Payments to the Revenue Fund. On or before the 25<sup>th</sup> day of each month, commencing [May 25, 2022], the Bond Trustee shall transfer from the Revenue Fund and deposit into the following respective accounts (each of which the Bond Trustee shall establish and maintain within the Revenue Fund) and then to the Administration Fund, the following amounts, in the following order of priority, the requirements of each such account or fund (including the making up of any deficiencies in any such account resulting from lack of Payments sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account or fund subsequent in priority:

(1) To the Interest Account, one-sixth (1/6) of the aggregate amount of interest becoming due and payable on the next succeeding Interest Payment Date on all Bonds then Outstanding, until the balance in said account is equal to said aggregate amount of interest; provided that from the date of delivery of the Bonds until the first Interest Payment Date with respect to the Bonds (if less than six months), transfers to the Interest Account shall be sufficient on a pro rata basis to pay the interest becoming due and payable on said Interest Payment Date;

(2) To the Principal Account, one-twelfth (1/12) of the aggregate amount of principal becoming due to redeem or pay Bonds or to make Mandatory Sinking Account Payments on the next succeeding Principal Payment Date, until the balance in said Principal Account is equal to said aggregate amount of such principal and Mandatory Sinking Account Payments; provided that from the date of delivery of the Bonds until the first Principal Payment Date with respect to the Bonds (if less than twelve months), transfers to the Principal Account shall be sufficient on a pro rata basis to pay the principal and Mandatory Sinking Account Payments becoming due and payable on said Principal Payment Date;

(3) To the Reserve Account, (a) the greater of (i) the amount designated for deposit to the Reserve Account in a written direction of the Borrower, and (ii) one-twelfth (1/12) of the aggregate amount of each prior withdrawal from the Reserve Account for the purpose of making up a deficiency in the Interest Account or Principal Account (until deposits on account of such withdrawal are sufficient to fully restore the amount withdrawn), provided that no deposit need be made into the Reserve Account if the balance in said account is at least equal to the Reserve Account Requirement, and (b) in the event the balance in said account shall be less than the Reserve Account Requirement due to valuation of the Eligible Securities deposited therein in accordance with Section 5.05, the amount necessary to increase the balance in said account to an amount at least equal to the Reserve Account Requirement (until deposits on account of such valuation deficiency are sufficient to increase the balance in said account to said amount); and

(4) To the Administration Fund, an amount equal to one-twelfth (1/12) of the annual Administrative Fees and Expenses.

So long as no Event of Default shall have occurred and be continuing, moneys remaining in the Revenue Fund after the foregoing transfers shall be transferred on June 1 and December 1 of each year, commencing [June 1, 2022], by the Bond Trustee to the Borrower free and clear of the Lien of this Indenture.

**SECTION 5.03. Application of Interest Account.** All amounts in the Interest Account shall be used and withdrawn by the Bond Trustee solely for the purpose of paying interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture), except during the occurrence and continuance of an Event of Default, when such amounts may be used in accordance with Section 7.03 of this Indenture.

**SECTION 5.04. Application of Principal Account.** (a) All amounts in the Principal Account shall be used and withdrawn by the Bond Trustee solely for the purpose of paying the principal or Mandatory Sinking Account Payments of the Bonds, as provided herein with respect to Bonds, except during the occurrence and continuance of an Event of Default, when such amounts may be used in accordance with Section 7.03 of this Indenture.

(b) The Bond Trustee shall establish and maintain within the Principal Account a separate subaccount for the Bonds, designated as the “\_\_\_ Sinking Account,” inserting therein the Series and maturity (if more than one such account established) for each Term Bond. On or before June 1 in each year, the Bond Trustee shall transfer the amount deposited in the Principal Account on that date pursuant to Section 5.02 from the Principal Account to the Sinking Account for the purpose of making a Mandatory Sinking Account Payment (if such deposit is required in such month). With respect to the Sinking Account, on each Mandatory Sinking Account Payment date established for the Sinking Account, the Bond Trustee shall transfer the amount deposited in the Principal Account pursuant to Section 5.02 for the purpose of applying the Mandatory Sinking Account Payment required on that date to the redemption (or payment at maturity, as the case may be) of Bonds, upon the notice and in the manner provided in Article IV; provided that, at any time prior to giving such notice of such redemption, the Bond Trustee shall apply such moneys to the purchase of Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as the Borrower may direct, in writing, except that the purchase price (excluding accrued interest) shall not exceed the par amount of such Bonds. If, during the twelve-month period immediately preceding said Mandatory Sinking Account Payment date, the Bond Trustee has purchased Bonds with moneys in the Sinking Account, or, during said period and prior to giving said notice of redemption, the Borrower has deposited Bonds with the Bond Trustee, or Bonds were at any time purchased or redeemed by the Bond Trustee from the Redemption Fund and allocable to said Mandatory Sinking Account Payment, such Bonds so purchased or deposited or redeemed shall be applied, to the extent of the full principal amount thereof, to reduce said Mandatory Sinking Account Payment. In the event of a redemption pursuant to Section 4.02 hereof, the Borrower shall provide the Bond Trustee with a revised sinking fund schedule giving effect to the purchase or redemption so completed. All Bonds purchased or deposited pursuant to this subsection shall be delivered to the Bond Trustee and cancelled. Any amounts remaining in the Sinking Account when all of the Bonds are no longer Outstanding shall be withdrawn by the Bond Trustee and transferred to the Revenue Fund. All Bonds purchased from the Sinking Account or deposited by the Borrower with the Bond Trustee shall be allocated first to the next succeeding Mandatory Sinking Account Payment, then to the remaining Mandatory Sinking Account Payments as the Borrower directs.

(c) Subject to the terms and conditions set forth in this Section and in Section 4.03, the Term Bonds shall be redeemed (or paid at maturity, as the case may be) by application of Mandatory Sinking Account Payments in the following amounts and on the following dates:

(i) Term Bonds maturing on June 1, 20\_\_ that are issued in an initial principal amount of \$ \_\_\_\_\_:

<i>Mandatory Redemption Date (June 1)</i>	<i>Principal Amount</i>
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† Maturity.

In the event of any extraordinary redemption or optional redemption of such Term Bonds, the Borrower shall provide the Bond Trustee with a revised sinking fund schedule giving effect to the redemption so completed; provided that in connection with any such redemption, Mandatory Sinking Account Payments must be reduced in inverse order of scheduled mandatory redemption dates.

**SECTION 5.05. Application of Reserve Account.** (a) All amounts in the Reserve Account shall be used and withdrawn by the Bond Trustee solely for the purpose of making up any deficiency in the Interest Account or Principal Account, which notice shall specify the amount of such withdrawal that exists on the date when monies on deposit in the Interest Account or the Principal Account are required to be applied, as provided in Sections 5.03 and 5.04 hereof, or (together with any other moneys available therefor) for the payment or redemption of all Bonds then Outstanding, except during the occurrence and continuance of an Event of Default, when such amounts may be used in accordance with Section 7.03 of this Indenture.

(b) The Bond Trustee shall notify the Authority and the Borrower immediately of any withdrawal from the Reserve Account for the purpose of making up a deficiency in the Interest Account or Principal Account. The Bond Trustee shall notify the Authority immediately of the final maturity, earlier redemption in full of the Bonds and the date on which no Bonds are Outstanding hereunder (including as provided in Article X hereof).

(c) Amounts on deposit in the Reserve Account shall be valued by the Bond Trustee at their fair market value each June 1 and December 1, and the Bond Trustee shall notify the Borrower of the results of such valuation in the form of its regular periodic statements. If the amount on deposit in the Reserve Account on the first (1st) Business Day following such valuation is less than one hundred percent (100%) of the Reserve Account Requirement, the Borrower has agreed in the Loan Agreement to make the deposits to the Reserve Account required by Section 5.02. If the amount on deposit in the Reserve Account on the first (1st) Business Day following such valuation is greater than the Reserve Account Requirement, then any additional excess shall be withdrawn from the Reserve Account and transferred to the Revenue Fund.

**SECTION 5.06. Establishment and Application of Redemption Fund.** The Bond Trustee shall, as and when needed, establish and maintain a fund separate from any other fund established and maintained hereunder designated as the Redemption Fund, and within the Redemption Fund, a separate Optional Redemption Account and a separate Special Redemption Account. The Bond Trustee shall accept all moneys deposited for redemption and shall deposit such moneys into the Optional Redemption Account or the Special Redemption Account, as applicable. All amounts deposited in the Optional Redemption Account and in the Special Redemption Account shall be accepted and used and withdrawn by the Bond Trustee solely for the purpose of redeeming Bonds, in the manner and upon the terms and conditions specified in Article IV, at the next succeeding date of redemption for which notice has not been given and at the redemption prices then applicable to redemptions from the Optional Redemption Account and the Special Redemption Account, respectively; provided that, at any time prior to giving such notice of redemption, the Bond Trustee shall, upon written direction of the Borrower, apply such amounts to the purchase of Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as the Borrower may direct, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to such Bonds (or, if such Bonds are not then subject to redemption, the par value of such Bonds); and provided further that in the case of the Optional Redemption Account in lieu of redemption at such next succeeding date of redemption, or in combination therewith, amounts in such account may be transferred to the Revenue Fund and credited against Loan Repayments in order of their due date as set forth in a Request of the Borrower.

**SECTION 5.07. [Reserved.]**

**SECTION 5.08. Establishment and Application of Working Capital Fund.** (a) The Bond Trustee shall establish, maintain and hold in trust a separate fund designated as the “Working Capital Fund.” The moneys in the Working Capital Fund shall be disbursed pursuant to Requisitions of the Borrower, which shall be substantially in the form of Exhibit B. Each such Requisition of the Borrower shall be sufficient evidence to the Bond Trustee of the facts stated therein and the Bond Trustee shall have no duty to confirm the accuracy of such facts.

(b) Any amounts thereafter remaining in such Working Capital Fund five Business Days prior to the first Principal Payment Date shall be transferred to the Principal Account for payment of principal on the Bonds. Upon such transfer, the Working Capital Fund shall be closed.

**SECTION 5.09. Establishment and Application of Costs of Issuance Fund; Insurance and Condemnation Proceeds Fund.** (a) The Bond Trustee shall establish, maintain and hold in trust a separate fund designated as the “Costs of Issuance Fund.” Moneys deposited in said fund shall be used and withdrawn by the Bond Trustee to pay the Costs of Issuance of the Bonds upon Requisition of the Borrower stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund, and including a copy of the invoice or statement evidencing the costs incurred. On the one hundred eightieth (180th) day following the initial issuance of the Bonds, or upon the earlier Request of the Borrower, amounts, if any, remaining in the Costs of Issuance Fund shall be transferred to the Working Capital Fund and the Costs of Issuance Fund shall be closed.

(b) As and when needed, the Master Trustee shall establish, maintain and hold in trust a separate fund designated as the “Insurance and Condemnation Proceeds Fund,” and administer said fund as set forth in Section 3.03 of the Master Indenture of Trust.

**SECTION 5.10. Establishment and Application of the Administration Fund.** The Bond Trustee shall establish, maintain and hold in trust a separate fund designated as the “Administration Fund.” The Trustee shall deposit in the Administration Fund such amounts required to be deposited in the Administration Fund hereunder or under the Loan Agreement. The Trustee shall disburse amounts in the Administration Fund necessary for payment of Administrative Fees and Expenses when due.

**SECTION 5.11. Investment of Moneys in Funds and Accounts.** All moneys in any of the funds, accounts and subaccounts established pursuant to this Indenture, shall be invested by the Bond Trustee solely in such Eligible Securities as are specified in a Request of the Borrower, provided, however, that, if the Borrower does not file such a Request with the Bond Trustee, the Bond Trustee shall invest to the extent practicable in investments described in clause (7) of the definition of the term “Eligible Securities” in Section 1.01 of this Indenture; provided, however, that any such investment shall be made by the Bond Trustee only if, prior to the date on which such investment is to be made, the Bond Trustee shall have received a Request of the Borrower specifying a specific money market fund and, if no such Request of the Borrower is so received, the Bond Trustee shall hold such moneys uninvested.

All interest, profits and other income received from the investment of moneys shall be deposited in the Revenue Fund; provided, however, all interest, profits and other income received from the investment of moneys in the Reserve Account shall remain in such account and be transferred to the Revenue Fund only in accordance with the 5.05(c).

Investments in any and all funds and accounts established pursuant to this Indenture may be commingled for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in a particular fund amounts received or held by the Bond Trustee hereunder, provided that the Bond Trustee shall at all times account for such investments strictly in accordance with the particular funds to which they are credited and otherwise as provided in this Indenture. The Bond Trustee may act as principal or agent in the making or disposing of any investment. To the extent Eligible Securities are registrable, such investments shall be registered in the name of the Bond Trustee. The Bond Trustee may sell or present for redemption, any securities so purchased whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such securities are credited, and the Bond Trustee shall not be liable or responsible for any loss resulting from such investment. The Bond Trustee shall have no investment discretion.

The Bond Trustee is hereby authorized, in making or disposing of any investment permitted by this Section, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Bond Trustee or for any third person or dealing as principal for its own account.

No float forward or forward purchase agreement or other arrangement, agreement or financial product may be utilized in connection with the Revenue Fund.

The Borrower acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Borrower the right to receive brokerage confirmations of security transactions as they occur, the Borrower specifically waives receipt of such confirmations to the extent permitted by law. The Borrower further understands that trade confirmations for securities transactions effected by the Bond Trustee will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker. The Bond Trustee shall furnish to the Borrower periodic cash transaction statements which shall include detail for all investment transactions made by the Bond Trustee hereunder. Upon the Borrower's election, such statements shall be delivered via the Bond Trustee's online service and upon electing such service, paper statements will be provided only upon request.

**SECTION 5.12. Amounts Remaining in Funds and Accounts.** Any amounts remaining in the Revenue Fund or any other fund or account established hereunder after payments in full of the Bonds (or after provision for payment thereof as provided herein) and payment of the fees, charges and expenses of the Bond Trustee and the Authority, shall belong and be paid to the Borrower by the Bond Trustee.

## ARTICLE VI

### COVENANTS

**SECTION 6.01. Punctual Payment.** The Authority shall punctually pay, but only out of Payments and pledged funds as herein provided, the principal and interest to become due in respect of every Bond issued hereunder at the times and places and in the manner provided herein and in the Bonds, according to the true intent and meaning thereof.

**SECTION 6.02. Extension of Payment of Bonds.** The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any of the claims for interest by the purchase or funding of such Bonds or claims for interest or by any other arrangement except with the written consent of the Bondholders and, if the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended without the written consent of the Bondholders, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which shall not have been so extended. Nothing in this Section shall be deemed to limit the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of Bonds.

**SECTION 6.03. Encumbrance Upon Payments.** The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Payments and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, including other programs under the Act, and reserves the right to issue other obligations for such purposes.

**SECTION 6.04. Power to Issue Bonds and Make Pledge and Assignment.**

(a) The Authority is duly authorized pursuant to law to issue the Bonds and to enter into this Indenture and to pledge and assign the Payments and other assets purported to be

pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture.

(b) The Authority has duly authorized the execution and delivery of the Bonds and the Indenture under the terms and provisions of the Act and a resolution adopted by its Board of Directors and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability against the Authority of the Bonds and the Indenture. The Authority has taken all necessary action and has complied with all provisions of the Act required to make the Bonds and the Indenture the valid, legal and binding limited obligations of the Authority.

(c) The Bonds and the provisions of this Indenture are and will be the valid and binding limited obligations of the Authority, and the Authority and Trustee shall at all times, to the extent permitted by law and subject to the provisions of this Indenture, defend, preserve and protect said pledge and assignment of Payments, all of the right, title and interest of the Authority in, to and under the Loan Agreement (except for the Retained Authority Rights), and other assets and all the rights of the Bondholders under this Indenture against all claims and demands of all persons whomsoever.

**SECTION 6.05. Accounting Records and Financial Statements.** The Bond Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with the Bond Trustee's accounting practices for books of record and account relating to similar trust accounts and in accordance with the customary standards of the corporate trust industry for such books of record and account, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds, the Payments, the Loan Agreement and all funds and accounts established pursuant to this Indenture. Such books of record and account shall be available for inspection by the Authority, the Borrower and any Bondholder, or his agent or representative duly authorized in writing, at reasonable hours, upon reasonable notice and under reasonable circumstances.

**SECTION 6.06. Other Covenants; Amendment of the Loan Agreement and the Lease.**

(a) Subject to the provisions of this Indenture, the Bond Trustee shall promptly collect all amounts due pursuant to the Loan Agreement and, upon an Event of Default, diligently enforce and take all steps, actions and proceedings reasonably necessary for the enforcement of all of the rights of the Authority under the Loan Agreement assigned to it pursuant to Section 5.01(b) hereof.

(b) The Authority shall not amend, modify or terminate any of the terms of the Loan Agreement, or consent to any such amendment, modification or termination, without the prior written consent of the Bond Trustee. The Bond Trustee shall give such written consent if but only if (1) it has received a written representation from the Borrower to the effect that (i) the Borrower has given 21 days' notice to the Bondholders of such amendment together with a copy thereof and (ii) such amendment or modification will not materially and adversely affect the interests of the Holders of the Bonds; provided that, if an Event of Default has occurred and is continuing, the Bond Trustee rather than the Borrower shall make a determination that such amendment or modification will not materially and adversely affect the interests of the Holders of the Bonds (provided that, in making such determination, the Bond Trustee may conclusively rely on written representations of the Majority Bondholders, financial advisors or consultants or the opinion or advice of counsel), or (2) the Majority Bondholders consent in writing to such amendment, modification or termination, provided that no such amendment, modification or termination shall reduce the amount of Loan

Repayments payable to the Authority, or extend the time for making such payments, without the written consent of the Holders of not less than 75% of the aggregate principal amount of the Bonds then Outstanding.

(c) The Bond Trustee shall promptly collect all amounts due from the Borrower pursuant to the Loan Agreement and Obligation No. 2, shall, upon an Event of Default, diligently enforce and take all steps, actions and proceedings reasonably necessary for the enforcement of all of the rights of the Authority (other than the Retained Authority Rights) and all of the obligations of the Borrower under the Loan Agreement and Obligation No. 2, subject to all rights and protections contained in this Indenture, all in accordance with Article VII hereof.

**SECTION 6.07. Further Assurances.** The Authority shall make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Holders of the Bonds of the rights and benefits provided in this Indenture.

**SECTION 6.08. Continuing Disclosure.** The Authority shall have no liability to the Holders of the Bonds or any other person with respect to Securities and Exchange Commission Rule 15c2-12.

## ARTICLE VII

### EVENTS OF DEFAULT; REMEDIES ON DEFAULT

**SECTION 7.01. Events of Default; Waiver of Default.** If one or more of the following events ("Events of Default") shall happen, that is to say-

(a) if default shall be made by the Authority in the due and punctual payment of the principal of any Bond as the same shall become due and payable (whether at maturity, by declaration or otherwise);

(b) if default shall be made by the Authority in the due and punctual payment of interest on any Bond when and as such interest shall become due and payable;

(c) if any occurrence and continuance of an "Event of Default" under the Borrower Documents or any security agreement delivered by an Obligated Group Member to the Master Trustee; or

(d) if default shall be made by the Authority in the performance or observance of any other of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, and such default shall have continued for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Authority by the Bond Trustee, or to the Authority, the Borrower and the Bond Trustee by the Majority Bondholders, except that, in each case, if such failure can be remedied but not within such 60-day period, such failure shall not become an Event of Default for so long as the Authority shall diligently proceed to remedy the same within 120 days;

**SECTION 7.02. Institution of Legal Proceedings by Bond Trustee.** (a) If one or more of the Events of Default shall occur, the Bond Trustee in its discretion may, and upon the written



request of the Majority Bondholders, and upon being indemnified to its satisfaction therefor, the Bond Trustee shall proceed to protect or enforce its rights or the rights of the holders of Bonds under this Indenture, the Loan Agreement, the Lease and Obligation No. 2, by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein or therein, or in aid of the execution of any power herein or therein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Bond Trustee shall deem most effectual in support of any of its rights or duties hereunder, provided that any such request from the Bondholders shall not be in conflict with any rule of law or with this Indenture, expose the Bond Trustee to personal liability or be unduly prejudicial to Bondholders not joining therein.

(b) Notwithstanding anything to the contrary in this Indenture, the Authority shall have no obligation to, and instead the Bond Trustee may, without further direction from the Authority, take any and all steps, actions and proceedings, to enforce any or all rights of the Authority (other than those specifically retained by the Authority pursuant to Section 5.01 of this Indenture) under this Indenture or the Loan Agreement, including, without limitation, the rights to enforce the remedies upon the occurrence and continuation of an Event of Default and the obligations of the Borrower under the Loan Agreement.

(c) Nothing herein shall be deemed to authorize the Bond Trustee to authorize or consent to or accept or adopt on behalf of any Bondholder any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any Bondholder thereof, or to authorize the Bond Trustee to vote in respect of the claim of any Bondholder in any such proceeding without the approval of the Bondholders so affected.

**SECTION 7.03. Application of Moneys Collected by Trustee.** Any moneys collected by the Bond Trustee pursuant to Section 7.02 hereof and any other amounts then held by the Bond Trustee under this Indenture, shall be applied in the following order, at the date or dates fixed by the Bond Trustee and, in the case of distribution of such moneys on account of principal upon presentation of the Bonds, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

*First:* To the payment of costs and expenses of collection and reasonable compensation to the Bond Trustee for its own services and for the services of counsel, agents and employees by it properly engaged and employed, and all other expenses and liabilities incurred, and for advances, together with interest on such advances at a rate per annum equal to the Post-Default Rate, made pursuant to the provisions of this Indenture.

*Second:* To the payment of interest in default, and

*Third:* To the payment of the principal of all Bonds then due and unpaid;

in every instance such payment to be made ratably to the persons entitled thereto without discrimination or preference.

Whenever moneys are to be applied pursuant to the provision of this Section, such moneys shall be applied at such times, and from time to time, as the Bond Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Bond Trustee shall apply such funds, it shall fix the date (which shall be the Interest Payment Date unless the Bond

Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal and past-due interest to be paid on such date shall cease to accrue.

Whenever all principal of and interest on all Bonds have been paid under the provisions of this Section and all fees, expenses and charges of the Bond Trustee (including without limitation those of its attorneys) have been paid, any balance remaining in the funds and accounts hereunder shall be paid to the Borrower.

**SECTION 7.04. Effect of Delay or Omission to Pursue Remedy.** No delay or omission of the Bond Trustee or of any Holder of Bonds to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every power and remedy given by this Article VII to the Bond Trustee or to the Holders of Bonds may be exercised from time to time, and as often as shall be deemed expedient. In case the Bond Trustee shall have proceeded to enforce any right under this Indenture, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the Bond Trustee, then and in every such case the Authority and the Bond Trustee, and the Holders of the Bonds, severally and respectively, shall be restored to their former positions and rights hereunder in respect to the trust estate; and all remedies, rights and powers of the Authority, the Bond Trustee and the Holders of the Bonds shall continue as though no such proceedings had been taken.

**SECTION 7.05. Remedies Cumulative.** No remedy herein conferred upon or reserved to the Bond Trustee or to any Holder of the Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

**SECTION 7.06. Covenant to Pay Bonds in Event of Default.** The Authority covenants that, upon the happening of any Event of Default, the Authority shall pay, but only out of Payments, to the Bond Trustee, upon demand, for the benefit of the Holders of the Bonds, the whole amount then due and payable thereon (by declaration or otherwise) for interest and principal as the case may be, and all other sums which may be due hereunder or secured hereby, including reasonable compensation to the Bond Trustee and its agents and counsel and any expenses or liabilities incurred by the Bond Trustee hereunder and, its agents and counsel. In case the Authority shall fail to pay the same forthwith upon such demand, the Bond Trustee, in its own name and as trustee of an express trust, shall be entitled to institute proceedings at law or in equity in any court of competent jurisdiction to recover judgment for the whole amount due and unpaid, together with costs and reasonable attorneys' fees and expenses, subject, however, to the condition that such judgment, if any, shall be limited to, and payable solely out of, Payments as herein provided and not otherwise. The Bond Trustee shall be entitled to recover such judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of this Indenture, and the right of the Bond Trustee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture.

**SECTION 7.07. Trustee Appointed Agent for Bondholders.** The Bond Trustee is hereby appointed the agent and attorney-in-fact of the Holders of all Bonds Outstanding hereunder for the purpose of filing any claims relating to the Bonds.

**SECTION 7.08. Power of Bond Trustee to Control Proceedings.** Subject to Section 7.09 hereof, in the event that the Bond Trustee, upon the happening of an Event of Default, shall have taken some action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Holders of a majority in aggregate principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Holders of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Bond Trustee shall not, unless there no longer continues an Event of Default hereunder, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Majority Bondholders hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

**SECTION 7.09. Limitation on Bondholders' Right to Sue.** Notwithstanding any other provision hereof, no Holder of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, the Loan Agreement or Obligation No. 2, unless (a) such Holder shall have previously given to the Bond Trustee written notice of the occurrence of an Event of Default hereunder; (b) the Holders of at least a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Bond Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Holders shall have tendered to the Bond Trustee indemnity satisfactory to the Bond Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Bond Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Bond Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Holder of Bonds of any remedy hereunder; it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Holders of the Outstanding Bonds.

The right of any Holder of any Bond to receive payment of the principal of and interest on such Bond out of Payments and the funds pledged herein, as herein provided, on and after the respective due dates expressed in such Bond, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder, notwithstanding the foregoing provisions of this Section or Section 7.08 of this Indenture or any other provision of this Indenture.

**SECTION 7.10. Retained Authority Rights.** Nothing in this Article shall limit in any respect the right of the Authority to enforce or waive any of its Retained Authority Rights under the Loan Agreement.

## ARTICLE VIII

### THE BOND TRUSTEE

**SECTION 8.01. Duties, Immunities and Liabilities of Trustee.** (a) The Bond Trustee shall, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture. The Bond Trustee shall, during the existence of any Event of Default which has not been cured and no implied duties (including fiduciary duties) shall be imposed on the Bond Trustee, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) The Authority may, with the consent of the Majority Bondholders, remove the Bond Trustee at any time unless an Event of Default shall have occurred and then be continuing, and shall remove the Bond Trustee if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Majority Bondholders (or their attorneys duly authorized in writing) or if at any time the Bond Trustee shall cease to be eligible in accordance with subsection (e) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Bond Trustee or its property shall be appointed, or any public officer shall take control or charge of the Bond Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Bond Trustee, and thereupon shall appoint, with the written consent of the Majority Bondholders (or their attorneys duly authorized in writing), a successor Bond Trustee by an instrument in writing.

(c) The Bond Trustee may at any time resign by giving written notice of such resignation to the Authority, and by giving the Bondholders notice of such resignation by mail at the addresses shown on the Bond registration books maintained by the Bond Trustee. Upon receiving such notice of resignation, the Authority shall appoint, with the written consent of the Majority Bondholders (or their attorneys duly authorized in writing), a successor Bond Trustee by an instrument in writing.

(d) Any removal or resignation of the Bond Trustee and appointment of a successor Bond Trustee shall become effective upon acceptance of appointment by the successor Bond Trustee. If no successor Bond Trustee shall have been appointed and have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the retiring or resigning Bond Trustee or any Bondholder (on behalf of himself and all other Bondholders) may petition any court of competent jurisdiction for the appointment of a successor Bond Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Bond Trustee.

(e) Any successor Bond Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the Authority and to its predecessor Bond Trustee a written acceptance thereof, and thereupon such successor Bond Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Bond Trustee, with like effect as if originally named Bond Trustee herein; but, nevertheless at the Request of the Authority or the request of the successor Bond Trustee, such predecessor Bond Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably

be required for more fully and certainly vesting in and conveying to such successor Bond Trustee all the right, title and interest of such predecessor Bond Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Bond Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Bond Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Bond Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Bond Trustee as provided in this subsection, the successor Bond Trustee shall mail a notice of the succession of such Bond Trustee to the trusts hereunder to the Bondholders at the addresses shown on the Bond registration books maintained by the Bond Trustee.

(f) Any Bond Trustee appointed under the provisions of this Indenture shall be a national banking association, a trust institution or bank having trust powers, doing business and having a corporate trust office in California or, if it shall not have a corporate trust office in California, having the power under California law to perform all the duties of the Bond Trustee hereunder as evidenced by an opinion of its counsel, having, or if it is a member of a bank holding company system its parent shall have, a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000 and subject to supervision or examination by State or federal authorities. In case at any time the Bond Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Bond Trustee shall resign immediately in the manner and with the effect specified in this Section.

(g) Notwithstanding anything contained herein to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Bond Trustee to liability under any Environmental Law, the Bond Trustee may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action. The term “Environmental Laws” shall mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

(h) The Bond Trustee shall transfer the Authority Annual Fee, promptly upon receipt thereof from the Borrower, to the Authority at the Remittance Address.

**SECTION 8.02. Merger or Consolidation.** Any company into which any successor Bond Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the successor Bond Trustee, if any, may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under subsection (e) of Section 8.01 hereof, shall be the successor to such successor Bond Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

**SECTION 8.03. Rights of Bond Trustee.** (a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and the Bond Trustee does not assume any

responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture, the Loan Agreement or the Bonds, or incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Bond Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Bond Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct.

(b) The Bond Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bond Trustee was negligent in ascertaining the pertinent facts.

(c) The Bond Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Majority Bondholders relating to the time, method and place of conducting any proceeding for any remedy available to the Bond Trustee, or exercising any trust or power conferred upon the Bond Trustee under this Indenture. The permissive right of the Bond Trustee to do things enumerated in this Indenture shall not be construed as a duty.

(d) The Bond Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Bondholders pursuant to the provisions of this Indenture unless such Bondholders shall have offered to the Bond Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby.

(e) The Bond Trustee shall not be deemed to have knowledge of any Event of Default other than an Event of Default under Section 7.01(a) or 7.01(b) hereof unless and until a Responsible Officer of the Bond Trustee shall have actual knowledge thereof, or shall have received written notice thereof, at its Principal Corporate Trust Office. Except as otherwise expressly provided herein, the Bond Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds or as to the existence of an Event of Default hereunder.

(f) No provision of this Indenture shall require the Bond Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of its rights or powers. The Bond Trustee has no obligation or liability to the Bondholders for the payment of interest or principal with respect to the Bonds.

(g) The Bond Trustee shall not be bound to ascertain or inquire as to the validity or genuineness of any collateral given to or held by it. The Bond Trustee shall not be responsible for the recording or filing of any document relating to this Indenture or of financing statements (or continuation statements in connection therewith) or of any supplemental instruments or documents of further assurance as may be required by law in order to perfect the security interests in any collateral given to or held by it.

(h) The Bond Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

(i) The Bond Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Bond Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Borrower elect to give the Bond Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Bond Trustee in its discretion elects to act upon such instructions, the Bond Trustee's understanding of such instructions shall be deemed controlling. The Bond Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bond Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Bond Trustee, including without limitation the risk of the Bond Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(j) The Bond Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Bond Trustee and could not have been avoided by exercising due care. Force majeure shall mean acts of God, terrorism, war, riots, fire, floods, or earthquakes.

(k) The Bond Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, affiliates, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Bond Trustee shall not be answerable for the acts or omissions of any such attorney, agent, or receiver selected by it with reasonable care.

(l) The Bond Trustee shall have no responsibility or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of these Bonds.

(m) The Bond Trustee shall not be required to review or inspect, and shall not be deemed to have notice of, the contents of any financial statement delivered to the Bond Trustee, it being expressly understood that the Bond Trustee shall only receive and hold such documents as a repository for examination and copying by any Holder at such Holder's expense during business hours on Business Days with reasonable prior notice.

(n) Upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Bond Trustee to liability under any Environmental Regulation, the Bond Trustee may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action. The Bond Trustee shall not be required to take any foreclosure action if the approval of a government regulator shall be a condition precedent to taking such action.

(o) Whether or not therein expressly so provided, every provision of this Indenture, the Loan Agreement or related documents relating to the conduct or affecting the liability of or affording protection to the Bond Trustee shall be subject to the provisions of this Article.

(p) To the fullest extent permitted by law and notwithstanding anything in this Indenture to the contrary, the Bond Trustee shall not be personally liable for (i) special, consequential or punitive damages, however styled, including, without limitation, lost profits or (ii) the acts or omissions of any nominee, correspondent, clearing agency, or securities depository through which it holds securities or assets.

**SECTION 8.04. Right of Bond Trustee to Rely on Documents.** The Bond Trustee shall be protected in acting upon any notice, requisition, resolution, request, consent, order, certificate, report, opinion, Bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Bond Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Bond Trustee shall not be bound to recognize any person as the Holder of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto is satisfactorily established, if disputed.

Whenever in the administration of the trusts imposed upon it by this Indenture the Bond Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the Authority, and such Certificate shall be full warrant to the Bond Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion the Bond Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

**SECTION 8.05. Preservation and Inspection of Documents.** All documents received by the Bond Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Authority and any Bondholder, and their agents and representatives duly authorized in writing, at reasonable hours, upon reasonable notice and under reasonable conditions.

**SECTION 8.06. Compensation and Indemnification of Bond Trustee.** The Authority (solely from Payments received from the Borrower) shall from time to time, subject to any agreement between the Authority and the Bond Trustee then in force, pay to the Bond Trustee compensation for its services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties hereunder of the Bond Trustee, which compensation shall not be limited by any provision of law with respect to the compensation of a trustee of an express trust, and the Authority (solely from Payments received from the Borrower) will reimburse the Bond Trustee for all its advances (with interest on such advances at the maximum rate allowed by law) and expenditures, including but not limited to advances to and fees and expenses of independent accountants, counsel (including in-house counsel to the extent not duplicative of other counsel's work) and engineers or other experts employed by it, and reasonably required, in the exercise and performance of its powers and duties hereunder. The Authority covenants and agrees to indemnify



the Bond Trustee (solely from Payments received from the Borrower) against any loss, expense and liability (other than those which are due to the Bond Trustee's negligence or default) which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability. The obligations of the Authority under this Section shall survive resignation or removal of the Bond Trustee hereunder and payment of the Bonds and discharge of this Indenture.

## ARTICLE IX

### MODIFICATION OF INDENTURE

**SECTION 9.01. Modification without Consent of Bondholders.** Subject to the conditions and restrictions contained in this Indenture, the Authority and the Bond Trustee, with 21 days' prior written notice to the Bondholders including a copy of the proposed amendment, from time to time may enter into an indenture or indentures supplemental hereto, which indenture or indentures thereafter shall form a part hereof, including, without limitation, for one or more of the following purposes, provided that the Authority and the Bond Trustee shall have received an Opinion of Bond Counsel to the effect that such amendment or modification is permitted by this Indenture:

(a) to add to the covenants and agreements of the Authority contained in this Indenture, other covenants and agreements thereafter to be observed, or to assign or pledge additional security for the Bonds, or to surrender any right or power herein reserved to or conferred upon the Authority; provided such amendment or modification will not materially and adversely affect the interests of the Holders of the Bonds;

(b) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing, correcting or supplementing any defective provision, contained in this Indenture, or in regard to such matters or questions arising under this Indenture as the Authority may deem necessary and not inconsistent with this Indenture; provided such amendment or modification will not materially and adversely affect the interests of the Holders of the Bonds;

(c) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof or thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and, if they so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939, as amended, or similar federal statute; provided such amendment or modification will not materially and adversely affect the interests of the Holders of the Bonds;

(d) in connection with an amendment of any agreement permitted by Section 6.06 hereof for the purpose of conforming the terms, conditions and covenants of this Indenture to the corresponding or related provisions of such amended agreement; or

(e) to comply with requirements of a Rating Agency in order to obtain or maintain a rating on any Bonds.

Any supplemental indenture authorized by the provisions of this Section 9.01 may be executed by the Authority and the Bond Trustee without the consent of the Holders of any of the

Bonds at the time Outstanding, notwithstanding any of the provisions of Section 9.02 hereof, but the Bond Trustee shall not be obligated to enter into any such supplemental indenture which affects the Bond Trustee's own rights, duties or immunities under this Indenture or otherwise.

The Bond Trustee shall mail an executed copy of a supplemental indenture authorized by this Section 9.01 and any document related thereto or executed in connection therewith to the Borrower and each Rating Agency then rating the Bonds promptly after execution by the Authority and the Bond Trustee. The Authority shall mail drafts of any such documents to such parties prior to execution thereof.

**SECTION 9.02. Modification with Consent of Bondholders.** With the consent of the Majority Bondholders, the Authority and the Bond Trustee may from time to time and at any time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture; provided, however, that no such supplemental indenture shall (1) extend the fixed maturity of any Bonds or reduce the rate of interest thereon or extend the time of payment of interest, or reduce the amount of the principal thereof or (2) extend the time of payment or permit the creation of any lien on the Payments or the assets pledged herein prior to or on a parity with the lien of this Indenture or (3) deprive the Holders of the Bonds of the lien created by this Indenture upon the Payments or the assets pledged herein, without the consent of the Holders of not less than 75% of the aggregate principal amount of the Bonds then Outstanding; and provided further, that that no such supplemental indenture shall reduce the aforesaid percentage of Holders of Bonds whose consent is required for the execution of such supplemental indentures without the consent of the Holders of all the Bonds then Outstanding. Upon the filing with the Bond Trustee of evidence of the consent of Bondholders, as aforesaid, the Bond Trustee shall join with the Authority in the execution of such supplemental indenture unless such supplemental indenture affects the Bond Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Bond Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Promptly determining the need to supplement or amend this Indenture pursuant to the provisions of this Section, the Authority shall mail a notice to the Bond Trustee setting forth a copy such supplemental indenture, and the Bond Trustee, upon receipt of such notice, shall mail such notice to the Borrower and the Bondholders at the addresses shown on the Bond registration books maintained by the Bond Trustee, at the expense of the Borrower. Any failure of the Authority or the Bond Trustee to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

The Bond Trustee shall mail an executed copy of such supplemental indenture and any amendment of the Loan Agreement permitted under Section 6.06 hereof to the Borrower, each Rating Agency then rating the Bonds promptly after execution by the Authority, the Bond Trustee, and in the case of the Loan Agreement, the Borrower. The Authority shall mail drafts of any such documents to such parties prior to execution thereof.

**SECTION 9.03. Effect of Supplemental Indenture.** Upon the execution of any supplemental indenture pursuant to the provisions of this Article IX this Indenture shall be, and shall be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Bond Trustee and all Holders of Outstanding Bonds shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such

supplemental indenture shall be part of the terms and conditions of this Indenture for any and all purposes.

**SECTION 9.04. Opinion of Counsel as to Supplemental Indenture.** Subject to the provisions of Section 8.04 of this Indenture and the requirement in Sections 9.01 and 9.02 hereof for an Opinion of Bond Counsel, the Bond Trustee and the Authority may receive an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to the provisions of this Article IX complies with the requirements of this Article IX and shall have no liability to Holders in excluding any Supplemental Indenture in reliance on an Opinion of Bond Counsel.

**SECTION 9.05. Notation of Modification on Bonds; Preparation of New Bonds.** Bonds authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article IX may bear a notation, in form approved by the Authority, as to any matter provided for in such supplemental indenture, and if such supplemental indenture shall so provide, new Bonds, so modified as to conform, in the opinion of the Authority, to any modification of this Indenture contained in any such supplemental indenture, may be prepared by the Authority, authenticated by the Bond Trustee and delivered without cost to the Holders of the Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amounts.

## ARTICLE X

### DEFEASANCE

**SECTION 10.01. Discharge of Indenture.** (a) Bonds may be paid or caused to be paid in any of the following ways, provided any other sums payable hereunder have also been paid or caused to be paid:

(i) by paying or causing to be paid the principal of and interest on the Bonds Outstanding as and when the same become due and payable;

(ii) by depositing with the Bond Trustee, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03 hereof) to pay or redeem Bonds Outstanding; or

(iii) by delivering to the Bond Trustee, for cancellation by it, all Bonds Outstanding.

(b) If all Bonds then Outstanding are paid or caused to be paid as provided above and all other sums payable hereunder shall also be paid or caused to be paid, and if the Borrower shall have paid all Additional Payments and any indemnification owed to the Authority and any other fees and expenses payable to the Authority pursuant to the Loan Agreement, then and in that case, at the election of the Borrower (evidenced by a Certificate of the Borrower, filed with the Bond Trustee, signifying the intention of the Authority to discharge all such indebtedness and this Indenture), and notwithstanding that any Bonds shall not have been surrendered for payment, this Indenture and the pledge of Payments made under this Indenture and all covenants, agreements and other obligations of the Authority under this Indenture shall cease, terminate, become void and be completely discharged and satisfied, except only as provided in Section 10.02 hereof. In such event, upon request of the Borrower, the Bond Trustee shall cause an accounting for such period or periods as may be requested by the Borrower to be prepared and filed with the Borrower and shall execute

and deliver to the Borrower all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Bond Trustee shall pay over, transfer, assign or deliver to the Borrower all moneys or securities or other property held by it pursuant to this Indenture which are not required for the payment of Bonds not theretofore surrendered for such payment and which are not required for the payment of fees and expenses of the Bond Trustee.

**SECTION 10.02. Discharge of Liability on Bonds.** Upon the deposit with the Bond Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03 hereof) to pay any Outstanding Bond, whether upon or prior to its maturity, then all liability of the Authority in respect of such Bond shall cease, terminate and be completely discharged, except only that thereafter the Holder thereof shall be entitled to payment of the principal of and interest on such Bond, and the Authority shall remain liable for such payment but only out of the money or securities deposited with the Bond Trustee as aforesaid for its payment; provided further, however, that the provisions of Section 10.04 hereof shall apply in all events.

The Bonds may at any time be surrendered to the Bond Trustee for cancellation by the Authority or the Borrower, which Bonds may have been acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

**SECTION 10.03. Deposit of Money or Securities with Bond Trustee.** Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Bond Trustee money or securities in the amount necessary to pay any Bonds, such amount (which may include money or securities held by the Bond Trustee in the funds established pursuant to this Indenture) shall be equal (taking into account income which will accrue from the investment thereof on the date of deposit of such funds but without taking into account any income from the subsequent reinvestment thereof) to the principal amount of such Bonds and all unpaid interest thereon to maturity, and shall be:

(a) lawful money of the United States of America; or

(b) noncallable bonds, bills and bonds issued by the Department of the Treasury (including without limitation (1) obligations issued or held in book-entry form on the books of the Department of the Treasury and (2) the interest component of Resolution Funding Corporation strips for which separation of principal and interest is made by request to the Federal Reserve Bank of New York in book-entry form), United States Treasury Obligations State and Local Government Series and Zero Coupon United States Treasury Bonds;

provided, in each case, that the Bond Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Request of the Borrower or the Authority) to apply such money to the payment of such principal of and interest on such Bonds and provided, further, that the Authority and the Bond Trustee shall have received (i) an Opinion of Bond Counsel to the effect that the Bonds to be discharged are no longer Outstanding; and (ii) a verification report of a firm of certified public accountants or other financial services firm acceptable to the Bond Trustee verifying that the money or securities so deposited or held together with earnings thereon will be sufficient to make all payments of principal of and interest on the Bonds to be discharged to and including their maturity date.

**SECTION 10.04. Payment of Bonds after Discharge of Indenture.** Notwithstanding any provision of this Indenture, and subject to applicable escheat laws, any moneys (including interest

thereon) held by the Bond Trustee in trust for the payment of the principal of or interest on any Bonds and remaining unclaimed for one year after the principal of all the Outstanding Bonds has become due and payable (whether at maturity or by declaration as provided in this Indenture), if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid to the Borrower free from the trusts created by this Indenture, and all liability of the Bond Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Borrower as aforesaid, the Bond Trustee may (at the expense of the Borrower) first mail to the Holders of Bonds which have not yet been paid, at the addresses shown on the registration books maintained by the Bond Trustee, a notice, in such form as may be deemed appropriate by the Bond Trustee, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Borrower of the moneys held for the payment thereof.

## ARTICLE XI

### MISCELLANEOUS

**SECTION 11.01. Liability of Authority Limited to Payments.** Principal of and interest on the Bonds is payable solely from Payments. Neither the State nor the Authority shall be obligated to pay the Bonds or the interest thereon except from certain Payments set forth herein, and neither the faith and credit nor the taxing power of the State or of any political subdivision thereof shall be pledged to the payment of the principal of or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The Authority shall not be treated or deemed as having incurred any liability hereunder or by reason of or in connection with this Indenture, the Loan Agreement or any of the transactions contemplated by any thereof except to the extent payable from certain Payments set forth herein or other amounts available therefor under and pursuant to this Indenture. Nevertheless, the Authority may, but shall not be required to, advance for any of the purposes of this Indenture any funds of the Authority which may be made available to it for such purposes. The Authority shall not be liable for payment of the principal (or redemption price) of 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 this Indenture, the Bonds or any other documents, except only to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement.

The Bond Trustee hereby acknowledges that the Authority's sole source of moneys to repay the Bonds will be provided by the revenues (consisting primarily of Payments), and hereby agrees that if the revenues shall ever prove insufficient to pay all principal (or redemption price) of and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then the Bond Trustee shall give notice to the Borrower in accordance with this Indenture to 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.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE AUTHORITY AS PROVIDED IN THE ACT, PAYABLE SOLELY FROM AND SECURED BY THE FUNDS PROVIDED THEREFOR UNDER THIS INDENTURE. THE BONDS DO NOT CONSTITUTE A

DEBT OR LIABILITY OF THE STATE OR OF ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY AS SET FORTH IN THIS INDENTURE). NEITHER THE AUTHORITY, ITS MEMBERS, THE STATE, 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 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 THIS INDENTURE, THE BONDS OR ANY OTHER DOCUMENTS, EXCEPT ONLY TO THE EXTENT AMOUNTS ARE RECEIVED FOR THE PAYMENT THEREOF FROM THE BORROWER UNDER THE LOAN AGREEMENT. NONE OF THE AUTHORITY, ANY AUTHORITY MEMBER, ANY PERSON EXECUTING THE BONDS OR ANY OFFICIAL, DIRECTOR, MEMBER, OFFICER, AGENT OR EMPLOYEE OF THE STATE, THE AUTHORITY, ANY PUBLIC AGENCY THEREOF OR ANY MEMBER THEREOF IS LIABLE PERSONALLY ON THE BONDS OR IN RESPECT OF ANY UNDERTAKINGS BY THE AUTHORITY UNDER THE BOND DOCUMENTS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE OF THE BONDS.

**SECTION 11.02. Successor Is Deemed Included in All References to Predecessor.**

Whenever in this Indenture either the Authority or the Bond Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority or the Bond Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**SECTION 11.03. Limitation of Rights to Parties, Borrower and Bondholders.** Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Authority, the Authority Indemnified Parties, the Bond Trustee, the Borrower and the Holders of the Bonds any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Authority Indemnified Parties, the Bond Trustee, the Borrower and the Holders of the Bonds.

**SECTION 11.04. Waiver of Notice.** Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**SECTION 11.05. Destruction of Bonds.** Whenever in this Indenture provision is made for the cancellation by the Bond Trustee and the delivery to the Authority of any Bonds, the Bond Trustee shall, in lieu of such cancellation and delivery, destroy such Bonds (in the presence of an

officer of the Authority, if the Authority shall so require) and, at the request of the Authority, deliver a certificate of such destruction to the Authority.

**SECTION 11.06. Severability of Invalid Provisions.** If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

**SECTION 11.07. Notices.** Unless otherwise provided herein, all notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given (a) if hand delivered or delivered by courier, when delivered to the appropriate notice address, or (b) if mailed by first class mail, postage prepaid, six Business Days after deposit in the United States mail addressed to the appropriate notice address. Any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day. The parties listed below may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice required or permitted hereunder shall be directed to the following notice address:

As to the Authority: California Enterprise Development Authority  
2150 River Plaza Drive, Suite 275  
Sacramento, California 95833  
Attention: Chair  
Telephone: (916) 448-8252  
Email: gsahota@caled.org

As to the Borrower: Western Encore Properties Incorporated  
16955 Lemon Street  
Hesperia, California 92345  
Attention: Chief Executive Officer

As to Trustee: UMB Bank, N.A.  
120 South Sixth Street, Suite 1400  
Minneapolis, Minnesota 55402  
Fax: (612) 337-7039  
Email: katie.carlson@umb.com  
Attention: Katie Carlson

**SECTION 11.08. Evidence of Rights of Bondholders.** Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bondholders may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bondholders in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such

agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Bond Trustee and of the Authority if made in the manner provided in this Section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the bond registration books held by the Bond Trustee.

Any request, consent, or other instrument or writing of the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Bond Trustee or the Authority in accordance therewith or reliance thereon.

**SECTION 11.09. Disqualified Bonds.** In determining whether the Holders of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Authority or the Borrower or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the Borrower shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Bond Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the Borrower. In case of a dispute as to such right, any decision by the Bond Trustee taken upon the advice of counsel shall be full protection to the Bond Trustee. Upon request of the Bond Trustee, the Authority and the Borrower shall specify in a certificate to the Bond Trustee those Bonds disqualified pursuant to this Section and the Bond Trustee may conclusively rely on such certificate.

**SECTION 11.10. Money Held for Particular Bonds.** The money held by the Bond Trustee for the payment of the interest and principal due on any date with respect to particular Bonds shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Holders of the Bonds entitled thereto.

**SECTION 11.11. Funds and Accounts.** Any fund required by this Indenture to be established and maintained by the Bond Trustee may be established and maintained in the accounting records of the Bond Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds shall at all times be maintained in accordance with customary standards of the corporate trust industry, to the extent practicable, and with due regard for the requirements of Section 5.11 and for the protection of the security of the Bonds and the rights of every Holder thereof. In addition to the funds and accounts hereby established, and subject to the foregoing, the Bond Trustee may establish such additional accounts or subaccounts, including of a temporary nature, as may be necessary or convenient for the administration of this Indenture.



**SECTION 11.12. Waiver of Personal Liability.** No official, director, member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal (or redemption price) of or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such official, director, member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture. No covenant or agreement contained in the Bonds or in this Indenture 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 or any official, director, member, officer, agent or employee of the Bond Trustee in his or her individual capacity, and neither the members of the governing body of the Authority nor any official executing the Bonds, including any officer or employee of the Bond Trustee, shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**SECTION 11.13. Execution in Several Counterparts and Electronic Execution.** This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Bond Trustee shall preserve undestroyed, shall together constitute but one and the same instrument. Each party agrees, and acknowledges that it is such party's intent, that if such party signs this 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 agreement on paper. Each party acknowledges that it is being provided with an electronic or paper copy of this agreement in a usable format.

**SECTION 11.14. Governing Law; Venue.** This Indenture, the Loan Agreement and the Bonds are contracts 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 the State of California. This Indenture, the Loan Agreement and the Bonds shall be enforceable in the State of California, and any action arising out of this Indenture, the Loan Agreement or the Bonds shall be filed and maintained in Sacramento County, 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.

**SECTION 11.15. Complete Agreement.** This Indenture represents the complete agreement between the parties with respect to the Bonds and related matters.

**SECTION 11.16. Action to be Taken on Days Other Than Business Days.** Except as otherwise provided herein, whenever this Indenture requires any action to be taken on a day which is not a Business Day, such action shall be taken on the next succeeding Business Day with the same force and effect as if taken on such day. If any payment is made on the next Business Day as aforesaid, no interest shall accrue for the intervening period.

**SECTION 11.17. Third Party Beneficiaries.** Each of the Authority Indemnified Parties, other than the Authority, and the Bondholders shall be considered to be intended third party beneficiaries of this Indenture. Nothing in this Indenture shall confer any right upon any person other than the parties hereto and the specifically designated third party beneficiaries of this Indenture.

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IN WITNESS WHEREOF, the CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY has caused this Indenture to be signed in its name by an authorized representative, and UMB Bank, N.A., in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its name by a deputy hereunto duly authorized, all as of the day and year first above written.

**CALIFORNIA ENTERPRISE DEVELOPMENT  
AUTHORITY**

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

**UMB BANK, N.A.,**  
as Trustee

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

**EXHIBIT A**

**FORM OF BOND**

**THIS BOND IS SUBJECT TO TRANSFER RESTRICTIONS AS SET FORTH IN THE INDENTURE (DEFINED HEREIN). BY POSSESSION OF THIS BOND, THE HOLDER CERTIFIES THAT IT IS A QUALIFIED INSTITUTIONAL BUYER AS DEFINED IN THE INDENTURE. THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS BOND, ACKNOWLEDGES THAT THIS BOND MAY ONLY BE REGISTERED IN THE NAME OF, OR TRANSFERRED TO, OR BENEFICIAL OWNERSHIP CAN ONLY BE HELD BY A "QUALIFIED INSTITUTIONAL BUYER." THE TRANSFER RESTRICTIONS HEREOF MAY BE REMOVED ONLY PURSUANT TO CERTAIN PROVISIONS OF THE INDENTURE. IN THE EVENT SUCH RESTRICTIONS ARE REMOVED, THE BOND TRUSTEE SHALL PROVIDE NOTICE THEREOF AS SET FORTH IN THE INDENTURE.**

**THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE AUTHORITY AS PROVIDED IN THE ACT, PAYABLE SOLELY FROM AND SECURED BY THE FUNDS PROVIDED THEREFOR UNDER THE INDENTURE. THE BONDS DO NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY AS SET FORTH IN 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 THE LOAN AGREEMENT. NONE OF THE AUTHORITY, ANY AUTHORITY MEMBER, ANY PERSON EXECUTING THE BONDS OR ANY OFFICIAL, DIRECTOR, MEMBER, OFFICER, AGENT OR EMPLOYEE OF THE STATE, THE AUTHORITY, ANY PUBLIC AGENCY THEREOF OR ANY MEMBER THEREOF IS LIABLE PERSONALLY ON**

**THE BONDS OR IN RESPECT OF ANY UNDERTAKINGS BY THE AUTHORITY UNDER THE BOND DOCUMENTS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE OF THE BONDS.**

REGISTERED

REGISTERED

No. R-\_\_

\$ \_\_\_\_\_

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY  
CHARTER SCHOOL REVENUE BONDS  
(ENCORE EDUCATION CORPORATION)  
SERIES 2022 (TAXABLE)**

<b>Initial Rate of Interest:</b>	<b>Maturity Date:</b>	<b>Dated Date:</b>	<b>CUSIP:</b>
[__]%	June 1, 20__	May __, 2022	[_____]

**Registered Owner:** Cede & Co.

**Principal Amount:** \_\_\_\_\_ DOLLARS

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the “Authority”), for value received, hereby promises to pay (but only out of the Payments and other assets pledged therefor as hereinafter mentioned) to CEDE & CO. or registered assigns, on the maturity date specified above (subject to any right of prior redemption hereinafter mentioned), the principal sum of [\_\_\_\_\_] DOLLARS (\$[\_\_\_\_\_]), in lawful money of the United States of America; and to pay interest thereon (but only from said Payments and other assets pledged therefor) in like lawful money from the date hereof until payment of such principal sum shall be discharged as provided in the Indenture hereinafter mentioned, at the rate stated above, subject to adjustment as provided in the Indenture, payable on June 1 and December 1 of each year, commencing on June 1, 2022; provided that, during the occurrence and continuance of an Event of Default under the Indenture, this bond shall bear interest at the Post-Default Rate. The principal (or redemption price) hereof is payable at the Principal Corporate Trust Office (as defined in the Indenture) of UMB Bank, N.A. (together with any successor Bond Trustee as provided in the Indenture, as defined below, the “Trustee”). Interest hereon is payable by check mailed on each interest payment date to the registered owner hereof as of the fifteenth day of the month immediately preceding the month in which such interest payment date occurs (except with respect to defaulted interest) (the “Record Date”) at the address appearing on the bond registration books maintained by the Bond Trustee; provided, however, that the holder of \$1,000,000 or more in aggregate principal amount of Bonds may be paid by wire transfer to an account within the United States of America upon written request filed with the Bond Trustee by the applicable Record Date for such payment.

Principal of and interest on the Bonds is payable solely from Payments. Neither the State nor the Authority shall be obligated to pay the Bonds or the interest thereon except from certain Payments set forth in the Indenture, and neither the faith and credit nor the taxing power of the State or of any political subdivision thereof shall be pledged to the payment of the principal of or the interest on the Bonds. The issuance of the Bonds shall not directly or indirectly or contingently

obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The Authority shall not be treated or deemed as having incurred any liability under the Indenture or by reason of or in connection with the Indenture, the Loan Agreement or any of the transactions contemplated by any thereof except to the extent payable from certain Payments set forth in the Indenture or other amounts available therefor under and pursuant to the Indenture. Nevertheless, the Authority may, but shall not be required to, advance for any of the purposes of the Indenture any funds of the Authority which may be made available to it for such purposes. The Bonds are not a debt of the State of California and said State is not liable for payment thereof.

This Bond is entitled “California Enterprise Development Authority Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable)” (herein called the “Bonds”), limited in aggregate principal amount \_\_\_ Million \_\_\_ Hundred Thousand dollars (\$ \_\_\_\_\_) and issued pursuant to the provisions of the Joint Exercise of Powers Act (comprising Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State of California) (herein called the “Act”) and an indenture, dated as of May 1, 2022, between the Authority and the Bond Trustee (herein called the “Indenture”). The Bonds are issued for the purpose of (i) funding the loan to Western Encore Properties Incorporated, a California nonprofit public benefit corporation, pursuant to a Loan Agreement dated May 1, 2022 (herein called the “Loan Agreement”), between the Authority and the Borrower, as acknowledged by 16955 Lemon Street LLC, a California limited liability company, as owner of the Facility and as lessor under and pursuant to the Lease, for the purposes and for on the terms and conditions set forth therein, (ii) funding a debt service reserve account, and (iii) paying certain costs of issuance of the Bonds. Proceeds of the loan will be used by the Borrower to finance working capital.

The Bonds are issuable only as fully registered Bonds in denominations of \$250,000 or any integral multiple of \$5,000 in excess thereof, except as otherwise provided in the Indenture. Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, Bonds may be exchanged, at the Principal Corporate Trust Office, for a like aggregate principal amount of Bonds of other authorized denominations.

Reference is hereby made to the Indenture (a copy of which is on file at said Principal Corporate Trust Office) and all indentures supplemental thereto, to the Loan Agreement (a copy of which is on file at said Principal Corporate Trust Office) and to the Act for a description of the rights thereunder of the registered owners of the Bonds, of the nature and extent of the security, of the rights, duties and immunities of the Bond Trustee and of the rights and obligations of the Authority thereunder, to all the provisions of which Indenture and Loan Agreement the registered owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds are secured by a pledge and assignment of Payments and of amounts held in the funds and accounts established pursuant to the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture.

The Bonds are subject to redemption prior to their respective stated maturities, at the times and redemption prices, upon the notice and subject to the terms and conditions set forth in the Indenture. If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

This Bond is transferable by the registered owner hereof, in person or by such person's attorney duly authorized in writing, at the Principal Corporate Trust Office, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a Bond or Bonds, of authorized denomination or denominations and for the same aggregate principal amount, will be issued to the transferee in exchange therefor.

The Authority and the Bond Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Authority and the Bond Trustee shall not be affected by any notice to the contrary.

It is hereby certified and recited that any and all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the provisions of the Act and by the Constitution and laws of the State of California, and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Act, or by the Constitution and laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon endorsed shall have been signed by the Bond Trustee.

This Bond shall be construed in accordance with and governed by the Constitution and the laws of the State of California applicable to contracts made and performed in the State of California.

**IN WITNESS WHEREOF**, the California Enterprise Development Authority has caused this Bond to be executed in its name and on its behalf by the facsimile signature of its Chair, as of the Dated Date recited above.

**CALIFORNIA ENTERPRISE  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Gubax Suhota  
Chair

**[FORM OF TRUSTEE'S CERTIFICATE OF  
AUTHENTICATION AND REGISTRATION]**

This is one of the Bonds described in the within-mentioned Indenture which has been authenticated and registered this \_\_\_\_\_.

**UMB Bank, N.A.,**  
as Bond Trustee

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

**ASSIGNMENT**

For value received the undersigned do(es) hereby sell, assign and transfer unto

\_\_\_\_\_  
(print or type name, address, taxpayer identification no.  
and zip code of assignee)

the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney, to transfer the same on the books of the Bond Trustee with full power of substitution in the premises.

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

\_\_\_\_\_  
Signature

BOND: The signature to the assignment must correspond to the name as written on the face of this Bond in every particular, without any alteration or change whatsoever.

Signature Guaranteed By: \_\_\_\_\_

BOND: The signature(s) to the assignment must be guaranteed by an eligible guarantor institution.



**EXHIBIT B**

**FORM OF REQUISITION FROM THE WORKING CAPITAL FUND**

The undersigned authorized representative of Western Encore Properties Incorporated, a California nonprofit public benefit corporation (the “Borrower”) hereby requests UMB Bank, N.A., as trustee (the “Trustee”) under that certain Indenture, dated as of May 1, 2022, between the California Enterprise Development Authority and the Bond Trustee, to pay to the Persons listed on Schedule I attached hereto, the amounts shown for the purposes indicated from the Working Capital Fund established and maintained under the Indenture.

The Borrower hereby certifies that (a) there has not been filed with or served upon the Borrower any notice of claim of lien, or attachment upon, or claim affecting the right to receive payment of, any of the amounts payable to any of the persons named in this Requisition, that has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen’s or mechanics’ liens accruing by mere operation of law; and (b) no Event of Default has occurred under the Loan Agreement.

All payments shall be made by check or wire transfer in accordance with payment instructions contained in Schedule I and the Bond Trustee shall have no duty or obligation to authenticate such payment instructions or the authorization thereof.

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

**WESTERN ENCORE PROPERTIES  
INCORPORATED**

By: \_\_\_\_\_  
[Chief Financial Officer]

Schedule I

(WORKING CAPITAL FUND REQUISITION)

<i>Item #</i>	<i>Payee Name/Address</i>	<i>Amount</i>	<i>Purpose</i>
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## EXHIBIT C

### FORM OF INVESTOR LETTER

California Enterprise Development Authority  
2150 River Plaza Drive, Suite 275  
Sacramento, California 95833

UMB Bank, N.A.  
120 South Sixth Street, Suite 1400  
Minneapolis, Minnesota 55402

Stifel, Nicolaus & Company, Incorporated  
2121 Avenue of the Stars, Suite 2050  
Los Angeles, California 90067

Re: California Enterprise Development Authority Charter School Revenue Bonds (Encore Education Corporation) 2022 (Taxable)

Ladies and Gentlemen:

The undersigned (the “Investor”) hereby acknowledges that it is purchasing \$[\_\_\_\_\_] aggregate principal amount of California Enterprise Development Authority [Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable)] (the “Bonds”) issued in authorized denominations of \$[\_\_\_\_\_] or any integral multiple of \$5,000 in excess thereof] pursuant to an Indenture of Trust, dated as of \_\_\_\_\_ (the “Bond Indenture”), by and between the California Enterprise Development Authority (the “Authority”) and UMB Bank, N.A. (the “Trustee”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Bond Indenture.

This letter is being provided pursuant to the Bond Indenture and, with respect to the initial purchaser of the Bonds, a Bond Placement Agreement, dated \_\_\_\_\_, 2022 (the “Bond Placement Agreement”), among the Authority, Western Encore Properties Incorporated (the “Borrower”),] Encore Education Corporation (“Encore Education”) and Stifel, Nicolaus & Company, Incorporated (the “Placement Agent”).

The Investor acknowledges that the proceeds of the Bonds will be used for the purposes, and that Bond principal and interest will be payable solely from the sources, described in the Private Placement Memorandum relating to the Bonds, dated \_\_\_\_\_, 2022 (the “Private Placement Memorandum”).

In connection with the sale of the Bonds to the Investor, the Investor hereby makes the following representations upon which you may rely:

1. The Investor has the authority and is duly authorized to purchase the Bonds and to execute this letter and any other instruments and documents required to be executed by the Investor in connection with its purchase of the Bonds.
2. The Investor is a “qualified institutional buyer” as that term is defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “Securities Act”), and has sufficient knowledge and experience in financial and business matters and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the Bonds.
3. The Investor acknowledges:

The Bonds are being acquired by the Investor for investment and not with a current view to, or for resale in connection with, any distribution of the Bonds, and the Investor intends to hold the Bonds solely for its own account for investment purposes for an indefinite period of time, and does not intend at this time to dispose of all or any part of the Bonds. However, the Investor may sell the Bonds at any time the Investor deems appropriate, but solely in compliance with applicable state and federal securities laws, rules, and regulations and subject to the transfer restrictions set forth in the Bonds and in the Bond Indenture. The Investor understands that it may need to bear the risks of its investment in the Bonds for an indefinite time, since any sale of the Bonds, or any portion thereof, prior to maturity may not be possible. The Investor understands that (A) the Bonds will be issued only in authorized minimum denominations, and confirms that it will not allocate Bonds to accounts in violation of such limitations; and (B) to the extent the Investor is purchasing the Bonds not on its own behalf but in its capacity as investment adviser to beneficial owners of separately managed accounts, such accounts will solely be for investors which meet the qualifications for investors as set forth in the Bond Indenture and as described in paragraph 2 of this letter and the investor is authorized to make the representations set forth in this letter on behalf of each such account. The Investor understands that the Placement Agent will not facilitate the establishment of such accounts and that the Bonds will be issued only in authorized minimum denominations, and confirms that it will not facilitate the deposit of Bonds into accounts in violation of such limitations.

4. The Investor understands that the Bonds are not, and are not intended to be, registered under the Securities Act and that such registration is not legally required as of the date hereof, and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the “blue sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating agency, and (d) will be delivered in a form that may not be readily marketable.
5. The Investor has been supplied with, and has reviewed, a copy of the Private Placement Memorandum for the Bonds. The Investor has had the opportunity to ask questions of and receive answers from the Borrower and Encore Education concerning the Investor's purchase of the Bonds and all matters relating thereto, and has received from the Borrower and Encore Education any additional information it deemed necessary in its decision to purchase the Bonds. Without limiting the foregoing, the Investor acknowledges the information referenced in the Private Placement Memorandum made available by Encore Education or the Borrower through their submissions on the Electronic Municipal Market Access (“EMMA”) website of the Municipal Securities Rulemaking Board (“MSRB”) concerning recent matters and pertinent to Encore Education's and the Landlord's operations and financial condition. The Investor acknowledges and agrees that neither the Authority nor the Placement Agent has made any representations to the Investor other than as set forth in the Private Placement Memorandum, and that the Private Placement Memorandum speaks only as of its date.
6. The Investor acknowledges and understands that the Bonds are a speculative investment and that investing in the Bonds is subject to a high degree of risk, including the risks described in the Private Placement Memorandum. The Investor understands that such risks may adversely affect the timely and full payment of principal and interest on the Bonds. The Investor represents that it can bear the economic risks associated with investing in the Bonds, including that it is capable of suffering a loss of the entirety of its investment represented by the Bonds.
7. The Investor acknowledges and agrees that the Placement Agent and the Authority take no responsibility for, and make no representation to, the Investor or any subsequent purchaser, with regard to any sale, transfer or other disposition of the Bonds, or any interest therein, in

violation of the provisions of the Indenture or applicable state and federal securities laws, rules and regulations, or any securities law or income tax law consequences thereof. The Investor also acknowledges that, with respect to the Authority's obligations and liabilities, the Investor is solely responsible for compliance with the sales restrictions on the Bonds and related legal requirements under applicable state and federal securities laws, rules and regulations in connection with any subsequent transfer of the Bonds made by the Investor.

8. The Investor agrees that it is bound by and will abide by the provisions of the Bond Indenture relating to transfer, the restrictions noted on the face of the Bonds and this Investor Letter. The Investor also covenants to comply with all applicable state and federal securities laws, rules and regulations in connection with any resale or transfer of the Bonds by the Investor.

THE BONDS MAY BE PURCHASED BY OR TRANSFERRED ONLY TO A QUALIFIED INSTITUTIONAL BUYER AS DEFINED IN THE BOND INDENTURE, AND ONLY IN COMPLIANCE WITH APPLICABLE STATE AND FEDERAL SECURITIES LAWS, RULES AND REGULATIONS.

9. The Purchaser understands that the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the Authority (which has no taxing power), any Authority Indemnified Party the State of California or any political subdivision or taxing district thereof; that the Bonds will never represent or constitute a general obligation or a pledge of the faith and credit of the Authority, any Authority Indemnified Party, the State of California or any political subdivision thereof; that no right will exist to have taxes levied by the State of California or any political subdivision thereof for the payment of principal and interest on the Bonds; and that the liability of the Authority with respect to the Bonds is subject to further limitations as set forth in the Bonds and the Bond Indenture.
10. The Authority, the Trustee and Bond Counsel have not undertaken and will not undertake steps to ascertain the accuracy or completeness of the information furnished to the Investor with respect to the Borrower, Encore Education or (with respect to the Authority and the Trustee) the Bonds. The Investor has not relied and will not rely upon the Authority, any Authority Indemnified Party in any way with regard to the accuracy or completeness of any information, other than the Authority Information, and the Investor has not relied and will not rely upon Bond Counsel in any way with regard to the accuracy or completion of any information, other than the information set forth under the headings "THE BONDS" and "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS."
11. The Investor acknowledges that the sale of the Bonds to the Investor is made in reliance upon the certifications, representations, and warranties herein made to the addressees hereto. The Investor agrees to indemnify and hold harmless the Authority and each Authority Indemnified Party with respect to any claim asserted against the Authority or any such Authority Party that is based upon Investor's breach of any representation, warranty or agreement made by it herein, or, made on its behalf by the Investor herein, other than any claim that is based upon the willful misconduct of the person seeking indemnification.
12. The Investor hereby waives any and all claims, actions, or causes of action which the Investor may have from and after the date hereof against the Authority and its members, officers, agents, and employees, growing out of any action (other than willful misconduct) which the Authority took or could have taken in connection with the authorization, execution, delivery, and sale of the Bonds or the purchase of the Bonds by the undersigned or in connection with any statements or representations which induced the undersigned to purchase the Bonds.

- 13. The interpretation of the provisions hereof shall be governed and construed in accordance with California law without regard to principles of conflicts of laws.
- 14. All representations of the Investor contained in this letter shall survive the execution and delivery of the Bonds to the Investor as representations of fact existing as of the date of execution and delivery of this Investor Letter.

Date: \_\_\_\_\_, 2022

Very truly yours,

[NAME OF INVESTOR]

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

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

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

**APPENDIX A**

**CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL,  
THE CORPORATION AND THE OBLIGATED GROUP**

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## APPENDIX A

### CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP

*Certain statements contained in this Appendix reflect forecasts, projections and “forward-looking statements.” No assurance can be given that the future results discussed herein will be achieved. Actual results may differ materially from the forecasts described herein. In this respect, the words “estimate,” “project,” “anticipate,” “expect,” “intend,” “believe” and similar expressions are intended to identify forward-looking statements. All projections, forecasts, assumptions, expressions of opinions, estimates and other forward-looking statements are expressly qualified in their entirety by the cautionary statements set forth in this Private Placement Memorandum. Unless otherwise noted, all information, data, and projections in this Appendix were furnished by the Borrower. All capitalized terms in this Appendix A that are not defined herein will have such meaning as given to them in the forepart of this Private Placement Memorandum.*

### ENCORE EDUCATION CORPORATION

The following section presents general information regarding Encore Education Corporation (“Encore”). However, the obligation of Encore to pay amounts due under the Lease is limited to the Gross School Revenues, as defined under the Lease, which are generally limited to revenues of Encore associated with the operation of Encore Jr./Sr. High School for the Performing and Visual Arts (the “School”). See “THE LEASE” in the forepart of the Private Placement Memorandum to which this Appendix is attached.

**The inclusion in this appendix of information regarding financial results of or the operation of any charter school other than the School does not indicate that such moneys are available for the satisfaction of obligations under the Lease.** Beneficial Owners of the Bonds and the Trustee will not have any rights against the assets of Encore to pay any debt service on the Bonds, except as specifically provided in the documents governing the issuance of the Bonds and the Lease.

#### **General**

Encore is a California nonprofit public benefit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). Encore currently holds one charter authorized by the Hesperia Unified School District (“Hesperia USD”) and operates one charter school in Hesperia, California focusing on preparing students with a passion for the arts for college. Encore is the recipient of all state and federal revenue related to the operation of the School.

#### **Governance and Administration**

**Board of Directors.** Encore is governed by its board of directors (the “Board”). The Board comprises no fewer than five and no more than nine members. The Board currently comprises four members, with one vacancy. Members of the Board serve terms of two years and until a successor is designated and qualified. Directors may serve multiple terms. In accordance with Section 47604I of the California Education Code, Hesperia USD is entitled to a representative on the Board; but Hesperia USD has not appointed a member of the Board.

Vacancies on the Board, except for a vacancy with respect to a representative appointed by the charter authorizer, may be filled by approval of the Board or, if the number of directors then in office is less than a quorum, by (a) the affirmative vote of a majority of the directors then in office at a regular or special meeting of the Board, or (b) a sole remaining director. A vacancy in the seat of the representative of the charter authorizer shall be filled by the charter authorizer.

The following table lists the current members of the Board as well as their titles, when they joined the Board and the expiration of their current term.

[TO BE UPDATED – ONE MEMBER HAS RESIGNED, PER SABRINA]

<b>Name</b>	<b>Title</b>	<b>Occupation</b>	<b>Joined Board</b>	<b>Term Expires</b>
Rob Gasler	President	Retired Firefighter	2017	June 2022
Chandale Sutton	Vice President	Human Resources Director	2021	June 2023
Dr. Kelly Ahmed	Secretary	Medical Doctor	2016	June 2023
Kathy Staley	Member		2020	June 2022
Glenn Thackeray	Member	Retired Fleet Manager for Mercedes	2021	June 2022

Source: *Encore*.

**Prior Administration; Investigative Report.** Encore was founded in 2007 by Denise Griffin and John Griffin, who served as Chief Executive Officer and Chief Operating Officer. As one condition of the most recent charter renewal of the School in January 2021 (described below), Hesperia USD (as defined below), as the School’s charter authorizer, required that Encore hire a qualified controller by March 1, 2021, to start full-time by May 1, 2021. Encore engaged a full-time controller (the “Controller”), who began work on March 16, 2021.

On July 27, 2021, the Controller notified Encore’s board of directors (the “Board”) that Encore was failing to comply with the conditions of its most recent charter renewal for the School, and followed with a document to the board outlining the Controller’s concerns related to Encore’s practices and failure to comply with the terms of its charter. Thereafter, on September 3, 2021, the Board engaged Encore’s legal counsel regarding the Controller’s concerns and, in consultation therewith, requested that Nicole Miller & Associates, Inc. (the “Investigator”), a full-service independent investigative firm, conduct an investigation into concerns raised by the Controller. On October 19, 2021, Encore received a letter from Hesperia USD expressing additional concerns, and the Investigator’s investigation was expanded to include those concerns.

Following receipt of the letter from Hesperia USD on October 19, 2021, the Board placed Denise Griffin and John Griffin on administrative leave in early November 2021.

On January 24, 2022, the Investigator issued a comprehensive report of its investigation and findings (the “Investigator’s Report”). A redacted copy of the Investigator’s Report is available on the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access (“EMMA”) website at <https://emma.msrb.org/P11573670-P11214889-P11635530.pdf>. Certain of the allegations investigated by the Investigator were partially or fully sustained, including:

- Continued use of debit cards despite their discontinuance being a condition in the MOU (as defined herein) between Encore and Hesperia USD;
- The Controller being excluded from determinations regarding salary increases; and
- Continued large purchases being made not preapproved under Encore’s new fiscal processes;

At its February 19, 2022 meeting, the Board voted to terminate Denise Griffin and John Griffin without cause on February 23, 2022. Employment contracts for Denise Griffin and John Griffin included a requirement for severance pay in the event of early termination; due to Encore’s financial situation, the Board authorized a payment to Denise Griffin and John Griffin of less than required under their employment contracts. See “OPERATING AND FINANCIAL INFORMATION – No Material Litigation” herein.

***Current Administration.*** In December 2021, Encore engaged Dr. Sabrina Bow as the Interim Executive Director of Encore. In March 2022, Dr. Bow was named the permanent Executive Director of Encore. The following is a brief biography of Dr. Bow.

**Dr. Sabrina Bow, Executive Director.** Dr. Bow joined the Encore team with 18 years of experience in educational administration and fundraising from colleges and schools in the greater Los Angeles area. As a former executive director of charter schools in the two largest school districts in the state, her perspective brought a veteran educator’s insight to the analysis and feasibility of school budgets, facilities, operations, and leadership capacity. Dr. Bow holds an MBA from University of Southern California’s Marshall School of Business, and a Doctorate in Education from University of California Los Angeles. Dr. Bow is a member of the Azusa Library Commission and Vice President of the Azusa Unified School District Governing Board.

**Fiscal Controller.** Carol Walker was engaged as Controller in March 2021. In April 2022, Ms. Walker notified Encore of her intention to retire and relocate, for personal reasons. Encore is currently searching for a new controller, with an expectation of filling the role by July 2022.

**Delta Managed Solutions.** Encore contracts with Delta Managed Solutions, Inc. (“DMS”) for payroll, purchasing, accounts payable, budgeting, and compliance services (collectively, “backoffice services”). Founded in 2003, DMS provides comprehensive backoffice services to charter schools in California and Nevada from its Sacramento location. See “OPERATING AND FINANCIAL INFORMATION – Outstanding Debt Obligations” herein.

## THE SCHOOL

### Charters

***History of Charters and Charter Schools Operated by Encore.*** Encore received its first charter from Hesperia USD in 2008 to establish the School, which opened in August 2008 initially serving 502 students in grades 7-12. On December 8, 2014, Riverside Unified School District (“Riverside USD”) authorized Encore’s second charter, and Encore opened Encore High School for the Arts – Riverside (“Encore Riverside”) in downtown Riverside, California in August 2015, initially serving 413 students in grades 7-10.

In July 2015, Encore entered into an agreement with Synergy Education Project to operate SEP High School in Pittsburg, California. In October 2015, the board of directors of Synergy Education Project resigned *en masse*, and in November 2015, Encore terminated its contract to manage the school. In ending its relationship with SEP High School, Encore cited circumstances surrounding the school that had not been disclosed to Encore, including corrective notices from the California Department of Education, deep rooted safety concerns regarding gang activity, discipline issues, student achievement issues, and operational, financial and procedural improprieties. The California Department of Education revoked the charter for SEP High School on January 14, 2016, and the school closed on January 22.

Encore received charter renewals for the School from Hesperia USD in 2011 and 2016, each for five-year terms.

In December 2019, Encore applied for renewal of the charter petition for Encore Riverside. At its February 18, 2020 board meeting, Riverside USD staff initially recommended denial of the charter petition, due in part to academic performance and fiscal challenges. The board of education agreed to delay acting on the renewal until a subsequent meeting, during which time Riverside USD and Encore to meet and confer on a possible renewal option. At its March 18, 2020 meeting, the Riverside USD board of education approved a charter renewal for Encore Riverside with various conditions. Approximately one month later, on April 30, 2020, the Encore board of directors voted to close Encore Riverside at the end of the 2019-20 fiscal year.

**2020 Charter Renewal.** On September 11, 2020, Encore submitted a petition to Hesperia USD seeking renewal of the charter for the School. In response to concerns expressed by Hesperia USD, Encore made various revisions to its charter petition and resubmitted it for review and action.

On November 4, 2020, Hesperia USD issued Encore a notice (the “November 4 Notice”) in accordance with the Education Code setting forth fiscal and governance factors that could support a finding that Encore is demonstrably unlikely to successfully implement the program set forth in its renewal charter petition. On November 27, 2020, Encore submitted a response to such notice. In a memorandum dated December 3, 2020, from Hesperia USD Assistant Superintendent to Hesperia USD Superintendent (the “Staff Analysis”), Hesperia USD staff recommended that the Hesperia USD Board of Trustees (the “Hesperia USD Board”) find that Encore had not satisfactorily addressed Hesperia USD’s concerns set forth in the November 4 Notice, that Encore’s corrective action plan has been unsuccessful, and that the Hesperia USD Board deny the School’s charter renewal because Encore is demonstrably unlikely to successfully implement the program set forth in its charter due to the fiscal and governance factors detailed in the November 4 Notice that remain unresolved by Encore’s response.

In the Staff Analysis, Hesperia USD staff recommended to the Hesperia USD Board that the Encore renewal charter be denied based on the findings and the facts set forth therein, however, in the event the Hesperia USD Board determines that the Encore renewal charter should be approved, such renewal be conditioned on Encore addressing all of the staff’s to its satisfaction, including but not limited to those specifically addressed in the November Notice and the Staff Analysis, as well as any additional conditions identified by the Hesperia USD Board.

On January 15, 2021, Encore submitted a revised charter petition to Hesperia USD. At its January 25, 2021 meeting, the Hesperia USD Board voted 4-1 to adopt a resolution conditionally approving the charter renewal for the School for a term through June 30, 2026, making written factual findings supporting denial, and denying the renewal charter if certain conditions are not met, including Encore updating its practices/procedures/policies and/or revise its charter and/or enter into and execute a memorandum of understanding (“MOU”) with Hesperia USD satisfactory to Hesperia USD, in its sole discretion, that will address all of Hesperia USD staff’s concerns with the renewal charter, including but not limited to those specified in the Staff Analysis and in the November 4 Notice, and any additional concerns and requirements as noted by the Hesperia USD Board.

On \_\_\_\_\_, 2021, Encore and Hesperia USD entered into the MOU, the form of which is attached as Exhibit A to this Appendix to the Private Placement Memorandum.

**Authorizer Relations.** On March 17, 2022, the Superintendent of Hesperia USD issued a letter addressed to Encore, stating the following:

To continue fulfilling all oversight duties as the authorizer for [the School], we have received and reviewed the following documentation submitted by Encore to date: (a) annual audited financial statements including findings and recommendations; (b) year to date budget, financial, and cash flow reports; and (c) an investigative report dated January 24, 2022, relating to purchasing, accounting controls, student service fund accounting, and other issues. Based on [Hesperia USD’s] review of these documents, [Hesperia USD] has no current plan to revoke or non-renew Encore’s charter. [Hesperia USD’s] execution of this letter is explicitly on the basis that it reflects [Hesperia USD’s] current understanding and belief, including based on the current status of Encore’s representations and stated efforts to address areas of concern reflected in the above-referenced documents and the conditions of renewal of Encore’s charter, including but not limited to the terms of the Memorandum of Understanding approved by the [Hesperia USD] Board on May 3, 2021, between Encore and [Hesperia USD] (“MOU”). Hesperia USD expressly reserves the right to determine that Encore is and/or has been operating in violation of the law and/or its charter or has engaged in

fiscal mismanagement, and to issue a Notice(s) of Violations, a Notice(s) of Intent to Revoke, to revoke Encore’s charter, and/or take any and all steps or measures [Hesperia USD] deems necessary or appropriate in its role as chartering authority pursuant to the applicable provisions of the Education Code.

Finally, [Hesperia USD’s] execution of this correspondence is not precedent setting and nothing in this correspondence can be utilized by Encore or any Encore creditors in any proceedings that may arise after the date of the submission of this correspondence, including, but not limited to, any effort by Encore to use this correspondence as evidence of Encore’s compliance with its charter, the MOU, and/or law in response to any notice, concern, or other proceeding or action raised or instituted by [Hesperia USD].

**Enrollment and Attendance**

**Enrollment.** The following tables present historical and projected enrollment by grade at the School.

**TABLE 2  
HISTORICAL ENROLLMENT<sup>(1)</sup>  
2016-17 through 2021-22  
The School**

	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21</u>	<u>2021-22</u>
7 <sup>th</sup> Grade	314	200	178	205	167	126	99
8 <sup>th</sup> Grade	249	263	196	205	202	169	144
9 <sup>th</sup> Grade	202	182	196	167	165	147	124
10 <sup>th</sup> Grade	184	154	165	190	165	133	141
11 <sup>th</sup> Grade	160	166	139	137	156	126	103
12 <sup>th</sup> Grade	119	120	148	113	114	157	111
<b>Total</b>	<b>1,228</b>	<b>1,085</b>	<b>1,022</b>	<b>1,017</b>	<b>969</b>	<b>858</b>	<b>722</b>

<sup>(1)</sup> Reflects certified enrollment as of the fall census day (the first Wednesday in October), as reported to the California Longitudinal Pupil Achievement Data System (“CALPADS”) in each school year.  
Source: Encore.

**TABLE 3  
PROJECTED ENROLLMENT<sup>(1)</sup>  
2022-23 through 2026-27  
The School**

	<u>2022-23</u>	<u>2023-24</u>	<u>2024-25</u>	<u>2025-26</u>	<u>2026-27</u>
7 <sup>th</sup> Grade					
8 <sup>th</sup> Grade					
9 <sup>th</sup> Grade					
10 <sup>th</sup> Grade					
11 <sup>th</sup> Grade					
12 <sup>th</sup> Grade					
<b>Total</b>					

Source: Encore.

**Average Daily Attendance and EL/LI Enrollment.** The table below shows the School’s average daily attendance (“ADA”) and percentage of English learners and low income (“EL/LI”) student enrollment, from the 2016-17 school year through the 2021-22 school year. See “APPENDIX D – CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING – STATE FUNDING OF EDUCATION – Allocation of State Funding to Charter Schools – Local Control Funding Formula” attached to this Private Placement Memorandum.

**TABLE 4**  
**AVERAGE DAILY ATTENDANCE AND EL/LI ENROLLMENT**  
**2016-17 through 2021-22**  
 The School

*Average Daily Attendance<sup>(1)</sup>*

	<i>Funded 7-8 ADA</i>	<i>Funded 9-12 ADA</i>	<i>Total ADA</i>	<i>% of EL/LI Enrollment<sup>(2)</sup></i>
2016-17	428.95	569.50	998.45	53.0%
2017-18	353.41	599.58	952.99	55.3
2018-19	381.20	559.28	940.48	58.9
2019-20	342.10	557.17	899.27	60.4
2020-21	342.10	557.17	899.27	57.8
2021-22	231.61	428.29	659.90	55.0

<sup>(1)</sup> For school years 2016-17 through 2019-20, reflects ADA as of the second principal reporting period (“P-2 ADA”), ending on or before the last attendance month prior to April 15 of each school year. An attendance month is equal to each four week period of instruction beginning on the first day of school. For school year 2020-21, reflects ADA as of the first principal reporting period (“P-1 ADA”).

<sup>(2)</sup> Reflects certified enrollment as of the fall census day (the first Wednesday in October), which is reported to CALPADS in each school year and is used to calculate the School’s unduplicated EL/LI student enrollment. Adjustments may be made to the certified EL/LI counts by the State Department of Education. A school’s percentage of unduplicated EL/LI students is based on a rolling average of its EL/LI enrollment for the current fiscal year and the two immediately preceding fiscal years.

Source: *Encore*.

**Student Retention.** The following table sets forth, for the periods shown, the percentage of students enrolled at the School from the prior school year that returned as students in the latter school year.

**TABLE 5**  
**HISTORICAL STUDENT RETENTION<sup>(1)</sup>**  
**2016-17 through 2021-22**  
 The School

<i>Student Retention</i>
2016-17 to 2017-18
2017-18 to 2018-19
2018-19 to 2019-20
2019-20 to 2020-21
2020-21 to 2021-22

<sup>(1)</sup> Data reflect certified enrollment as of the fall census day (the first Wednesday in October), which is reported to CALPADS in each school year. Enrollment may vary throughout the school year as students enroll or leave the Obligated Group Schools.

Source: *Encore*.

**Academic Results**

**CAASPP.** Academic Performance Index (“API”) scores have, in the past, been calculated using results of the State’s STAR program and, for high school students, the California High School Exit Examination (“CAHSEE”). Changes to the Education Code enacted in 2013 deleted certain provisions of State law establishing the STAR program and replaced them with the California Assessment of Student Performance and Progress program (“CAASPP”), effective July 1, 2014. As a means to assess certain elementary and secondary pupils, CAASPP comprises:

(a) the State’s Smarter Balanced Assessments, composed of (i) summative assessments in English language arts (“ELA”) and mathematics for grades 3 to 8 inclusive, and grade 11, (ii) interim assessments to monitor student progress toward mastery of the Common Core State Standards in ELA and mathematics, and (iii) a “Digital Library” consisting of tools and practices designed to help teachers utilize formative assessment processes for improved teaching and learning;

(b) alternate assessments for ELA and mathematics in grades 3 through 8 and 11, that are based on alternate achievement standards and aligned with the Common Core State Standards for students with significant cognitive disabilities;

(c) science assessments in grades 5, 8, and 10, measuring specified content standards, currently composed of (i) the California Standards Test (“CST”) for students in public schools, (ii) the California Modified Assessment (“CMA”) for students with an individualized education program, and the (iii) California Alternate Performance Assessment (“CAPA”) for students with significant cognitive disabilities; and

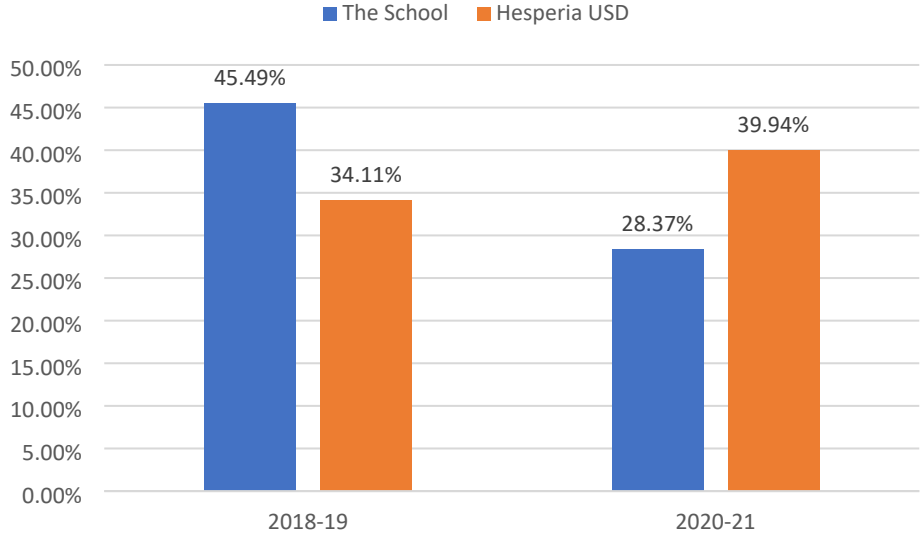
(d) the Standards-based Tests in Spanish (“STS”), which are multiple-choice tests that allow Spanish-speaking English learners in grades 2 through 11 to demonstrate their knowledge of California content standards by taking a reading/language arts (“RLA”) assessment in their primary language.

The following figure summarizes the performance of the School on CAASPP Smarter Balanced Assessments for ELA and mathematics in 2018-19 and 2020-21, compared against results for students in grades 7, 8 and 11 in Hesperia USD. Due to the outbreak of COVID-19, the State suspended the administration of the Smarter Balanced Assessments for the 2019-20 school year.

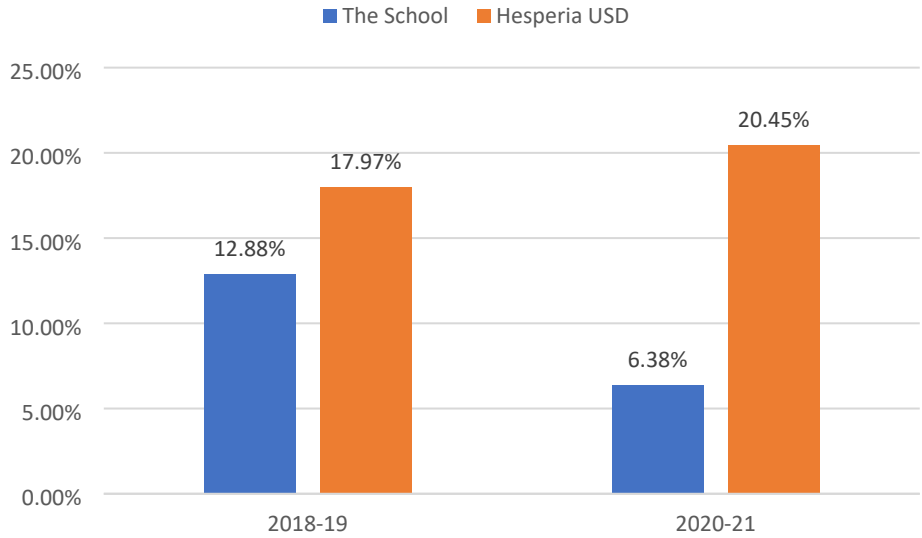
**FIGURE 1**  
**SMARTER BALANCED ASSESSMENTS CONSORTIUM (SBAC) RESULTS**  
**Percent of Students Met or Exceeded Standard<sup>(1)</sup>**

The School and Hesperia USD  
 2018-19 and 2020-21

**English Language Arts**



**Mathematics**



<sup>(1)</sup> Percentages shown are sums of percentages of students in grades 7, 8 and 11 indicated as “Standards Met” and “Standards Exceeded” in Smarter Balanced Assessment results for the 2018-19 and 2020-21 school years.  
 Source: California Department of Education.



**California School Dashboard.** The California State Board of Education (“SBE”) has adopted an integrated accountability and continuous improvement system (the “Accountability System”) that is used to evaluate local education agency (“LEA”) and school performance in areas critical to students’ preparedness for college and career. The Accountability System is aligned to both (i) the LCFF priority areas, as required under State law, and (ii) accountability measures required under the provisions of the federal Every Student Succeeds Act. Performance by individual LEAs and schools under the Accountability System is reported through the State’s California School Dashboard (the “Dashboard”).

The Accountability System measures performance in the following priority areas using various state and local indicators:

Priority Areas	State Indicator	Local Indicator
Basic Services or Basic Condition at schools	N/A	Appropriately assigned teachers, access to curriculum-aligned instructional materials, and safe, clean and functional school facilities
Implementation of State Academic Standards	N/A	Progress in implementing state academic standards
Parent Engagement	N/A	Progress in seeking input from parents in decision making and promoting parental participation in programs
Student Achievement	<ul style="list-style-type: none"> <li>Academic Performance (Grades 3-8 and Grade 11);</li> <li>English Learners Progress</li> </ul>	N/A
Student Engagement	<ul style="list-style-type: none"> <li>Graduation Rate;</li> <li>Chronic Absenteeism</li> </ul>	N/A
School Climate	Suspension Rate	Administration of a local climate survey at least every other year that provides a valid measure of perceptions of school safety and connectedness to students in at least one grade within the grade span(s) that the LEA serves (e.g., K-5, 6-8, 9-12)
Access to a Broad Course of Study	N/A	Annually measures progress on the extent students have access to, and are enrolled in, a broad course of study
Outcomes in a Broad Course of Study	College/Career	N/A

Source: California Department of Education.

**State Indicators.** The Accountability System measures performance on state indicators through a combination of current performance (“Status”) and improvement over time (“Change”). Both Status and Change are weighted equally, and scores approved by SBE serve as performance standards based on the state-wide distribution of Status and Change for each indicator. For each state indicator, a school or LEA will be assigned (i) a Status level of Very High, High, Medium, Low or Very Low; and (ii) a Change level of Increased Significantly, Increased, Maintained, Declined or Declined Significantly. For each state indicator, the combination of Status level and Change level yields a performance level of Blue, Green, Yellow, Orange or Red, with Blue representing the highest performance and Red indicating the lowest performance. Any performance level below Green indicates that improvement is needed.

**Local Indicators.** The local indicators require LEAs (including individual charter schools) to determine whether they have Met, Not Met, or Not Met for More than Two Years the standards for each local

indicator. For each local indicator, LEAs (and charter schools) must (i) measure their progress using locally available information, (ii) report the results at a regularly scheduled public meeting of the LEA’s (or charter school’s) local governing board, and (iii) upload the results to the public through the Dashboard.

**School Performance Overview.** Each LEA and school’s School Performance Overview provides the performance level for all students on state and local indicators, including how the current year (status) compares to prior years (change) for each state indicator. Status and change each have five possible levels, which are displayed with the data for each indicator.

Due to the COVID-19 pandemic, State law suspended the reporting of state and local indicators for the Dashboard in 2020 and 2021. Additionally, the State suspended the administration of the Smarter Balanced Assessments for the 2019-20 school year. See “CERTAIN RISK FACTORS – Outbreak of Disease; Coronavirus” in the forepart of this Private Placement Memorandum. It is uncertain whether such closures and suspension of testing will affect the Dashboard for the 2021-22 school year. Below are the 2019 Dashboard results for the School.

**TABLE 5**  
**CALIFORNIA SCHOOL DASHBOARD STATE AND LOCAL INDICATORS<sup>(1)</sup>**  
**2019**  
 The School

<u>State Indicators</u>	<u>All Students Performance<sup>(1)</sup></u>	<u>Status</u>	<u>Change</u>
Chronic Absenteeism <sup>(2)</sup>		20.9% chronically absent	Increased (+4.1%)
Suspension Rate <sup>(3)</sup>		1.1% suspended at least once	Declined (-4.1%)
English Learner Progress <sup>(4)</sup>	N/A <sup>(3)</sup>	Low – 38.4% making progress towards English proficiency	N/A <sup>(3)</sup>
English Language Arts <sup>(5)</sup>		17 points below standard	Increased (+18.4 points)
Mathematics <sup>(5)</sup>		103.6 points below standard	Increased (+19.9 points)
Graduation Rate <sup>(6)</sup>		94.2% graduated	Declined (-2.6%)
College/Career <sup>(7)</sup>		37.8% prepared	Increased (+5.8%)
<b><u>Local Indicators</u></b>		<b><u>Ratings</u></b>	
Basics: Teachers, Instructional Materials, Facilities)		Standard Met	
Implementation of Academic Standards		Standard Met	
Parent and Family Engagement		Standard Met	
Local Climate Survey		Standard Met	
Access to a Broad Course of Study		Standard Met	

[FOOTNOTES ON FOLLOWING PAGE]

- (1) Performance levels include, from highest to lowest, Blue, Green, Yellow, Orange and Red, based on the Status and Change levels for each indicator.
- (2) Chronic Absenteeism Status level is based on the number of students absent for 10% or more of instructional days within the 2018-19 school year. Chronic Absenteeism Change level is based on the difference between the chronic absenteeism rates for the 2018-19 and 2017-18 school years.
- (3) Suspension Rate Status level is based on the unduplicated number of students suspended within the 2018-19 school year. Suspension Rate Change level is based on the difference between the suspension rates for the 2018-19 and 2017-18 school years.
- (4) English Learner Progress Status level is based on the percentage of English Language Proficiency Assessments for California (“ELPAC”) test takers scoring at a proficient level in the 2018-19 school year. A school’s progress level is deemed Very Low for less than 35%; Low for 35% to less than 45%; Medium for 45% to less than 55%; High for 55% to less than 65%; and Very High for 65% or higher. No Change levels are available for 2019, as the 2017-18 school year was the first year that California transitioned from the California English Language Development Test to the ELPAC and three years of ELPAC data are required to calculate Change.
- (5) English Language Arts (“ELA”) and Mathematics Status levels are based on the sum of all grades 3-8 and 11 students’ distance from the minimum score qualifying a student for “Standards Met” on the ELA or Math 2018-19 Smarter Balanced Assessment, divided by the total number of 2018-19 Smarter Balanced Assessment ELA or Math test takers. English Language Arts and Mathematics Change levels are based on the difference between the current year and prior year Status levels.
- (6) Percentage of students who received a high school diploma within four or five years of entering ninth grade or completed their graduation requirements at an alternative school.
- (7) Determination of whether high school students are prepared for success after graduation based on measures like graduation rate, performance on state tests, and college credit courses.

*Source: California Department of Education.*

**OPERATING AND FINANCIAL INFORMATION**

**Historical Financial Results**

The following table presents the audited statements of activities and changes in net assets for the School for fiscal years 2017-18 through 2020-21.

**TABLE 6**  
**STATEMENT OF ACTIVITIES**  
**2017-17 through 2020-21**  
 The School

	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21</u>
<b>SUPPORT AND REVENUES:</b>				
State Revenue:				
State Aid				
Other State Revenue				
Federal revenue:				
Grants and Entitlements				
PPP Loan Forgiveness				
Local revenues:				
In-Lieu Property Tax Revenue				
Contributions				
Investment Income				
Other Revenue				
Total revenues	_____	_____	_____	_____
<b>EXPENSES:</b>				
Program services				
Management and general				
Total expenses	_____	_____	_____	_____
<b>CHANGE IN NET ASSETS</b>				
Net Assets, Beginning of Year	_____	_____	_____	_____
<b>NET ASSETS, END OF YEAR</b>				

*Source: Encore; Audited Financial Reports for Fiscal Years 2017-18 through 2020-21.*

**Historical Statements of Financial Position**

The following table sets forth the audited assets, liabilities and net assets of the School as of June 30 of each year for fiscal years 2017-18 through 2020-21.

**TABLE 7**  
**STATEMENT OF FINANCIAL POSITION**  
**2017-18 through 2020-21**  
 The School

	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21</u>
<b><u>CURRENT ASSETS</u></b>				
Cash and Cash Equivalents				
Accounts receivable – Federal and State				
Accounts receivable – Other				
Prepaid Expenses and Other Assets				
Total current assets				
Total assets				
<b><u>CURRENT LIABILITIES</u></b>				
Accounts Payable and Accrued Liabilities				
Deferred Revenue				
Factored Receivables Liability				
Notes Payable, Current Portion				
Total Current Liabilities				
<b><u>LONG-TERM LIABILITIES</u></b>				
Notes Payable				
Total Liabilities				
<b>NET ASSETS:</b>				
Without donor restriction				
With donor restrictions				
Total net assets				
Total liabilities and net assets				

*Source: Encore; Audited Financial Reports for Fiscal Years 2017-18 through 2020-21.*

**Financial Statements**

The audited financial statements of Encore for the year ended June 30, 2021 (the “2020-21 Audit”) are set forth in “APPENDIX B – AUDITED FINANCIAL STATEMENTS OF ENCORE FOR THE YEAR ENDED JUNE 30, 2021” attached to this Private Placement Memorandum.

Nigro & Nigro PC, Encore’s auditor for the fiscal year ending June 20, 2021 (the “Auditor’), has not been engaged to perform and has not performed, since the date of the 2020-21 Audit, any procedures on the financial statements addressed in the 2020-21 Audit. The Auditor also has not performed any procedures relating to this Private Placement Memorandum.

The Auditor identifies various material weaknesses and significant deficiencies relating to Encore’s financial reporting, and several findings of noncompliance with State program rules and regulations. See the 2020-21 Audit set forth in “APPENDIX B – AUDITED FINANCIAL STATEMENTS OF ENCORE FOR THE YEAR ENDED JUNE 30, 2021” attached to this Private Placement Memorandum.

**Management Discussion and Analysis; 2020-21 and 2021-22 Fiscal Years**

[TO COME]

**Retirement Programs**

Qualified Encore employees are covered under multiple-employer defined benefit pension plans. Classified employees are members of the California Public Employees’ Retirement System (“PERS”), and certificated employees are members of the California State Teachers’ Retirement System (“STRS”). See “CERTAIN RISK FACTORS – Specific Risks of Charter Schools – State Retirement Systems” in the forepart of this Limited Offering Memorandum.

**STRS.** Encore’s full-time certificated teachers are members of the State Teachers’ Retirement System. STRS provides retirement, disability and survivor benefits to plan members and beneficiaries under a defined benefit program (the “STRS Defined Benefit Program”). The STRS Defined Benefit Program is funded through a combination of investment earnings and statutorily set contributions from three sources: employees, employers, and the State. Benefit provisions and contribution amounts are established by State statutes, as legislatively amended from time to time.

Prior to fiscal year 2014-15, and unlike typical defined benefit programs, none of the employee, employer nor State contribution rates to the STRS Defined Benefit Program varied annually to make up funding shortfalls or assess credits for actuarial surpluses. In recent years, the combined employer, employee and State contributions to the STRS Defined Benefit Program have not been sufficient to pay actuarially required amounts. As a result, and due to significant investment losses, the unfunded actuarial liability of the STRS Defined Benefit Program has increased significantly in recent fiscal years. In September 2013, STRS projected that the STRS Defined Benefit Program would be depleted in 31 years assuming existing contribution rates continued, and other significant actuarial assumptions were realized. In an effort to reduce the unfunded actuarial liability of the STRS Defined Benefit Program, the State passed the legislation described below to increase contribution rates.

Prior to July 1, 2014, participant employers were required by such statutes to contribute 8.25% of eligible salary expenditures, while participants contributed 8% of their respective salaries. On June 24, 2014, the Governor signed AB 1469 (“AB 1469”) into law as a part of the State’s fiscal year 2014-15 budget. AB 1469 seeks to fully fund the unfunded actuarial obligation with respect to service credited to members of the STRS Defined Benefit Program before July 1, 2014 (the “2014 Liability”), within 32 years, by increasing member, participant employers and State contributions to STRS. Commencing July 1, 2014, the employee contribution rate increased over a three-year phase-in period in accordance with the following schedule:

**MEMBER CONTRIBUTION RATES  
STRS (Defined Benefit Program)**

<u>Effective Date</u>	<u>STRS Members Hired Prior to January 1, 2013</u>	<u>STRS Members Hired After January 1, 2013</u>
July 1, 2014	8.150%	8.150%
July 1, 2015	9.200	8.560
July 1, 2016	10.250	9.205

*Source: AB 1469.*

Pursuant to the Reform Act (defined below), the contribution rates for members hired after the Implementation Date (defined below) will be adjusted if the normal cost increases by more than 1% since the last time the member contribution was set. The contribution rate for employees hired after the Implementation Date (defined below) increased from 9.205% of creditable compensation for fiscal year commencing July 1, 2017 to 10.205% of creditable compensation effective July 1, 2018. For fiscal year commencing July 1, 2021,

the contribution rate is 10.250% for employees hired before the Implementation Date and 10.205% for employees hired after the Implementation Date, which remain unchanged the past two fiscal years.

Pursuant to AB 1469, participant employers’ contribution rate will increase over a seven-year phase-in period in accordance with the following schedule:

**PARTICIPANT EMPLOYER CONTRIBUTION RATES  
STRS (Defined Benefit Program)**

<u>Effective Date</u>	<u>K-14 School Districts</u>
July 1, 2014	8.88%
July 1, 2015	10.73
July 1, 2016	12.58
July 1, 2017	14.43
July 1, 2018	16.28
July 1, 2019	18.13
July 1, 2020	19.10

*Source: AB 1469.*

Based upon the recommendation from its actuary, for fiscal year 2021-22 and each fiscal year thereafter the STRS Teachers’ Retirement Board (the “STRS Board”), is required to increase or decrease the participant employers’ contribution rate to reflect the contribution required to eliminate the remaining 2014 Liability by June 30, 2046; provided that the rate cannot change in any fiscal year by more than 1% of creditable compensation upon which members’ contributions to the STRS Defined Benefit Program are based; and provided further that such contribution rate cannot exceed a maximum of 20.25%. In addition to the increased contribution rates discussed above, AB 1469 also requires the STRS Board to report to the State Legislature every five years (commencing with a report due on or before July 1, 2019) on the fiscal health of the STRS Defined Benefit Program and the unfunded actuarial obligation with respect to service credited to members of that program before July 1, 2014. The reports are also required to identify adjustments required in contribution rates for participant employers and the State in order to eliminate the 2014 Liability.

On June 27, 2019, the Governor signed SB 90 (“SB 90”) into law as a part of the 2019-20 Budget. Pursuant to SB 90, the State Legislature appropriated \$2.246 billion to be transferred to the Teacher’s Retirement Fund for the STRS Defined Benefit Program to pay in advance, on behalf of employers, part of the contributions required for fiscal years 2019-20 and 2020-21, resulting in participant employers having to contribute 1.03% less in fiscal year 2019-20 and 0.70% less in fiscal year 2020-21, resulting in employer contribution rates of 17.1% in fiscal year 2019-20 and 18.4% in fiscal year 2020-21. In addition, the State made a contribution of \$1.117 billion to be allocated to reduce the employer’s share of the unfunded actuarial obligation determined by the STRS Board upon recommendation from its actuary. This additional payment was reflected in the June 30, 2020 actuarial valuation. Subsequently, the State’s 2020-21 Budget redirected \$2.3 billion previously appropriated to STRS and PERS pursuant to SB 90 for long-term unfunded liabilities to further reduce the employer contribution rates in fiscal year 2020-21 and 2021-22. As a result, the effective employer contribution rate was 16.15% in fiscal year 2020-21 and is 16.92% in fiscal year 2021-22. See “STATE FUNDING OF EDUCATION – General” in the forepart of this Limited Offering Memorandum.

Encore’s contributions to STRS were \$ \_\_\_\_\_ for fiscal year 2016-17, \$ \_\_\_\_\_ for fiscal year 2017-18, \$785,803 for fiscal year 2018-19, \$762,477 for fiscal year 2019-20 and \$436,634 for fiscal year 2020-21. Encore has budgeted its contribution to STRS to be \$ \_\_\_\_\_ for fiscal year 2021-22.

The State also contributes to STRS, currently in an amount equal to 8.328% for fiscal year 2021-22. The State’s contribution reflects a base contribution rate of 2.017%, and a supplemental contribution rate that will vary from year to year based on statutory criteria. Based upon the recommendation from its actuary, for

fiscal year 2017-18 and each fiscal year thereafter, the STRS Board is required, with certain limitations, to increase or decrease the State's contribution rates to reflect the contribution required to eliminate the unfunded actuarial accrued liability attributed to benefits in effect before July 1, 1990. The STRS Board approved State supplemental contribution rate for fiscal year 2021-22 reflects an increase of 0.5% of payroll, the maximum allowed under current law.

In addition, the State is currently required to make an annual general fund contribution up to 2.5% of the fiscal year covered STRS member payroll to the Supplemental Benefit Protection Account (the "SBPA"), which was established by statute to provide supplemental payments to beneficiaries whose purchasing power has fallen below 85% of the purchasing power of their initial allowance.

**PERS.** Classified employees working four or more hours per day are members of the California Public Employees' Retirement System ("PERS"). PERS provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. Benefit provisions are established by the State statutes, as legislatively amended from time to time. PERS operates a number of retirement plans including the Public Employees Retirement Fund ("PERF"). PERF is a multiple-employer defined benefit retirement plan. In addition to the State, employer participants at June 30, 2019 included 1,612 public agencies and 1,319 K-14 school districts and charter schools. PERS acts as the common investment and administrative agent for the member agencies. The State and participant employers (for "classified employees," which generally consist of school employees other than teachers) are required by law to participate in PERF. Employees participating in PERF generally become fully vested in their retirement benefits earned to date after five years of credited service. One of the plans operated by PERS is for schools throughout the State (the "Schools Pool").

Contributions by employers to the Schools Pool are based upon an actuarial rate determined annually and contributions by plan members vary based upon their date of hire. Pursuant to SB 90, the State Legislature appropriated \$904 million to the Schools Pool, including transfers in fiscal years 2019-20 and 2020-21 to the Public Employees Retirement Fund to pay, in advance on behalf of K-14 school district employers, part of the contributions required for K-14 school district employers for such fiscal years, as well as additional amounts to be applied toward certain unfunded liabilities for K-14 school district employers. In June 2020, SB 90 was amended by Assembly Bill 84/Senate Bill 111 ("AB 84"). Under AB 84, \$144 million of the State contribution under SB 90 was deemed to satisfy a portion of the State's required contribution in fiscal year 2019-20, and the amounts previously allocated toward future liabilities were redirected such that, \$430 million will satisfy a portion of the employer contribution rate in fiscal year 2020-21, and \$330 million will satisfy a portion of the employer contribution rate in fiscal year 2021-22. As a result of the payments made by the State pursuant to SB 90, as amended by AB 84, the employer contribution rate was 19.721% for fiscal year 2019-20, 20.7% in fiscal year 2020-21, and will be 22.91% in fiscal year 2021-22. See "STATE FUNDING OF EDUCATION – General" in the forepart of this Limited Offering Memorandum. Participants enrolled in PERS prior to January 1, 2013 contribute at a rate established by statute, which is 7% of their respective salaries in fiscal year 2020-21 and will be 7% of such salaries in fiscal year 2021-22, while participants enrolled after January 1, 2013 contribute at an actuarially determined rate, which is 7% in fiscal year 2020-21 and will be 7% in fiscal year 2021-22. See "– California Public Employees' Pension Reform Act of 2013" herein.

Encore's contributions to PERS were \$ \_\_\_\_\_ for fiscal year 2016-17, \$ \_\_\_\_\_ for fiscal year 2017-18, \$709,146 for fiscal year 2018-19, \$718,972 for fiscal year 2019-20 and \$409,505 for fiscal year 2020-21. Encore has budgeted its contribution to PERS to be \$ \_\_\_\_\_ for fiscal year 2021-22.

**State Pension Trusts.** Each of STRS and PERS issues a separate comprehensive financial report that includes financial statements and required supplemental information. Copies of such financial reports may be obtained from each of STRS and PERS as follows: (i) STRS, P.O. Box 15275, Sacramento, California 95851-0275; (ii) PERS, P.O. Box 942703, Sacramento, California 94229-2703. Moreover, each of STRS and PERS maintains a website, as follows: (i) STRS: [www.calstrs.com](http://www.calstrs.com); (ii) PERS: [www.calpers.ca.gov](http://www.calpers.ca.gov). However, the



information presented in such financial reports or on such websites is not incorporated into this Limited Offering Memorandum by any reference.

Both STRS and PERS have substantial statewide unfunded liabilities. The amount of these unfunded liabilities will vary depending on actuarial assumptions, returns on investments, salary scales and participant contributions. The following table summarizes information regarding the actuarially-determined accrued liability for both STRS and PERS. Actuarial assessments are “forward-looking” information that reflect the judgment of the fiduciaries of the pension plans, and are based upon a variety of assumptions, one or more of which may not materialize or be changed in the future. Actuarial assessments will change with the future experience of the pension plans.

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**FUNDED STATUS**  
**STRS (Defined Benefit Program) and PERS (Schools Pool)**  
**(Dollar Amounts in Millions)<sup>(1)</sup>**  
**Fiscal Years 2010-11 through 2019-20**

<u>STRS</u>					
<u>Fiscal Year</u>	<u>Accrued Liability</u>	<u>Value of Trust Assets (MVA)<sup>(2)</sup></u>	<u>Unfunded Liability (MVA)<sup>(2)</sup></u>	<u>Value of Trust Assets (AVA)<sup>(3)</sup></u>	<u>Unfunded Liability (AVA)<sup>(3)</sup></u>
2010-11	\$208,405	\$147,140	\$68,365	\$143,930	\$64,475
2011-12	215,189	143,118	80,354	144,232	70,957
2012-13	222,281	157,176	74,374	148,614	73,667
2013-14	231,213	179,749	61,807	158,495	72,718
2014-15	241,753	180,633	72,626	165,553	76,200
2015-16	266,704	177,914	101,586	169,976	96,728
2016-17	286,950	197,718	103,468	179,689	107,261
2017-18	297,603	211,367	101,992	190,451	107,152
2018-19	310,719	225,466	102,636	205,016	105,703
2019-20	322,127	233,253	107,999	216,252	105,875

<u>PERS</u>					
<u>Fiscal Year</u>	<u>Accrued Liability</u>	<u>Value of Trust Assets (MVA)</u>	<u>Unfunded Liability (MVA)</u>	<u>Value of Trust Assets (AVA)<sup>(3)</sup></u>	<u>Unfunded Liability (AVA)<sup>(3)</sup></u>
2010-11	\$58,358	\$45,901	\$12,457	\$51,547	\$6,811
2011-12	59,439	44,854	14,585	53,791	5,648
2012-13	61,487	49,482	12,005	56,250	5,237
2013-14	65,600	56,838	8,761	-- <sup>(4)</sup>	-- <sup>(4)</sup>
2014-15	73,325	56,814	16,511	-- <sup>(4)</sup>	-- <sup>(4)</sup>
2015-16	77,544	55,785	21,759	-- <sup>(4)</sup>	-- <sup>(4)</sup>
2016-17	84,416	60,865	23,551	-- <sup>(4)</sup>	-- <sup>(4)</sup>
2017-18	92,071	64,846	27,225	-- <sup>(4)</sup>	-- <sup>(4)</sup>
2018-19 <sup>(5)</sup>	99,528	68,177	31,351	-- <sup>(4)</sup>	-- <sup>(4)</sup>
2019-20 <sup>(6)</sup>	104,062	71,400	32,662	-- <sup>(4)</sup>	-- <sup>(4)</sup>

(1) Amounts may not add due to rounding.

(2) Reflects market value of assets, including the assets allocated to the SBPA reserve. Since the benefits provided through the SBPA are not a part of the projected benefits included in the actuarial valuations summarized above, the SBPA reserve is subtracted from the STRS Defined Benefit Program assets to arrive at the value of assets available to support benefits included in the respective actuarial valuations.

(3) Reflects actuarial value of assets.

(4) Effective for the June 30, 2014 actuarial valuation, PERS no longer uses an actuarial value of assets.

(5) For fiscal year 2020-21, the additional \$430 million State contribution made pursuant to AB 84 did not directly impact the actuarially determined contribution as it was not yet in the Schools Pool by the June 30, 2019 actuarial valuation date. The additional State contribution was treated as an advance payment toward the unfunded accrued liability contribution with required employer contribution rate correspondingly reduced.

(6) For fiscal year 2021-22, the impact of the additional \$330 million State contribution made pursuant to AB 84 is directly reflected in the actuarially determined contribution, because the additional payment was in the Schools Pool as of the June 30, 2020 actuarial valuation date, which served to reduce the required employer contribution rate by 2.16% of payroll. For fiscal year 2021-22, the impact of the additional \$330 million State contribution made pursuant to AB 84 is directly reflected in the actuarially determined contribution, because the additional payment was in the Schools Pool as of the June 30, 2020 actuarial valuation date, which served to reduce the required employer contribution rate by 2.16% of payroll.

Source: PERS Schools Pool Actuarial Valuation; STRS Defined Benefit Program Actuarial Valuation.

The STRS Board has sole authority to determine the actuarial assumptions and methods used for the valuation of the STRS Defined Benefit Program. Based on the multi-year CalSTRS Experience Analysis (spanning from July 1, 2010, through June 30, 2015) (the “2017 Experience Analysis”), on February 1, 2017,

the STRS Board adopted a new set of actuarial assumptions that reflect member's increasing life expectancies and current economic trends. These new assumptions were first reflected in the STRS Defined Benefit Program Actuarial Valuation, as of June 30, 2016 (the "2016 STRS Actuarial Valuation"). The new actuarial assumptions include, but are not limited to: (i) adopting a generational mortality methodology to reflect past improvements in life expectancies and provide a more dynamic assessment of future life spans, (ii) decreasing the investment rate of return (net of investment and administrative expenses) to 7.25% for the 2016 STRS Actuarial Valuation and 7.00% for the June 30, 2017 actuarial evaluation (the "2017 STRS Actuarial Valuation"), and (iii) decreasing the projected wage growth to 3.50% and the projected inflation rate to 2.75%.

Based on the multi-year CalSTRS Experience Analysis (spanning from July 1, 2015, through June 30, 2018) (the "2020 Experience Analysis"), on January 31, 2020, the STRS Board adopted a new set of actuarial assumptions that were first reflected in the STRS Defined Benefit Program Actuarial Valuation, as of June 30, 2019 (the "2019 STRS Actuarial Valuation"). While no changes were made to the actuarial assumptions discussed above, which were established as a result of the 2017 Experience Analysis, certain demographic changes were made, including: (i) lowering the termination rates to reflect a continued trend of lower than expected teachers leaving their employment prior to retirement, and (ii) adopting changes to the retirement rates for both employees hire before the Implementation Date and after the Implementation Date to better reflect the anticipated impact of years of service on retirements. The 2019 STRS Actuarial Valuation continues using the Entry Age Normal Actuarial Cost Method.

The STRS Defined Benefit Program Actuarial Valuation, as of June 30, 2020 (the "2020 STRS Actuarial Valuation") reports that the unfunded actuarial obligation increased by \$172 million since the 2019 STRS Actuarial Valuation and the funded ratio increased by 1.1% to 67.1% over such time period. The increase in the funded ratio is primarily due to salary increases less than assumed, additional State contributions, and contributions to pay down the unfunded actuarial obligation under the STRS Board's valuation policy.

According to the 2020 STRS Actuarial Valuation, the future revenues from contributions and appropriations for the STRS Defined Benefit Program are projected to be approximately sufficient to finance its obligations with a projected ending funded ratio in fiscal year ending June 30, 2046 of 99.6%, except for a small portion of the unfunded actuarial obligation related to service accrued on or after July 1, 2014 for member benefits adopted after 1990, for which AB 1469 provides no authority to the STRS Board to adjust rates to pay down that portion of the unfunded actuarial obligation. This finding reflects the scheduled contribution rate increases directed by statute, assumes additional increases in the scheduled contribution rates allowed under the current law will be made, and is based on the valuation assumptions and valuation policy adopted by the STRS Board, including a 7.00% investment rate of return assumption.

In the STRS 2020 Review of Funding Levels and Risks, STRS noted that COVID-19 has the potential to affect investment performance, the number of teachers working in California and the longevity of STRS members, which are the three main risks to long-term funding that STRS has been monitoring for the last few years. In the 2020 STRS Actuarial Report, the actuary reports that a potential decline in the number of teachers and a slower growth in total payroll constitute the largest risk facing employers with respect to STRS. For the 2020 STRS Actuarial Valuation, the number of teachers actively working dropped from 451,000 on June 30, 2019, to about 448,000 on June 30, 2020. This drop in the number of working teachers, combined with salary increases, resulted in the payroll increasing by approximately 2.8% between 2019 and 2020, below the assumed 3.5% annual payroll growth. The actuary notes that the assumed growth in the total payroll was a key component of the employer contribution rate calculated in the 2020 STRS Actuarial Valuation, and that a slower growth will require a higher employer contribution rate to be able to collect the same amount of contributions. The actuary notes that the number of active teachers could be impacted in the future by K-12 enrollment, as well as teacher retirements. Based on CDE reports, net enrollment in K-12 school districts decreased by 3% (160,000 students) in 2020-21, the largest drop in 20 years, and the Department of Finance projects enrollment will continue to decline in the State over the next decade. In addition, in the first half of the fiscal year, STRS has seen a 26% increase in the number of retirements, and while an increase in

retirements would normally not impact long-term funding, decisions made by employers about whether or not to replace the teachers who have retired could impact STRS ability to reach full funding by 2046, especially if it leads to an overall reduction in the number of teachers working in the State and a reduction in total payroll. See “CERTAIN RISK FACTORS – Outbreak of Disease; Coronavirus” in the forepart of this Limited Offering Memorandum.

In recent years, the PERS Board of Administration (the “PERS Board”) has taken several steps, as described below, intended to reduce the amount of the unfunded accrued actuarial liability of its plans, including the Schools Pool.

On March 14, 2012, the PERS Board voted to lower the PERS’ rate of expected price inflation and its investment rate of return (net of administrative expenses) (the “PERS Discount Rate”) from 7.75% to 7.5%. On February 18, 2014, the PERS Board voted to keep the PERS Discount Rate unchanged at 7.5%. On November 17, 2015, the PERS Board approved a new funding risk mitigation policy to incrementally lower the PERS Discount Rate by establishing a mechanism whereby such rate is reduced by a minimum of 0.05% to a maximum of 0.25% in years when investment returns outperform the existing PERS Discount Rate by at least four percentage points. On December 21, 2016, the PERS Board voted to lower the PERS Discount Rate to 7.0% over a three year phase-in period in accordance with the following schedule: 7.375% for the June 30, 2017 actuarial valuation, 7.25% for the June 30, 2018 actuarial valuation and 7.00% for the June 30, 2019 actuarial valuation. The new discount rate went into effect July 1, 2017 for the State and July 1, 2018 for participant employers. Lowering the PERS Discount Rate means employers that contract with PERS to administer their pension plans will see increases in their normal costs and unfunded actuarial liabilities. Active members hired after January 1, 2013, under the Reform Act (defined below) will also see their contribution rates rise. The PERS Funding Risk Mitigation Policy recently triggered an automatic decrease of 0.2% in the PERS Discount Rate due to the investment return in fiscal year 2020-21, lowering such rate to 6.8%.

On April 17, 2013, the PERS Board approved new actuarial policies aimed at returning PERS to fully-funded status within 30 years. The policies include a rate smoothing method with a 30-year fixed amortization period for gains and losses, a five-year increase of public agency contribution rates, including the contribution rate at the onset of such amortization period, and a five year reduction of public agency contribution rates at the end of such amortization period. The new actuarial policies were first included in the June 30, 2014 actuarial valuation and were implemented with respect the State, K-14 school districts and all other public agencies in fiscal year 2015-16.

Also, on February 20, 2014, the PERS Board approved new demographic assumptions reflecting (i) expected longer life spans of public agency employees and related increases in costs for the PERS system and (ii) trends of higher rates of retirement for certain public agency employee classes, including police officers and firefighters. The new actuarial assumptions were first reflected in the Schools Pool in the June 30, 2015 actuarial valuation. The increase in liability due to the new assumptions will be amortized over 20 years with increases phased in over five years, beginning with the contribution requirement for fiscal year 2016-17. The new demographic assumptions affect the State, participant employers and all other public agencies.

The PERS Board is required to undertake an experience study every four years under its Actuarial Assumptions Policy and State law. As a result of the most recent experience study, on November 17, 2021, the PERS Board approved new actuarial assumptions, including (i) lowering the inflation rate to 2.30% per year, (ii) increasing the assumed real wage inflation assumption to 0.5%, which results in a total wage inflation of 2.80%, (iii) increasing the payroll growth rate to 2.80%, and (iv) certain changes to demographic assumptions relating to modifications to the mortality rates, retirement rates, and disability rates (both work and non-work related), and rates of salary increases due to seniority and promotion. These actuarial assumptions will be incorporated into the actuarial valuation for fiscal year ending June 30, 2021 and will first impact contribution rates for school districts in fiscal year 2022-23. Based on the timing of the study, the member data used in the analysis, which runs through June 30, 2019, does not include the impacts of COVID-19. Preliminary analysis of the system experience since the beginning of the pandemic has shown

demographic experience (e.g. retirements, deaths, etc.) did differ from the current actuarial assumptions in some areas, which will be more precisely quantified in future actuarial valuations. However, as of November 2021, PERS did not believe that the demographic impacts of COVID-19 would have a material impact on the system experience going forward.

On February 14, 2018, the PERS Board approved a new actuarial amortization policy with an effective date for actuarial valuations beginning on or after June 30, 2019, which includes (i) shortening the period over which actuarial gains and losses are amortized from 30 years to 20 years, (ii) requiring that amortization payments for all unfunded accrued liability bases established after the effective date be computed to remain a level dollar amount throughout the amortization period, (iii) removing the 5-year ramp-up and ramp-down on unfunded accrued liability bases attributable to assumptions changes and non-investment gains/losses established on or after the effective date and (iv) removing the 5-year ramp-down on investment gains/losses established after the effective date. While PERS expects that reducing the amortization period for certain sources of unfunded liability will increase future average funding ratios, provide faster recovery of funded status following market downturns, decrease expected cumulative contributions, and mitigate concerns over intergenerational equity, such changes may result in increases in future employer contribution rates.

The Schools Pool Actuarial Valuation as of June 30, 2020 (the “2020 PERS Actuarial Valuation”), reported that from June 30, 2019 to June 30, 2020 the funded ratio of the Schools Pool increased by 0.1% (from 68.5% to 68.6%), which was primarily due to the additional State contribution in July 2019 offset partially by the lower than expected investment return in fiscal year 2019-20. In addition, the 2020 PERS Actuarial Valuation reported that (i) the return on assets for fiscal year ending June 30, 2020, was approximately 4.7% reduced for administrative expenses, which was lower than the assumed return of 7.0%, leading to an investment experience loss, (ii) the overall demographic experience produced a nominal liability experience gain, and (iii) the normal cost declined slightly as the share of the active population of employees hired after the Implementation Date (defined below) continued to increase. When the PERS Board established the employer contribution rates for fiscal year 2021-22 on April 19, 2021, the PERS Board provided projections of the employer contribution rates for the next five fiscal years. Assuming all then-current actuarial assumptions are realized, including investment return of 7% in fiscal year 2020-21, that no changes to assumptions, methods or benefits will occur during the projection period, along with the expected reductions in normal cost due to the continuing transition of active members from those employees hired prior to the Implementation Date (defined below), to those hired after such date, the contribution rate for fiscal year 2022-23 was projected to be 26.1%, with annual increases in most years thereafter, resulting in a projected 27.6% employer contribution rate for fiscal year 2026-27. However, the 2020 PERS Actuarial Valuation did not provide projections of the employer contribution rates because key actuarial assumptions to be used in the June 30, 2021 actuarial valuation, particularly the PERS Discount Rate, which is the key driver of pension plan cost, are not yet known. The PERS Discount Rate is presently undergoing review as part of the periodic Asset Liability Management Study currently in progress and other economic and demographic assumptions are also currently undergoing review as part of the PERS Experience Study conducted every four years. It is currently anticipated that both economic and demographic assumptions will be finalized by the end of the 2021 calendar year, and once finalized PERS will produce an addendum to the 2020 PERS Actuarial Valuation, which will contain projections of the employer contribution rates for the next five fiscal years, reflecting both the new assumptions as well as the actual fiscal year 2020-21 investment return (approximately 21.9% before reduction for administrative expenses).

Encore can make no representations regarding the future program liabilities of STRS, or whether Encore will be required to make additional contributions to STRS in the future above those amounts required under AB 1469. Encore can also provide no assurances that Encore’s required contributions to PERS will not increase in the future.

**California Public Employees’ Pension Reform Act of 2013.** On September 12, 2012, the Governor signed into law the California Public Employees’ Pension Reform Act of 2013 (the “Reform Act”), which makes changes to both STRS and PERS, most substantially affecting new employees hired after January 1,

2013 (the “Implementation Date”). For STRS participants hired after the Implementation Date, the Reform Act changes the normal retirement age by increasing the eligibility for the 2% age factor (the age factor is the percent of final compensation to which an employee is entitled for each year of service) from age 60 to 62 and increasing the eligibility of the maximum age factor of 2.4% from age 63 to 65. Similarly, for non-safety PERS participants hired after the Implementation Date, the Reform Act changes the normal retirement age by increasing the eligibility for the 2% age factor from age 55 to 62 and increases the eligibility requirement for the maximum age factor of 2.5% to age 67. Among the other changes to PERS and STRS, the Reform Act also: (i) requires all new participants enrolled in PERS and STRS after the Implementation Date to contribute at least 50% of the total annual normal cost of their pension benefit each year as determined by an actuary, (ii) requires STRS and PERS to determine the final compensation amount for employees based upon the highest annual compensation earnable averaged over a consecutive 36-month period as the basis for calculating retirement benefits for new participants enrolled after the Implementation Date (previously 12 months for STRS members who retire with 25 years of service), and (iii) caps “pensionable compensation” for new participants enrolled after the Implementation Date at 100% of the federal Social Security contribution (to be adjusted annually based on changes to the Consumer Price Index for all Urban Consumers) and benefit base for members participating in Social Security or 120% for members not participating in social security (to be adjusted annually based on changes to the Consumer Price Index for all Urban Consumers), while excluding previously allowed forms of compensation under the formula such as payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off.

***GASB Statement Nos. 67 and 68.*** On June 25, 2012, GASB approved Statements Nos. 67 and 68 (“Statements”) with respect to pension accounting and financial reporting standards for state and local governments and pension plans. The new Statements, No. 67 and No. 68, replace GASB Statement No. 27 and most of Statements No. 25 and No. 50. The changes impact the accounting treatment of pension plans in which state and local governments participate. Major changes include: (1) the inclusion of unfunded pension liabilities on the government’s balance sheet (currently, such unfunded liabilities are typically included as notes to the government’s financial statements); (2) more components of full pension costs being shown as expenses regardless of actual contribution levels; (3) lower actuarial discount rates being required to be used for underfunded plans in certain cases for purposes of the financial statements; (4) closed amortization periods for unfunded liabilities being required to be used for certain purposes of the financial statements; and (5) the difference between expected and actual investment returns being recognized over a closed five-year smoothing period. In addition, according to GASB, Statement No. 68 means that, for pensions within the scope of the Statement, a cost-sharing employer that does not have a special funding situation is required to recognize a net pension liability, deferred outflows of resources, deferred inflows of resources related to pensions and pension expense based on its proportionate share of the net pension liability for benefits provided through the pension plan. Because the accounting standards do not require changes in funding policies, the full extent of the effect of the new standards on River Springs is not known at this time. The reporting requirements for pension plans took effect for the fiscal year beginning July 1, 2013 and the reporting requirements for employers, including River Springs, took effect for the fiscal year beginning July 1, 2014.

### **Outstanding Debt Obligations**

***DMS Loan.*** [TO COME].

***Prior Bonds.*** Encore made various financial covenants in the lease agreement entered into in connection with the Prior Bonds, including covenants to maintain a certain base rent coverage ratio and days cash on hand. Encore failed to meet such days cash on hand covenant in the 2016-17, 2017-18, 2017-19 and 2019-20 fiscal years, and failed to meet the base rent coverage ratio in the 2016-17 and 2017-18 fiscal years.

Pursuant to the loan agreement relating to the Prior Bonds, payments of debt service on the Prior Bonds shall be paid to the trustee for the Prior Bonds by an intercept of State apportionments sent to the trustee by the State Controller. Due to a drop in ADA for the School from the 2020-21 school year to the 2021-22 school year, no State LCFF apportionments were payable to Encore during the months of February 2022

through May 2022. Accordingly, monthly payments due under the loan agreement for the Prior Bonds during such months were not received via the State intercept. Encore made such payments via wire in such months.

Encore has, in the past, needed to receive approval of holders of the Prior Bonds to seek short-term cash borrowing for cashflow purposes. Additionally, in \_\_\_\_\_, 20\_\_\_\_, the Corporation (as defined herein) requisitioned approximately \$\_\_\_\_\_ from the Repair and Replacement Fund held under the indenture for the Prior Bonds to reimburse Encore for certain capital expenditures.

Various financial and operational reports and information have been provided to MSRB's EMMA website, both voluntarily by Encore and pursuant to a continuing disclosure agreement entered into by Encore and the Corporation in connection with the Series 2016 Bonds. Such reports and information can be found at <https://emma.msrb.org/IssueView/Details/ER377246>.

### **SB 740**

Encore is currently eligible to receive funding under the California law referred to herein as SB 740, which provides for reimbursement of facilities lease costs of 75% of the actual lease cost to the extent funded by the State up to a limit of \$1,256 per unit of classroom based ADA for the 2021-22 school year. This per-ADA amount may increase in future years based on cost of living adjustments. See "APPENDIX D CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING CHARTER SCHOOLS – STATE FUNDING OF EDUCATION – Allocation of State Funding to Charter Schools – SB 740 Facilities Grant Program Funding" attached to this Private Placement Memorandum.

To be eligible for SB 740 reimbursement, a charter school must serve a student population with at least 55% of its student population eligible for free or reduced lunch, or be located in a public elementary school attendance area with such composition. During the 2021-22 school year, the School is serving a student population with 47.1% of students eligible for free or reduced lunch. The School is located in the public elementary school attendance area of Juniper Elementary School, which is serving a student population with 80.5% of students eligible for free or reduced lunch.

Encore was awarded SB 740 funding for the School of \$\_\_\_\_\_ and \$\_\_\_\_\_ in fiscal years 2019-20 and 2020-21, respectively, and projects to receive \$\_\_\_\_\_ in fiscal year 2021-22.

There can be no assurance that any particular level of SB 740 funding will be available in fiscal year 2021-22, or any future year, or that the School will remain eligible for such funding. See "CERTAIN RISK FACTORS – Dependence on State Aid Payments that are Subject to Annual Appropriation and Political Factors," "– Specific Risks of Charter Schools – Charter School Law" and "– SB 740 Funding" in the forepart of this Private Placement Memorandum.

### **No Material Litigation**

No action, suit, proceeding or investigation at law or in equity, before or by any court, governmental agency or public board or body is pending or, to the knowledge of Encore or the Borrower, threatened, affecting the validity of the Lease or the Bonds or contesting the corporate existence of the Borrower, the Landlord, Encore or its authority to operate the School pursuant to its charter.

Encore, the Landlord and the Corporation are subject to lawsuits and claims in the ordinary course of their operations. In the opinion of the management of Encore and the Borrower, the aggregate amount of the uninsured liabilities for such lawsuits and claims will not materially affect the finances of the Borrower, the Landlord or Encore, or its operation of the School.

***Termination of Prior Administrators.*** [TO COME]

## PROJECTIONS AND CASH FLOWS

Attached to this Private Placement Memorandum as Appendix C are financial projections and projected cash flows of Encore. Notwithstanding Encore's history of performance with respect to the School, future financial performance of the School may not equal or exceed the projections set forth in this Private Placement Memorandum. No assurance is given that such projections will be met, or that the number of students attending the School may not diminish in the future. The projections of revenue and expenses contained in Appendix C are based upon the number of students projected to be enrolled at the School and were prepared by Encore and have not been independently verified by any party other than Encore.

The projections are "forward-looking statements" and are subject to the general qualifications and limitations described herein. The Placement Agent has not independently verified the Borrower's projections set forth in Appendix C or otherwise, and makes no representations nor gives any assurances that such projections, or the assumptions underlying them, are complete or correct.

ENCORE PREPARED THE PROJECTIONS BASED ON ASSUMPTIONS ABOUT FUTURE STATE FUNDING LEVELS AND FUTURE OPERATIONS OF THE SCHOOL, INCLUDING STUDENT ENROLLMENT AND EXPENSES. THERE CAN BE NO ASSURANCE THAT ACTUAL ENROLLMENT REVENUES AND EXPENSES WILL BE CONSISTENT WITH THE ASSUMPTIONS UNDERLYING SUCH PROJECTIONS. MOREOVER, NO GUARANTEE CAN BE MADE THAT THE PROJECTIONS OF REVENUES AND EXPENSES INCLUDED HEREIN WILL CORRESPOND WITH THE RESULTS ACTUALLY ACHIEVED IN THE FUTURE BECAUSE THERE CAN BE NO ASSURANCE THAT ACTUAL EVENTS WILL CORRESPOND WITH THE PROJECTIONS' UNDERLYING ASSUMPTIONS. ACTUAL OPERATING RESULTS MAY BE AFFECTED BY MANY FACTORS, INCLUDING, BUT NOT LIMITED TO, INCREASED COSTS, LOWER THAN ANTICIPATED REVENUES (AS A RESULT OF INSUFFICIENT ENROLLMENT, REDUCED STATE OR FEDERAL AID PAYMENTS, OR OTHERWISE), EMPLOYEE RELATIONS, CHANGES IN TAXES, CHANGES IN APPLICABLE GOVERNMENT REGULATIONS, CHANGES IN DEMOGRAPHIC TRENDS, CHANGES IN EDUCATION COMPETITION AND CHANGES IN LOCAL OR GENERAL ECONOMIC CONDITIONS. REFER TO "INTRODUCTION" IN THE FOREPART OF THIS PRIVATE PLACEMENT MEMORANDUM FOR QUALIFICATION AND LIMITATIONS APPLICABLE TO FORWARD-LOOKING STATEMENTS.

## THE BORROWER

### General

Western Encore Properties Incorporated (the "Borrower") is a California nonprofit public benefit corporation. The Corporation is organized and operated exclusively for charitable purposes and was formed by Encore in 2015 as a support organization under Section 509(a)(3) of the Code for Encore.

The Corporation received a determination letter from the Internal Revenue Service (the "IRS") on February 9, 2016, confirming its status as a public charity exempt from federal income tax under the Code, as a supporting organization. On November 15, 2018, the Borrower's federal tax exempt status was automatically revoked by the IRS for not filing its required tax returns for three consecutive years. The Corporation has covenanted in the Loan Agreement to file all overdue tax returns and seek to obtain retroactive reinstatement of its federal tax exempt status as soon as possible. See "CERTAIN RISK FACTORS – Tax Related Issues" in the forepart of this Private Placement Memorandum.

### Governance

**Board of Directors.** Encore Education, acting through its Board of Directors, has the power to designate the Directors of the Corporation and appoint successor Directors as necessary, and has such other



powers provided by the Borrower’s bylaws. The number of members of the Borrower’s Board of Directors may be no less than two members and no more than seven members. No more than 49% of the members of the Borrower’s Board of Directors may be persons, or relatives of persons, compensated by the Corporation for services rendered to it within the previous 12 months. The members of the Board of Directors hold office for staggered terms of either two or three years. Under the Borrower’s bylaws, the Board is required to meet at least annually, for among other purposes, appointing officers.

The Borrower’s Board of Directors currently comprises four individuals, all of whom are employees of Encore Education. The following table sets forth the members of the Board of Directors of the Borrower.

**WESTERN ENCORE PROPERTIES INCORPORATED**  
**Board of Directors**

<u>Member</u>	<u>Title</u>	<u>Date Appointed by Encore Education</u>	<u>Term Expires</u>
---------------	--------------	---	---------------------

*Source: Encore.*

**Role in the Financing**

Upon the issuance of the California Enterprise Development Authority’s Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable) (collectively, the “Bonds”), the California Enterprise Development Authority (the “Authority”) will loan the proceeds of the Bonds to the Corporation pursuant to a Loan Agreement (the “Loan Agreement”) between the Authority and the Corporation.

In addition, the Corporation is a party to the Master Indenture of Trust (as supplemented, the “Master Indenture”), as supplemented, including by a Supplemental Master Indenture for Obligation No. 2, each by and between the Borrower, as representative of the Obligated Group (defined herein), and UMB Trust, N.A., as master trustee (the “Master Trustee”). However, the Corporation is not itself a Member of the Obligated Group. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” in the forepart of this Private Placement Memorandum.

**THE MEMBER OF THE OBLIGATED GROUP**

**General**

16955 Lemon Street, LLC (the “Landlord” or the “Member”) is a California limited liability company, the sole member of which is the Borrower. The Member is currently the sole Member of the Obligated Group. The Member was formed to support the charter schools operated by Encore and specifically for the purpose of holding title to property and managing, operating and leasing property, collecting income, and conveying the entire amount of such income, less expenses to the Borrower.

Upon the issuance of the Bonds, the Facility (as defined in the forepart of this Limited Offering Memorandum) will be leased to Encore from the Member pursuant to the Lease (as defined in the forepart of this Private Placement Memorandum). The Facility will be used by Encore to operate the School.

The Member is expected to have no assets, other than holding title to the Facility, and is expected to have no revenue other than payments received pursuant to the Lease.

**EXHIBIT A**

**MEMORANDUM OF UNDERSTANDING BETWEEN ENCORE AND HESPERIA USD**

A-A-1

**NEW ISSUE—FULL BOOK-ENTRY****NOT RATED**

*In the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, San Francisco, California (“Bond Counsel”), under existing statutes, regulations, rulings and judicial decisions, interest on the Bonds is not excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”). In the further opinion of Bond Counsel, interest on the Bonds is exempt from State of California personal income tax. See “TAX MATTERS” herein with respect to tax consequences relating to the Bonds.*

§ \_\_\_\_\_  
**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**  
**CHARTER SCHOOL REVENUE BONDS**  
**(ENCORE EDUCATION CORPORATION)**  
**SERIES 2022 (TAXABLE)**

**Interest Rates:** 8.00% (through June 30, 2026)  
10.00% (July 1, 2026 through June 30, 2028)  
12.00% (July 1, 2028 through maturity)

CUSIP No.: \_\_\_\_\_ †

**Dated: Date of Delivery****Due: June 1, 2030**

*This cover page contains information for general reference only. It is not intended as a summary of these issues. Investors must read the entire Private Placement Memorandum to obtain information essential to making an informed investment decision.*

The California Enterprise Development Authority Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable), in the aggregate principal amount of \$ \_\_\_\_\_ (the “Bonds”) will be issued by the California Enterprise Development Authority (the “Authority”) pursuant to an Indenture, dated as of May 1, 2022 (the “Bond Indenture”), by and between the Authority and UMB Bank, N.A., as trustee (the “Trustee”). The Authority will loan the proceeds of the Bonds to Western Encore Properties Incorporated (the “Corporation”), a California nonprofit public benefit corporation, pursuant to a Loan Agreement, dated as of May 1, 2022 (the “Loan Agreement”), by and between the Authority and the Corporation, and accepted and acknowledged by 16955 Lemon Street LLC (the “Landlord”), a limited liability company the sole member of which is the Corporation. The Bonds and the interest thereon are payable solely out of certain revenues and income received by the Authority or the Trustee pursuant to the Loan Agreement and Obligation No. 2 relating to the Bonds (“Obligation No. 2”) issued by the Corporation in an amount equal to the aggregate principal amount of the Bonds pursuant to a Master Indenture of Trust, dated as of November 1, 2016 (the “Master Indenture”), as supplemented by a Supplemental Master Indenture for Obligation No. 2, dated as of May 1, 2022 (the “Supplemental Master Indenture”), by and among the Corporation, as representative of the Obligated Group, the Landlord, as the Member of the Obligated Group, and UMB Bank, N.A., as successor master trustee thereunder (the “Master Trustee”).

The Bonds will be used to (i) finance working capital of the Corporation; (ii) fund a debt service reserve account for the Bonds; and (iii) pay the costs of issuance of the Bonds. The Corporation will advance the net proceeds of the Bonds to Encore Education Corporation (“Encore”), a California nonprofit corporation, pursuant to an Amended and Restated Lease Agreement, dated as of May 1, 2022, between the Landlord and Encore (the “Lease”). Pursuant to the Lease, the Landlord will lease charter school facilities located at 16955 Lemon Street, Hesperia, California (the “Facility”) to Encore. Encore will make payments of Rent under the Lease from revenues derived solely from Encore Jr./Sr. High School for the Performing and Visual Arts (the “School”), a public charter school operated by Encore, or any other charter school operated by Encore in the Facility.

The Bonds are limited obligations of the Authority payable solely from Receipts and Revenues of the Authority from the Loan Agreement and Obligation No. 2 received under the Bond Indenture (including amounts payable under the Lease) and other amounts held in the funds established by the Bond Indenture and payments to be made pursuant to Obligation No. 2. The obligations of the Corporation under the Loan Agreement are payable from the Receipts and Revenues of the Authority from the Loan Agreement and Obligation No. 2 required to be deposited with the Trustee pursuant to the Bond Indenture. The Bonds will never be payable out of any funds of the Authority except from the limited sources referenced above.

Interest on the Bonds will be payable semiannually on each June 1 and December 1, commencing December 1, 2022. The Bonds are being issued as fully registered bonds and initially will be registered in the name of Cede & Co., as nominee for The Depository Trust Company (“DTC”). DTC will act as securities depository for the Bonds. Purchases of beneficial interests in the Bonds will be made in book-entry-only form (without physical certificates) in initial minimum denominations of \$250,000 and any integral multiple of \$5,000 in excess thereof. For so long as DTC or its nominee, Cede & Co., is the registered owner of the Bonds, (i) payments of the principal of and premium, if any, and interest on such Bonds will be made directly to Cede & Co. for payment to DTC participants for subsequent disbursement to the beneficial owners and (ii) all notices, including any notice of redemption will be mailed only to Cede & Co. See “APPENDIX I – BOOK-ENTRY SYSTEM” herein.

**The Bonds are subject to optional, mandatory and extraordinary redemption prior to maturity as described under “THE BONDS – Redemption” herein. The Bonds are subject to optional tender on any date on or after June 1, 2026. See “THE BONDS – Optional Tender” herein. The Corporation’s failure to purchase such tendered Bonds will constitute an Event of Default under the Bond Indenture.**

THE PURCHASE AND HOLDING OF THE BONDS INVOLVE RISKS THAT MAY NOT BE APPROPRIATE FOR CERTAIN INVESTORS. THE BONDS ARE TO BE OFFERED AND SOLD (INCLUDING IN SECONDARY MARKET TRANSACTIONS) ONLY TO “QUALIFIED INSTITUTIONAL BUYERS” (AS DEFINED HEREIN). IN ADDITION, EACH INITIAL PURCHASER OF THE BONDS WILL BE REQUIRED TO SUBMIT AN INVESTOR LETTER TO THE AUTHORITY AND THE TRUSTEE IN THE FORM ATTACHED HERETO AS APPENDIX K. See “NOTICE TO INVESTORS” and “TRANSFER RESTRICTIONS” HEREIN.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE AUTHORITY AS PROVIDED IN THE ACT (AS DEFINED HEREIN), PAYABLE SOLELY FROM REVENUES AND OTHER ASSETS PLEDGED UNDER THE BOND INDENTURE. THE BONDS DO NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY AS SET FORTH IN THE BOND 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 WHATSOEVER 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 BOND INDENTURE, THE BONDS OR ANY OTHER DOCUMENTS, EXCEPT ONLY TO THE EXTENT AMOUNTS ARE RECEIVED FOR THE PAYMENT THEREOF FROM THE CORPORATION UNDER THE LOAN AGREEMENT. NONE OF THE AUTHORITY, ANY AUTHORITY MEMBER, ANY PERSON EXECUTING THE BONDS OR ANY OFFICIAL DIRECTOR, MEMBER, OFFICER, AGENT, OR EMPLOYEE OF THE STATE, THE AUTHORITY, ANY PUBLIC AGENCY THEREOF OR ANY MEMBER THEREOF IS LIABLE PERSONALLY ON THE BONDS OR IN RESPECT OF ANY UNDERTAKINGS BY THE AUTHORITY UNDER THE BOND DOCUMENTS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE OF THE BONDS.

The Bonds are offered when, as and if issued by the Authority, subject to prior sale, modification or withdrawal of the offer without notice, and subject to the approval of legality by Stradling Yocca Carlson & Rauth, a Professional Corporation, Bond Counsel to the Authority, the approval of certain matters for the Authority by Kutak Rock LLP and the approval of certain matters for the Corporation and Encore, and relating to the School, by Musick, Peeler & Garrett LLP. It is expected that the Bonds in definitive form will be available for delivery through the facilities of The Depository Trust Company in New York, New York, on or about May \_\_, 2022, subject to the satisfaction of certain conditions.

Dated: May \_\_, 2022

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This Private Placement Memorandum does not constitute an offer to sell the Bonds or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any state or other jurisdiction to any person to whom it is unlawful to make such offer, solicitation or sale in such state or jurisdiction. No dealer, salesperson or any other person has been authorized to give any information or to make any representation other than those contained herein in connection with the offering of the Bonds, and, if given or made, such information or representation must not be relied upon.

The Authority has not reviewed or approved any information herein except information relating to the Authority under the captions “THE AUTHORITY” and “ABSENCE OF MATERIAL LITIGATION – The Authority,” which has been obtained from the Authority. All other information set forth herein has been obtained from the Corporation, Encore and other sources that are believed to be reliable. The adequacy, accuracy or completeness of such information is not guaranteed by, and is not to be construed as a representation of, the Authority or the Placement Agent. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Private Placement Memorandum, nor any sale made hereunder, shall under any circumstances create any implication that there has been no change in the affairs of the Authority, The Depository Trust Company, the Corporation or Encore since the date hereof.

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**CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING  
STATEMENTS IN THIS PRIVATE PLACEMENT MEMORANDUM**

Certain statements included or incorporated by reference in this Private Placement Memorandum constitute “forward-looking statements.” Such statements generally are identifiable by the terminology used such as “plan,” “expect,” “estimate,” “budget” or other similar words. Such forward-looking statements include but are not limited to certain statements contained in the information under the headings “CERTAIN RISK FACTORS” and “APPENDIX A – CERTAIN INFORMATION REGARDING EDUCATION, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” in this Private Placement Memorandum. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Neither the Corporation nor Encore plans to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

## NOTICE TO INVESTORS

The Bonds are to be offered and sold (including in secondary market transactions) only to Qualified Institutional Buyers (as defined herein). The Bond Indenture under which the Bonds will be issued contains provisions limiting transfers of the Bonds and beneficial ownership interests in the Bonds only to Qualified Institutional Buyers. In addition, the face of each Bond will contain a legend indicating that it is subject to transfer restrictions as set forth in the Bond Indenture and each initial purchaser of the Bonds will be required to execute and deliver to the Authority and the Trustee an investor letter in the form attached hereto as Appendix K.

Each purchaser of any Bond or ownership interest therein (including in secondary market transactions) will be deemed to have acknowledged, represented, warranted, and agreed with and to the Authority, the Corporation, the Placement Agent and the Trustee as follows:

1. That the Bonds are payable solely from certain revenues derived by the Authority under the Loan Agreement from payments of Base Rent under the Lease, and from certain funds and accounts established and maintained pursuant to the Bond Indenture;
2. That it is a Qualified Institutional Buyer and that it is purchasing the Bonds for its own account and not with a view to, or for offer or sale in connection with any distribution thereof in violation of the Securities Act of 1933, as amended (the "Securities Act") or other applicable securities laws;
3. That the Bonds (a) have not been registered under the Securities Act and are not registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state, (b) will not be listed on any stock or other securities exchange, and (c) may not be readily marketable;
4. That the Authority has not reviewed or approved any information in this Private Placement Memorandum except information relating to the Authority under the captions "THE AUTHORITY" and "ABSENCE OF MATERIAL LITIGATION – The Authority," which has been obtained from the Authority;
5. That the Bonds and beneficial ownership interests therein may only be transferred to Qualified Institutional Buyers; and
6. That the Authority, the Corporation, Encore, the Trustee, the Placement Agent and others will rely upon the truth and accuracy of the foregoing acknowledgments, representations and agreements.

See "TRANSFER RESTRICTIONS" herein.

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**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY  
CHARTER SCHOOL REVENUE BONDS  
(ENCORE EDUCATION CORPORATION)  
SERIES 2022 (TAXABLE)**

**INTRODUCTION**

**General**

This Private Placement Memorandum, including the cover page, the inside cover page, and Appendices hereto (the “Private Placement Memorandum”), is provided to furnish information with respect to the sale and delivery by the California Enterprise Development Authority (the “Authority”) of its Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable), in the aggregate principal amount of \$ \_\_\_\_\_ (the “Bonds”).

**The Bonds**

The Bonds will be issued pursuant to an Indenture, dated as of May 1, 2022 (the “Bond Indenture”), by and between the Authority and UMB Trust, N.A., as trustee (the “Trustee”). The Bonds will bear interest on June 1 and December 1 of each year, commencing December 1, 2022 (each such date, an “Interest Payment Date”) and will be subject to optional, mandatory and extraordinary redemption prior to maturity as set forth under “THE BONDS – Redemption” herein. The proceeds of the Bonds will be loaned to Western Encore Properties Incorporated (the “Corporation”), a California nonprofit public benefit corporation, pursuant to a Loan Agreement, dated as of May 1, 2022 (the “Loan Agreement”), by and among the Authority and the Corporation, and accepted and acknowledged by 16955 Lemon Street LLC (the “Landlord”), a California limited liability company, the sole member of which is the Corporation.

The Bonds and the interest thereon are payable solely out of certain revenues and income received by the Authority or the Trustee pursuant to the Loan Agreement and Obligation No. 2 relating to the Bonds (“Obligation No. 2”) issued by the Corporation in an amount equal to the aggregate principal amount of the Bonds pursuant to a Master Indenture of Trust, dated as of November 1, 2016 (as supplemented from time to time, the “Master Indenture”), as supplemented by a Supplemental Master Indenture for Obligation No. 1, dated as of November 1, 2016 (the “Supplemental Master Indenture No. 1”), and as further supplemented and amended by a Supplemental Master Indenture for Obligation No. 2, dated as of May 1, 2022 (the “Supplemental Master Indenture No. 2”) by and among the Corporation, as representative of the Obligated Group, the Landlord (as defined herein), as Members of the Obligated Group, and UMB Trust, N.A., as successor master trustee thereunder (the “Master Trustee”). See “THE BONDS” herein. Although the Corporation serves as the representative of the Obligated Group, it is not a Member of the Obligated Group.

The Bonds will be issued in initial minimum denominations of \$250,000 and any integral multiple of \$5,000 in excess thereof and in fully registered form only and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), and beneficial ownership interests in the Bonds are to be sold (including secondary market transactions) only to Qualified Institutional Buyers. Pursuant to the Bond Indenture, “Qualified Institutional Buyer” means a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act. The Bond Indenture and the Bonds contain provisions limiting transfers of the Bonds and beneficial ownership interests in the Bonds to Qualified Institutional Buyers. In addition, each initial purchaser of the Bonds must execute an investor letter in the form of “APPENDIX K – FORM OF INVESTOR LETTER” in connection with its purchase of the Bonds. Each Bond will contain a legend indicating that such Bond is subject to the transfer restrictions set forth in the Bond Indenture. See “TRANSFER RESTRICTIONS” and “CERTAIN RISK FACTORS – Purchases and Transfers of Bonds Restricted to Qualified Institutional Buyers” herein.



## **Authority for Issuance**

The Bonds will be issued by the Authority pursuant to Title 1, Division 7, Chapter 5 of the California Government Code, a resolution of the Authority adopted on April 28, 2022, and the Bond Indenture. See “THE AUTHORITY” herein.

## **Use of Proceeds**

The proceeds of the Bonds will be used to (i) finance working capital of the Corporation, (ii) fund a debt service reserve account for the Bonds and (iii) pay the costs of issuance of the Bonds.

The Corporation will advance proceeds of the Bonds to Encore Education Corporation (“Encore”), a California nonprofit public benefit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, pursuant to an Amended and Restated Lease Agreement (the “Lease”) by and between Encore, as lessee, and the Landlord, as lessor. Pursuant to the Lease, Encore leases a charter school facility located at 16955 Lemon Street in Hesperia, California (the “Facility”). For information regarding Encore and the Facility, see “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto.

**THE CORPORATION, ENCORE, AND THE SCHOOL MAY NOT CHARGE TUITION AND HAVE NO TAXING AUTHORITY.**

## **Security for the Bonds**

The Bonds and the interest thereon are payable solely out of certain revenues and income received by the Authority or the Trustee pursuant to the Loan Agreement and Obligation No. 2 issued by the Corporation in an amount equal to the aggregate principal amount of the Bonds pursuant to the Master Indenture, as supplemented by the First Supplemental Master Indenture and the Second Supplemental Master Indenture, by and among the Corporation, as representative of the Obligated Group, the Landlord, as the Member of the Obligated Group (the “Member”), and the Master Trustee.

Pursuant to and to the extent described in the Bond Indenture, the Authority assigns to the Trustee certain of the Authority’s rights under the Loan Agreement, including the right to receive payments thereunder, but excluding the Reserved Rights of the Authority. Payment of Educational Management Fees (as defined herein) to Encore from the revenues of the School will be subordinated to the obligation to pay Rent under the Lease. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” and “THE LEASE – Payment of Rent” herein. In addition, pursuant to the Mortgage (as defined herein), the Landlord has granted to the Master Trustee a first priority lien on the Facility. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein.

**Limited Obligations.** The Bonds are limited obligations of the Authority. The Authority is not obligated to advance any moneys derived from any source other than Payments (as defined below) and other assets pledged under the Bond Indenture, whether for the payment of the principal or redemption price of or interest on the Bonds. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein.

**Other Obligations; Prior Bonds.** Obligation No. 2 is payable on a senior basis to Obligation No. 1, dated as of November 1, 2016, in the aggregate principal amount of \$17,440,000, issued pursuant to the Master Indenture, as supplemented by the First Supplemental Master Indenture. Obligation No. 1 was issued in connection with the California School Finance Authority Charter School Revenue Bonds (Encore Education Obligated Group) Series 2016A and Series 2016B (Taxable) (collectively, the “Prior Bonds”), of which an aggregate principal amount of \$15,305,000 is currently outstanding, issued by the California School Finance Authority (the “Prior Issuer”) pursuant to an Indenture, dated as of November 1, 2016, by and between the Prior Issuer and UMB Bank, N.A., as successor trustee thereunder (the “Prior Trustee”). The proceeds of the

Prior Bonds were loaned to the Corporation pursuant to a Loan Agreement, dated as of November 1, 2016 (the “Prior Loan Agreement”), by and between the Prior Issuer and the Corporation.

The Corporation’s obligations under the Prior Loan Agreement are secured by an intercept of State apportionments with respect to and on behalf of the School, whereby the State Controller’s Office makes apportionments to the Prior Trustee, in amounts sufficient to repay the Prior Bonds and related costs (the “Prior Intercept”). Under the laws of the State of California (the “State”), no party, including the Corporation, Encore or any of their respective creditors (including the Master Trustee or the Trustee for the Bonds) will have any claim to the money apportioned or to be apportioned to the Prior Trustee by the State Controller pursuant to the Prior Intercept.

Although Obligation No. 2 is senior to Obligation No. 1 under the Master Indenture, and payment of Base Rent under the Lease relating to the Bonds is payable senior to that related to the Prior Bonds, the Prior Intercept is functionally senior in position to the County Intercept relating to the Bonds with regard to State apportionment funding, as the Prior Intercept directs State apportionments to be sent directly by the State Controller’s Office to the Prior Trustee before remaining amounts are remitted by the State to San Bernardino County Office of Education (“SBCOE”) and available to fund the County Intercept (defined herein) related to the Bonds. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – The Loan Agreement” and “CERTAIN RISK FACTORS – Additional Indebtedness and Additional Obligated Group School Indebtedness” herein.

***County Intercept; Intercreditor and Collateral Agency Agreement.*** Encore, the Corporation, the Master Trustee and the Prior Trustee will enter into an Intercreditor and Collateral Agency Agreement, along with UMB Bank, N.A., in its role as collateral agent thereunder (the “Collateral Agent”), dated as of May 1, 2022, concurrently with the issuance of the Bonds (the “Intercreditor Agreement”), pursuant to which the parties thereto agree that (i) the Master Trustee does not have any claim to any moneys intercepted or anticipated to be apportioned to the Prior Trustee pursuant to the Prior Intercept, (ii) the Trustee and the Landlord (and the Master Trustee, as assignee thereof) have a first priority interest, lien and security interest in the Gross School Revenues (as defined herein), net of the funds subject to the Prior Intercept, to secure Encore’s obligations under the Lease, the Landlord’s obligations under Obligation No. 2 and the Corporation’s obligations under the Loan Agreement, senior to any interest, lien and security interest in the Gross School Revenues of the Prior Trustee, and (iii) the Corporation, Trustee, Prior Trustee, Encore and Master Trustee, in their respective roles, will notify the other parties to the Intercreditor Agreement of any default in connection with the Lease, the Indenture, Prior Indenture or the Master Indenture.

A depository account in the name of Encore, for the benefit of the Master Trustee, the Trustee and the Prior Trustee, will be established and held by the Collateral Agent pursuant to the Intercreditor Agreement (the “Custody Account”). In connection with the issuance of the Bonds, Encore will give direction to SBCOE to send all apportionments payable to Encore relating to the School, net of funds received by the Prior Trustee pursuant to the Prior Intercept, to the Collateral Agent for deposit in the Custody Account. Such funds will be available to the Master Trustee and the Trustee for satisfaction of any obligations of Encore under the Lease or of the Landlord under the Master Indenture, and to the extent not owed to such parties, then released promptly to Encore for deposit in its bank account. See “THE LEASE – Intercreditor Agreement” and “CERTAIN RISK FACTORS – Additional Indebtedness and Additional Obligated Group School Indebtedness” herein.

***Obligated Group and Related Parties.*** The Corporation is a California nonprofit public benefit corporation organized and operated exclusively for charitable purposes. The Corporation was formed by Encore in 2015 as a support organization for the various charter schools that have been or will be formed by, and receive administrative services from, Encore. The Corporation’s primary purpose is to finance, develop, lease and maintain certain school facilities for the exclusive use by Encore.

The Corporation is the sole member of the Landlord, which was organized in 2016. In connection with the issuance of the Prior Bonds, the Master Trustee and the Corporation, as representative of the

Obligated Group, entered into the Master Indenture, and Supplemental Master Indenture No. 1 with the Landlord, as the initial Member of the Obligated Group. In connection with the issuance of the Bonds, the Corporation will enter into Supplemental Master Indenture No. 2. The Landlord is currently the only Member of the Obligated Group.

The Landlord has a fee simple interest in the Facility (as defined herein), and currently leases the Facility to Encore pursuant to that certain Lease dated as of November 1, 2016 by and between the Landlord and Encore. In connection with the issuance of the Bonds, such Lease will be replaced by that certain Amended and Restated Lease Agreement, dated as of May 1, 2022, between the Landlord and Encore (the "Lease"). Encore is not a party to the Master Indenture and is obligated solely as lessee under the Lease.

See "APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP" attached hereto.

***Payment of Required Payments; Priority of Obligation No. 2.*** Under the Master Indenture, each Member jointly and severally covenants and agrees (a) to pay or cause to be paid promptly all Required Payments at the place, on the dates and in the manner provided in the Master Indenture, in any Related Supplement and in said Obligations, and (b) to faithfully observe and perform all of the conditions, covenants and requirements of the Master Indenture, any Related Supplement and any Obligation. **Notwithstanding the foregoing, each Member jointly and severally covenants and agrees that, to the extent Required Payments are due with respect to Obligation No. 2 and any other Obligation on the same date, except to the extent any such Required Payment is paid pursuant to an Intercept, each Member will pay amounts due in respect of Obligation No. 2 before paying amounts due in respect of any other Obligation.**

Although additional members may be added to the Obligated Group in connection with future projects and financings, the Corporation, the Landlord and Encore make no assurances that additional members will be added to the Obligated Group. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – The Master Indenture" herein.

### **Redemption and Optional Tender**

The Bonds will be subject to extraordinary optional redemption, optional redemption, extraordinary mandatory redemption, and mandatory sinking fund redemption as described below under "THE BONDS – Redemption."

The Bonds will be subject to optional tender as described below under the heading "THE BONDS – Optional Tender."

### **Certain Risk Factors**

The Bonds may not be a suitable investment for all investors. Prospective purchasers of the Bonds should read this entire Private Placement Memorandum, including the appendices and the information under the section "CERTAIN RISK FACTORS" before making an investment in the Bonds.

### **Miscellaneous**

This Private Placement Memorandum contains brief descriptions of, among other things, the Bonds, the Bond Indenture, the Loan Agreement, the Lease, the Master Indenture, the Supplemental Master Indenture, Obligation No. 2, the Corporation, Encore, and the School. All references in this Private Placement Memorandum to documents are qualified in their entirety by reference to such documents, and references to the Bonds are qualified in their entirety by reference to the form of the Bonds included in the Bond Indenture. Encore maintains a website providing additional information about itself and its operations. The information on such website is not included as part of, or incorporated by any reference in, this Private Placement

Memorandum. Any capitalized terms in this Private Placement Memorandum that are not defined herein will have such meaning as given to them in the Bond Indenture.

### **THE AUTHORITY**

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 and is authorized by the Act to issue bonds, notes or other evidences of indebtedness, or certificates of participation in leases or other agreements, or enter into loan agreements to, among other things, finance or refinance facilities owned and/or leased and operated by organizations described in Section 501(c)(3) of the Code.

The Authority may sell and deliver obligations other than the Bonds. These obligations will be secured by instruments separate and apart from the Bond Indenture, and the holders of such other obligations of the Authority will have no claim on the security for the Bonds. Likewise, the Holders of the Bonds will have no claim on the security for such other obligations that may be issued by the Authority.

Neither the Authority nor its independent contractors has furnished, reviewed, investigated or verified the information contained in this Private Placement Memorandum other than the information contained in this section and in the section entitled “ABSENCE OF MATERIAL LITIGATION – The Authority” herein. The Authority does not and will not in the future monitor the financial condition of the Corporation, the Landlord or Encore or otherwise monitor payment of the Bonds or compliance with the documents relating thereto.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE AUTHORITY AS PROVIDED IN THE ACT, PAYABLE SOLELY FROM REVENUES AND OTHER ASSETS PLEDGED UNDER THE BOND INDENTURE. THE BONDS DO NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY AS SET FORTH IN THE BOND 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 BOND INDENTURE, THE BONDS OR ANY OTHER DOCUMENTS, EXCEPT ONLY TO THE EXTENT AMOUNTS ARE RECEIVED FOR THE PAYMENT THEREOF FROM THE CORPORATION UNDER THE LOAN AGREEMENT. NONE OF THE AUTHORITY, ANY AUTHORITY MEMBER, ANY PERSON EXECUTING THE BONDS OR ANY OFFICIAL, DIRECTOR, MEMBER, OFFICER, AGENT, OR EMPLOYEE OF THE STATE, THE AUTHORITY, ANY PUBLIC AGENCY THEREOF OR ANY MEMBER THEREOF IS LIABLE PERSONALLY ON THE BONDS OR IN RESPECT OF ANY UNDERTAKINGS BY THE AUTHORITY UNDER THE BOND DOCUMENTS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE OF THE BONDS.

## THE BONDS

*The following is a summary of certain provisions of the Bonds. Reference is made to the Bonds for the complete text thereof and to the Bond Indenture for all of the provisions relating to the Bonds. The discussion herein is qualified by such reference.*

### **General**

The Bonds are being issued pursuant to the Bond Indenture in the aggregate principal amount set forth on the cover of this Private Placement Memorandum. The Bonds will initially be delivered as registered Bonds in minimum denominations of \$250,000 and any integral multiple of \$5,000 in excess thereof (“Authorized Denominations”), and will be transferable and exchangeable only as set forth in the Bond Indenture and as described herein. See “TRANSFER RESTRICTIONS” herein. The Bonds will be dated the date of issuance and will bear interest at the rates set forth on the inside cover page hereof from their dated date. Interest on the Bonds will be calculated on the basis of a 360-day year of twelve 30-day months and will be payable in arrears on each Interest Payment Date. The Bonds will mature in the amounts and in each of the years as set forth on the inside cover page hereof.

The Bonds, when issued, will be registered in the name of Cede & Co., as nominee of DTC, and will be evidenced by one Bond for each maturity of a Series in the total aggregate principal amount of the Bonds of such maturity. Registered ownership of the Bonds, or any portion thereof, may not thereafter be transferred except as set forth in the Bond Indenture. So long as Cede & Co. is the registered owner of the Bonds, as nominee of DTC, references herein to the Bondholders, holders or registered owners will mean Cede & Co. as aforesaid and will not mean the “beneficial owners” of the Bonds.

The principal and redemption price of and interest on the Bonds will be payable in lawful money of the United States of America upon surrender at the principal corporate trust office of the Trustee. The interest on any Bond will be payable to the person whose name appears on the registration books of the Trustee as the registered owner thereof as of the close of business on the fifteenth day of the calendar month immediately preceding the Interest Payment Date (the “Record Date”), such interest to be paid by check mailed by first class mail, postage prepaid, on the Interest Payment Date, to the registered owner at his or her address as it appears on such registration books. Notwithstanding the foregoing, however, any Holder of all the Bonds and any Holder of \$1,000,000 or more in an aggregate principal amount of the Bonds will be entitled to receive payments of interest on the Bonds held by it by wire transfer of immediately available funds to such bank or trust company located within the United States of America as such Holder will designate in writing to the Trustee by the first Record Date for such payment. So long as Cede & Co. is the registered owner of the Bonds, principal of and interest on the Bonds are payable in same day funds by the Trustee to Cede & Co., as nominee for DTC.

Any interest not punctually paid or duly provided for will thereafter cease to be payable to the Bondholder on such Record Date and will be paid to the person in whose name the Bond is registered at the close of business on the date established by the Trustee pursuant to the Bond Indenture as a record date for the payment of defaulted interest on the Bonds (the “Special Record Date”). The Special Record Date will be fixed by the Trustee, notice thereof being given to the Bondholders not less than 10 days prior to such Special Record Date.

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

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully registered securities without coupons in Authorized Denominations. The Bonds will be registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Bond certificate will be issued for each maturity of a Series of Bonds set forth on the inside cover of this Private Placement Memorandum, and will be delivered through the facilities of DTC.

For additional information regarding DTC and its book-entry only system, see “APPENDIX I – BOOK-ENTRY SYSTEM” herein.

### **Transfer of Bonds**

So long as the Bonds are subject to a system of book-entry only transfers, beneficial ownership interests in the Bonds may not be purchased by, or transferred to, any person except a Qualified Institutional Buyer. During any period of time when the Bonds are not subject to a system of book-entry only transfers, any Bond may be transferred upon the books kept by the Trustee, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of any such Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee. The Trustee will conclusively rely upon such written instrument of transfer as evidence that the transferee is a Qualified Institutional Buyer, as defined in the Bond Indenture. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority will execute and the Trustee will authenticate and deliver a new Bond or Bonds, of the same series and maturity and for a like aggregate principal amount of Authorized Denominations. The Trustee will require the Holder requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. No registration of transfers of Bonds shall be required to be made during the period established by the Trustee for selection of Bonds for redemption and after a Bond has been selected for redemption. The Bonds are subject to certain transfer restrictions under the Bond Indenture, as described herein under “TRANSFER RESTRICTIONS.”

### **Exchange of Bonds**

Bonds may be exchanged at the principal corporate trust office of the Trustee for a like aggregate principal amount of the Bonds of the same series and maturity of other Authorized Denominations. The Trustee will require the payment by the Holder requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange, and there will be no other charge to any Holder for any such exchange.

### **Redemption**

***Optional Redemption.*** The Bonds are subject to redemption prior to their stated maturities, at the option of the Corporation, in whole or in part on any date at a redemption equal to 100% of the principal amount of the Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

***Extraordinary Optional Redemption from Insurance and Condemnation Proceeds.*** The Bonds are subject to redemption prior to their respective stated maturities, at the option of the Corporation, as a whole or in part on any date from moneys required to be transferred from the Insurance and Condemnation Proceeds Fund to the Special Redemption Account at a redemption price equal to the principal amount thereof together with interest accrued thereon to the date fixed for redemption, without premium.

***Extraordinary Mandatory Redemption Due to Change of Use.*** The Bonds are subject to redemption prior to their stated maturity, as a whole on any date from Loan prepayments made by the Corporation in connection with the cessation of operation of Encore at the Facility, at a redemption price equal to the principal amount thereof together with interest accrued thereon to the date fixed for redemption, without premium.

***Extraordinary Mandatory Redemption from One-Time Funds Received by Encore.*** The Bonds are subject to redemption prior to their respective stated maturities, as a whole or in part on any date, from any unrestricted one-time moneys received by Encore and transferred to the Trustee pursuant to the Lease, at a redemption price equal to the principal amount thereof together with interest accrued thereon to the date fixed for redemption, without premium.

**Extraordinary Mandatory Redemption from Encore Cash On Hand.** The Bonds are subject to redemption prior to their respective stated maturities, as a whole or in part, on the 30<sup>th</sup> day following the end of each fiscal quarter of Encore, from any cash available to Encore in excess of the amount necessary to satisfy the Consolidated Days Cash on Hand covenant of the Lease as of the last day of the preceding fiscal quarter, as certified to the Trustee by the Corporation and Encore, at a redemption price equal to the principal amount of the Bonds subject to redemption together with interest accrued thereon to the date fixed for redemption, without premium.

**Mandatory Sinking Fund Redemption.** The Bonds are subject to redemption prior to their stated maturity date in part, by lot, from Mandatory Sinking Account Payments established pursuant to the Bond Indenture on June 1, 20\_\_ and on each June 1 thereafter, to and including June 1, 20\_\_, at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, in the years and amounts as follows:

<b>Term Bonds Maturing</b>	
June 1, 20__	
<u>Mandatory Redemption Date</u>	<u>Principal Amount</u>
June 1, 20__	
June 1, 20__	
June 1, 20__	
June 1, 20__	
June 1, 20__	
June 1, 20__	
June 1, 20__	
June 1, 20__	
June 1, 20__	
June 1, 20__ †	

† Maturity Date.

In the event of Extraordinary Mandatory Redemption, Extraordinary Optional Redemption, Optional Redemption or Optional Tender of any Bonds subject to Mandatory Sinking Fund Redemption, the Corporation shall provide the Bond Trustee with a revised sinking fund schedule giving effect to the optional redemption so completed.

**Notice of Redemption.** In connection with the redemption of Bonds (other than mandatory sinking fund redemption) the Corporation will give written notice of redemption to the Trustee not less than 35 days prior to the redemption date (or such shorter notice as may be acceptable to the Trustee). Notice of redemption of any Bonds will be given by the Trustee in accordance with the written request of the Corporation. Notice of any redemption of Bonds will be given electronically while registered to Cede & Co. and otherwise mailed postage prepaid not less than 30 nor more than 60 days prior to the redemption date by first class mail to the respective Holders thereof at the addresses appearing on the Bond registration books described in the Bond Indenture. Each notice of redemption will contain all of the following information: (a) the date of such notice; (b) the name of the Bonds and the date of issue of the Bonds; (c) the redemption date; (d) the redemption price; (e) the dates of maturity of the Bonds to be redeemed; (f) (if less than all of the Bonds of any maturity are to be redeemed) the distinctive numbers of the Bonds of each maturity to be redeemed; (g) (in the case of Bonds redeemed in part only) the respective portions of the principal amount of the Bonds of each maturity to be redeemed; (h) the CUSIP number, if any, of each maturity of Bonds to be redeemed; (i) a statement that such Bonds must be surrendered by the Holders at the principal corporate trust office of the Trustee, or at such other place or places designated by the Trustee; (j) a statement that such redemption is conditioned upon receipt by the Trustee, on or prior to the redemption date, of moneys sufficient to pay the redemption price or upon the happening of such other event as shall be specified therein, and if such moneys shall not have been so received or such event shall have (or have not) occurred, as the case may be, said notice shall be rescinded and the

notice cancelled; (k) a statement that any such redemption notice can be rescinded as provided in the Bond Indenture; and (l) notice that further interest on such Bonds, if any, will not accrue from and after the designated redemption date.

Such redemption notices may state that no representation is made as to the accuracy or correctness of the CUSIP numbers provided therein or on the Bonds.

Any notice of optional redemption may state that such redemption shall be conditioned (“Conditional Notice”) upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, premium, if any, and interest on such Bonds to be redeemed or upon the occurrence of such other event or condition as is set forth in such Conditional Notice, and that, if such moneys are not so received, or if such other event or condition has occurred or failed to occur (as the case may be), said notice will be of no force and effect and the redemption of the Bonds specified in the notice will no longer be required. The Trustee will within a reasonable time thereafter give notice, in the manner in which the original Conditional Notice was given, of the cancellation of such redemption.

***Effect of Notice.*** A certificate of the Trustee or the Corporation that notice of call and redemption has been given to Holders as provided in the Bond Indenture will be conclusive as against all parties. The actual receipt by the Holder of any Bond or any other party of notice of redemption will not be a condition precedent to redemption, and failure to receive such notice, or any defect in the notice given, will not affect the validity of the proceedings for the redemption of such Bonds or the cessation of interest, if any, on the date fixed for redemption.

When notice of redemption has been given substantially as provided for in the Bond Indenture, and when the redemption price of the Bonds called for redemption is set aside for the purpose as described in the Bond Indenture, the Bonds designated for redemption will become due and payable on the specified redemption date and interest, if any, will cease to accrue thereon as of the redemption date, and upon presentation and surrender of such Bonds at the place specified in the notice of redemption, such Bonds will be redeemed and paid at the redemption price thereof out of the money provided therefor. The Holders of such Bonds so called for redemption after such redemption date will look for the payment of such Bonds and the redemption premium thereon, if any, only to the redemption fund established for such purpose. All Bonds redeemed will be cancelled forthwith by the Trustee and will not be reissued.

***Right to Rescind Notice.*** In the event that the Corporation has cured the conditions that caused the Bonds to be subject to extraordinary redemption, the Corporation may rescind any extraordinary redemption and notice thereof on any date prior to the date fixed for redemption by causing written notice of the rescission to be given to the Holders of the Bonds so called for redemption, with a copy to the Trustee. Notice of rescission of redemption will be given in the same manner in which notice of redemption was originally given. The actual receipt by the Holder of any Bond of notice of such rescission will not be a condition precedent to rescission, and failure to receive such notice or any defect in such notice will not affect the validity of the rescission.

***Funds for Redemption.*** Prior to or on the redemption date of any Bonds there will be available in the Redemption Fund, or held in trust for such purpose as provided by law, monies for the purpose and sufficient to redeem, at the premiums payable as in the notice provided, the Bonds designated in said notice of redemption. Such monies so set aside in the Redemption Fund or in the escrow fund established for such purpose will be applied on or after the redemption date solely for payment of principal of and premium, if any, on the Bonds to be redeemed upon presentation and surrender of such Bonds, provided that all monies in the Redemption Fund will be used for the purposes established and permitted by law. Any interest due on or prior to the redemption date will be paid from the Redemption Fund, unless otherwise provided for to be paid from an escrow fund established for such purpose. If, after all of the Bonds have been redeemed and cancelled or paid and cancelled, there are monies remaining in the Redemption Fund or otherwise held in trust for the payment of redemption price of the Bonds, said monies will be held in or returned or transferred to the



Redemption Fund for payment of any Outstanding Bonds of the Corporation payable from said fund; provided, however, that if said monies are part of the proceeds of refunding bonds of the Corporation, said monies will be transferred to the fund created for the payment of principal of and interest on such Bonds. If no such refunding bonds of the Corporation are at such time Outstanding, said monies will be transferred to the general fund of the Corporation as provided and permitted by law.

***Selection of Bonds for Redemption.*** When any redemption is made pursuant to any of the provisions of the Bond Indenture and less than all of the Outstanding Bonds are to be redeemed, the Trustee shall select the Bonds to be redeemed from the Outstanding Bonds not previously called for redemption, by lot within a maturity. In no event will Bonds be redeemed in amounts other than whole multiples of Authorized Denominations. For purposes of redeeming Bonds in denominations greater than minimum Authorized Denominations, the Trustee will assign to such Bonds a distinctive number for each such principal amount and, in selecting Bonds for redemption by lot, will treat such amounts as separate Bonds.

“Outstanding” under the Bond Indenture means all Bonds theretofore, or thereupon being, authenticated and delivered to the Trustee under the Bond Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority has been discharged in accordance with the Bond Indenture; and (c) Bonds for the transfer or exchange of which, or in lieu of or in substitution for which other Bonds have been authenticated and delivered by the Trustee pursuant to the Bond Indenture.

***Purchase in Lieu of Redemption.*** The Corporation shall have the option to cause the Bonds to be purchased in lieu of any scheduled redemption pursuant to the Bond Indenture. Such option may be exercised by delivery to the Trustee on or prior to the Business Day preceding the scheduled redemption date of a written notice of the Corporation, specifying that the Bonds shall not be redeemed, but instead shall be purchased by the Corporation. Upon delivery of such notice, the Bonds shall not be redeemed but shall instead be subject to purchase by the Corporation at the applicable redemption price, which shall be payable on the date that would have been the redemption date. The principal amount of Bonds so purchased in lieu of redemption shall be applied as a credit to the next Mandatory Sinking Account Payment for the applicable series of Bonds.

### **Optional Tender**

Each Bondholder has the right to tender (each, an “Optional Tender”) its Bond to the Trustee for purchase in whole or in party on any day on or after June 1, 2026 (any such date referred to as an “Optional Tender Date”), at a purchase price equal to the principal amount thereof together with interest accrued thereon to the date fixed for redemption, without premium (the “Purchase Price”). In order to exercise such option, the Bondholder must deliver written notice to the Trustee at least 120 days prior to the proposed Optional Tender Date.

Not later than the Business Day after receipt of any notice of Optional Tender, the Trustee shall deliver notice to the Corporation specifying (i) the principal amount of the Bonds for which a notice of Optional Tender has been given and (ii) the proposed Optional Tender Date.

The Corporation shall, no later than five (5) days prior to the Optional Tender Date, pay to the Trustee for deposit in the Revenue Fund an amount equal to the Purchase Price. Failure of the Corporation to pay to the Trustee an amount equal to the Purchase Price by such date shall constitute an Event of Default under the Bond Indenture. If the Bondholder properly exercised the option to have its Bonds purchased as prescribed above, on the Optional Tender Date, the Trustee shall pay to the Bondholder an amount equal to the Purchase Price.

## Defeasance

**Discharge of Bond Indenture.** Bonds may be paid in any of the following ways, provided that the Corporation also pays or causes to be paid any other sums payable under the Bond Indenture: (a) by paying or causing to be paid the principal of and interest on the Bonds Outstanding as and when the same become due and payable; (b) by depositing with the Trustee, in trust, at or before maturity, money or securities in the necessary amount to pay or redeem Bonds Outstanding; or (c) by delivering to the Trustee, for cancellation by it, all Bonds Outstanding. If the Bonds are paid in part in accordance with the Bond Indenture as a result of a partial prepayment of the Loan pursuant to the Loan Agreement and the related Extraordinary Optional Redemption of a portion of the Bonds as described herein, the Mortgage may be released on the related portion of the Facility as permitted by the Loan Agreement and in accordance with instructions from the Corporation.

If all Bonds then Outstanding are paid or caused to be paid as provided above and all other sums payable under the Bond Indenture are also paid or caused to be paid, and if the Corporation has paid any all Additional Payments and indemnification owed to the Authority and any other fees and expenses payable to the Authority under the Loan Agreement, then and in that case, at the election of the Corporation, and notwithstanding that any Bonds have not been surrendered for payment, the Bond Indenture and the pledge of Payments made under the Bond Indenture and all covenants, agreements and other obligations of the Authority under the Bond Indenture will cease, terminate, become void and be completely discharged and satisfied, except as provided in the Bond Indenture. In such event, upon request of the Corporation, the Trustee will cause an accounting for such period or periods as may be requested by the Corporation to be prepared and filed with the Corporation and will execute and deliver to the Corporation all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee will pay over, transfer, assign or deliver to the Corporation all moneys or securities or other property held by it pursuant to the Bond Indenture which are not required for the payment of Bonds not theretofore surrendered for such payment and which are not required for the payment of fees and expenses of the Trustee.

**Discharge of Liability on Bonds.** Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount to pay any Outstanding Bond, whether upon or prior to its maturity, then all liability of the Authority in respect of such Bond will cease, terminate and be completely discharged, except only that thereafter the Holder thereof will be entitled to payment of the principal of and interest on such Bond by the Authority, and the Authority will remain liable for such payment but only out of the money or securities deposited with the Trustee as aforesaid for its payment; provided further, however, that the provisions of “ – Payment of Bonds after Discharge of Bond Indenture” hereinafter will apply in all events.

The Authority or Corporation may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the Authority or Corporation may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, will be deemed to be paid and retired.

**Deposit of Money or Securities with Trustee.** Whenever in the Bond Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the amount necessary to pay any Bonds, such amount (which may include money or securities held by the Trustee in the funds established pursuant to the Bond Indenture) will be equal (taking into account income which will accrue from the investment thereof on the date of deposit of such funds but without taking into account any income from the subsequent reinvestment thereof) to the principal amount of such Bonds and all unpaid interest thereon to maturity, and will be: (a) lawful money of the United States of America; or (b) noncallable bonds, bills and bonds issued by the Department of the Treasury (including without limitation (1) obligations issued or held in book-entry form on the books of the Department of the Treasury and (2) the interest component of Resolution Funding Corporation strips for which separation of principal and interest is made by request to the Federal Reserve Bank of New York in book-entry form), United States Treasury Obligations State and Local Government Series and Zero Coupon United States Treasury Bonds; provided, in each case, that the Trustee will have been irrevocably instructed (by the terms of the Bond Indenture or by request of the Authority or the Corporation) to apply such money to the payment of such principal of and interest on such Bonds and

provided, further, that the Authority and the Trustee will have received (i) an Opinion of Bond Counsel to the effect that such deposit will not cause interest on the Tax Exempt Bonds to be included in the gross income of the holder thereof for federal income tax purposes and that the Bonds to be discharged are no longer Outstanding; and (ii) a verification report of a firm of certified public accountants or other financial services firm acceptable to the Authority verifying that the money or securities so deposited or held together with earnings thereon will be sufficient to make all payments of principal of and interest on the Bonds to be discharged to and including their maturity date.

***Payment of Bonds after Discharge of Bond Indenture.*** Notwithstanding any provision of the Bond Indenture, and subject to applicable escheat laws, any moneys held by the Trustee in trust for the payment of the principal of or interest on any Bonds and remaining unclaimed for one year after the principal of all the Outstanding Bonds has become due and payable (whether at maturity or by declaration as provided in the Bond Indenture), if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, will be repaid to the Corporation free from the trusts created by the Bond Indenture, and all liability of the Trustee with respect to such moneys will thereupon cease; provided, however, that before the repayment of such moneys to the Corporation as aforesaid, the Trustee may (at the cost of the Corporation) first mail to the holders of Bonds which have not yet been paid, at the addresses shown on the registration books maintained by the Trustee, a notice, in such form as may be deemed appropriate by the Trustee, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Corporation of the moneys held for the payment thereof.

## **TRANSFER RESTRICTIONS**

The Bonds are to be offered and sold (including in secondary market transactions) only to Qualified Institutional Buyers. The foregoing limitation will cease to apply (without notice to or consent of any Bondholder) upon and after receipt by the Trustee from the Corporation of a rating letter by Fitch, S&P or Moody's indicating that the Bonds are rated "A-" or "A3," as applicable, or better. The Trustee will as soon as practicable, but in no event more than ten calendar days after receipt by the Trustee of such information, notify each Bondholder that (i) the restrictions set forth in the Bond Indenture requiring that the Beneficial Owners of the Bonds be Qualified Institutional Buyers will be of no further force or effect and (ii) the Authorized Denominations of the Bonds will be \$5,000 and any multiple in excess thereof. Pursuant to the Bond Indenture, "Qualified Institutional Buyer" means a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act.

In addition, the face of each Bond will contain a legend indicating that it is subject to transfer restrictions as set forth in the Bond Indenture. See "CERTAIN RISK FACTORS – Purchases and Transfers of Bonds Restricted to Qualified Institutional Buyers" herein. Each initial purchaser of the Bonds will be required to execute and deliver to the Authority and the Trustee an investor letter in the form attached hereto as Appendix K.

**ESTIMATED SOURCES AND USES OF FUNDS**

The following table sets forth the estimated sources and uses of funds related to the Bonds.

Sources:

Bond Principal \_\_\_\_\_  
**Total Sources:** \_\_\_\_\_

Uses:

Working Capital Fund  
 Reserve Account  
 Costs of Issuance<sup>(1)</sup> \_\_\_\_\_  
**Total Uses** \_\_\_\_\_

<sup>(1)</sup> Includes legal, printing, placement agent and other professional fees and other miscellaneous costs of issuance.

**THE FACILITY**

Proceeds of the Prior Bonds were used by the Corporation to finance the acquisition and improvement of charter school facilities located on a site of approximately 13.69 acres at 16955 Lemon Street in the City of Hesperia, California (the “Facility”). The Facility was originally developed as a youth rehabilitation facility in 2004, with four L-shaped dormitory buildings, a gymnasium, a fully equipped commercial kitchen, and various administrative offices. The L-shaped dormitory buildings are each one-story stucco buildings. The other original facilities are housed in two additional one-story stucco buildings. The total square footage of the six one-story buildings (not including portable structures) is approximately 65,541 square feet.

The Facility also includes nineteen portable classrooms, portable restrooms, a portable office building, a tent building of approximately 9,408 sq. ft., an outdoor stage for performances, an outdoor basketball court and a parking lot. In total, the Facility (including portable structures and the tent building) comprises structures providing approximately 98,949 sq. ft. of space and provides for approximately 200 parking spaces.

**Environmental Inspection.** Champlain Global Inc./Smith Roberts (“Champlain Global”) performed a Phase I Environmental Site Assessment of the Facility. In that connection, Champlain Global prepared a report dated January 25, 2016 (the “Phase I Report”). The Phase I Report states its purpose was to assess (1) the likelihood of contamination of the subject site as a result of either past or present land-use practices; and (2) the potential for future environmental contamination that may occur as a result of current conditions or operations and maintenance activities at either the subject site or properties adjoining the subject site, thereby identifying real or potential environmental or economic impact to the subject site.

Champlain Global’s assessment consisted of a reconnaissance of the subject property, drive-by observation of adjoining properties, acquisition and review of a current One-Mile Radius Regulatory Map Report, review of readily available information on file at selected governmental agencies, review of readily available maps and aerial photographs, interviews with persons reportedly knowledgeable of existing and prior uses of the subject property, and preparation of a written report summarizing Champlain Global’s findings. The Phase I Report is subject to a number of limitations and disclaimers.

The Phase I Report did not identify any Recognized Environmental Conditions at the subject site and did not recommend any further investigation. The term “Recognized Environmental Condition” means the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release or the material threat of a release of hazardous substances or

petroleum products into structures on the property or into the ground, groundwater or surface water of the property.

The Phase I Report speaks only as of its date, and Champlain Global has not been asked to perform any additional assessment since the time of the assessments described in the Phase I Report. Further, the Phase I Report is subject to the limitations specified in such report. Costs incurred by the Corporation, the Landlord or Encore with respect to environmental remediation or liability could adversely affect their respective financial conditions. See “CERTAIN RISK FACTORS – Limitations on Value of the Facility and on Remedies Under the Mortgage” herein.

## **Appraisal**

**General.** Curtis-Rosenthal, Inc. (the “Appraiser”), appraised the site and the buildings comprising the Facility. In connection therewith, the Appraiser prepared an appraisal for Encore (the “Appraisal”) which assumed an effective date of value of May 12, 2016. The Appraisal employed two different approaches: (i) the cost approach, based on a summation of the estimated value of the land, as if vacant, and the reproduction of replacement cost of the improvements; and (ii) the sales comparison approach, based on the prices paid for similar properties.

**Appraisal Amount.** The Appraisal estimates that the market value of the fee simple interest in the subject property, permanent improvements, portable buildings and tent structure constituting the Facility, as of May 12, 2016, was \$11,500,000. The Appraisal estimates that, as of May 12, 2016, (a) the valuation by cost approach of the Facility was \$11,600,000, and the (b) valuation by the sales comparison approach was \$11,400,000.

**Limitations.** The value of the Facility as estimated in the Appraisal represents only the opinion of the Appraiser and is only as of the effective date. The Appraiser has not been engaged to update or revise the estimates contained in the Appraisal since its effective date. See “CERTAIN RISK FACTORS – Limitations of Appraisal” herein.

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## DEBT SERVICE SCHEDULE

The annual debt service payment requirements of the Bonds and the Prior Bonds are set forth in the table below.

<i>Period Ending June 1</i>	<i>The Bonds<sup>(1)</sup></i>		<i>Prior Bonds</i>	<i>Total Bonds Debt Service</i>
	<i>Principal</i>	<i>Interest</i>		
2022			\$980,250	
2023			979,500	
2024			983,250	
2025			981,250	
2026			983,750	
2027			980,500	
2028			981,750	
2029			982,250	
2030			982,000	
2031	--	--	981,000	
2032	--	--	979,250	
2033	--	--	981,750	
2034	--	--	983,250	
2035	--	--	983,750	
2036	--	--	983,250	
2037	--	--	981,750	
2038	--	--	979,250	
2039	--	--	980,750	
2040	--	--	981,000	
2041	--	--	980,000	
2042	--	--	982,750	
2043	--	--	984,000	
2044	--	--	983,750	
2045	--	--	982,000	
2046	--	--	978,750	
2047	--	--	979,000	
2048	--	--	982,500	
2049	--	--	979,000	
2050	--	--	983,750	
2051	--	--	981,250	
2052	--	--	981,750	
Totals			\$30,428,000	

<sup>(1)</sup> Figures may not sum to totals due to rounding.

## SECURITY AND SOURCES OF PAYMENT FOR THE BONDS

### Limited Obligations of the Authority

The Bonds and interest thereon constitute special, limited obligations of the Authority and are payable solely from certain revenues received under the Bond Indenture and from certain funds and accounts established and maintained under the Bond Indenture. The Authority is not obligated to advance any moneys derived from any source other than the Payments (as defined below) and other assets pledged under the Bond Indenture, whether for the payment of the principal or redemption price or interest with respect to the Bonds.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE AUTHORITY AS PROVIDED IN THE ACT, PAYABLE SOLELY FROM REVENUES AND OTHER ASSETS PLEDGED UNDER THE BOND INDENTURE. THE BONDS DO NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE AUTHORITY AS SET FORTH IN THE BOND 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 BOND INDENTURE, THE BONDS OR ANY OTHER DOCUMENTS, EXCEPT ONLY TO THE EXTENT AMOUNTS ARE RECEIVED FOR THE PAYMENT THEREOF FROM THE CORPORATION UNDER THE LOAN AGREEMENT. NONE OF THE AUTHORITY, ANY AUTHORITY MEMBER, ANY PERSON EXECUTING THE BONDS OR ANY DIRECTOR, OFFICER, OR EMPLOYEE OF THE STATE, THE AUTHORITY, ANY PUBLIC AGENCY THEREOF OR ANY MEMBER THEREOF IS LIABLE PERSONALLY ON THE BONDS OR IN RESPECT OF ANY UNDERTAKINGS BY THE AUTHORITY UNDER THE BOND DOCUMENTS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE OF THE BONDS.

**Bond Indenture**

*Pledge of Payments and Other Amounts.* The Authority has executed and delivered the Bond Indenture and has pledged to secure the payment of the principal of and interest on the Bonds in accordance with the terms of the Bond Indenture, all of the Payments and any other amounts held in any fund or account established pursuant to the Bond Indenture. Said pledge will constitute a lien on and security interest in such assets and will attach and be valid and binding from and after delivery of the Bonds, without any physical delivery thereof or further act.

“Payments,” under the Bond Indenture, means (i) all moneys, if any, received by the Trustee directly from, or on behalf of, the Corporation, pursuant to the Loan Agreement (excluding Additional Payments not directed to be deposited into any fund or account created and held under the Bond Indenture) or Obligation No. 2, and (ii) all income derived from the investment of any money in any fund or account established pursuant to the Bond Indenture. See “APPENDIX E – FORM OF BOND INDENTURE” attached hereto.

*Assignment of Payments and Other Amounts, Loan Agreement, Lease, and Mortgage.* The Authority assigns to the Trustee, for the benefit of the Holders from time to time of the Bonds, (i) all of the Payments and other amounts pledged under “ – Pledge of Payments and Other Amounts” above, (ii) all of the right, title and interest of the Authority in, to and under the Loan Agreement (except for the right to receive any Administrative Fees and Expenses payable to the Authority, any right to be indemnified, held harmless or defended and rights to inspection and to receive notices, certificates and opinions, express rights to give approvals, consents, or waivers, and the obligation of the Corporation to make deposits pursuant to the Tax Certificate) and Obligation No. 2. The Authority will also cause Obligation No. 2 to be registered in the name of the Trustee.

The Trustee will be entitled to and will receive all of the Payments, and any such Payments collected or received by the Authority will be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and will forthwith be paid by the Authority to the Trustee. The Trustee will be entitled to and will (subject to the provisions of the Bond Indenture) take all steps, actions and proceedings following any event of default under the Loan Agreement or Obligation No.2 reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the

Authority assigned to the Trustee and all of the obligations of the Corporation under the Loan Agreement and Obligation No. 2.

***Revenue Fund.*** The Trustee will establish, maintain and hold in trust a special fund designated as the “Revenue Fund.” All Payments will be promptly deposited by the Trustee upon receipt thereof into the Revenue Fund, and will be held in trust for the benefit of the Holders from time to time of the Bonds but will nevertheless be disbursed, allocated and applied solely for the uses and purposes set forth in the Bond Indenture. The Trustee will establish within the Revenue Fund an Interest Account and a Principal Account for the payment of debt service on the Bonds.

Interest Account. All amounts in the Interest Account will be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it becomes due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to the Bond Indenture).

Principal Account. All amounts in the Principal Account will be used and withdrawn by the Trustee solely for the purpose of paying the principal or Mandatory Sinking Account Payments of the Bonds, as provided in the Bond Indenture.

The Trustee will establish and maintain within the Principal Account a separate subaccount for the Bonds, designated as the “\_\_\_\_ Sinking Account,” inserting therein the series and maturity (if more than one such account is established) for each Term Bond. On or before June 1 in each year, the Trustee will transfer the amount deposited in the Principal Account on and prior to that date pursuant to the Bond Indenture, as described in “– Allocation of Revenues” below, from the Principal Account to the Sinking Account for the purpose of making a Mandatory Sinking Account Payment (if such deposit is required in such month). With respect to the Sinking Account, on each Mandatory Sinking Account Payment date established for the Sinking Account, the Trustee will transfer the amount deposited in the Principal Account pursuant to the Bond Indenture for the purpose of applying the Mandatory Sinking Account Payment required on that date to the redemption (or payment at maturity, as the case may be) of Bonds, upon the notice and in the manner provided in the Bond Indenture; provided that, at any time prior to giving such notice of such redemption, the Trustee will apply such moneys to the purchase of Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as the Corporation may direct, in writing, except that the purchase price (excluding accrued interest) will not exceed the par amount of such Bonds. If, during the twelve-month period immediately preceding said Mandatory Sinking Account Payment date, the Trustee has purchased Bonds with moneys in the Sinking Account, or, during said period and prior to giving said notice of redemption, the Corporation has deposited Bonds with the Trustee, or Bonds were at any time purchased or redeemed by the Trustee from the Redemption Fund and allocable to said Mandatory Sinking Account Payment, such Bonds so purchased or deposited or redeemed will be applied, to the extent of the full principal amount thereof, to reduce said Mandatory Sinking Account Payment. All Bonds purchased or deposited pursuant to the provisions of the Bond Indenture summarized in this paragraph will be delivered to the Trustee and cancelled. Any amounts remaining in the Sinking Account when all of the Bonds are no longer Outstanding will be withdrawn by the Trustee and transferred to the Revenue Fund. All Bonds purchased from the Sinking Account or deposited by the Corporation with the Trustee will be allocated first to the next succeeding Mandatory Sinking Account Payment, then to the remaining Mandatory Sinking Account Payments as the Corporation directs.

The Term Bonds, which are Bonds payable on or before their specified maturity dates from Mandatory Sinking Account Payments, will be redeemed (or paid at maturity, as the case may be) by application of Mandatory Sinking Account Payments as set forth in “THE BONDS – Redemption – Mandatory Sinking Fund Redemption.”

Reserve Account. Under the Bond Indenture, the Trustee will establish the Reserve Account within the Revenue Fund. All amounts in the Reserve Account will be used and withdrawn by the Trustee solely for



the purpose of making up any deficiency in the Interest Account or the Principal Account, or (together with any other funds available) for the payment or redemption of all Outstanding Bonds.

Amounts on deposit in the Reserve Account will be valued by the Trustee at their fair market value each June 1 and December 1 and on the date of any Special Mandatory Redemption, and the Trustee will notify the Borrower of the results of such valuation. If the amount on deposit in the Reserve Account on the first Business Day following such valuation is less than one-hundred percent (100%) of the Reserve Account Requirement (as defined below), the Corporation has agreed in the Loan Agreement to make the deposits to the Reserve Account required by the Bond Indenture. If the amount on deposit in the Reserve Account on the first Business Day following such valuation is greater than the Reserve Account Requirement, then any excess will be withdrawn from the Reserve Account and transferred to the Revenue Fund.

The term “Reserve Account Requirement” means as of any date of calculation, an amount which shall be equal to maximum annual Debt Service with respect to the Bonds Outstanding.

See “APPENDIX E – FORM OF BOND INDENTURE” attached hereto.

***Allocation of Revenues.*** Promptly upon receipt, the Trustee will deposit the Payments to the Revenue Fund. On or before the 25<sup>th</sup> day of each month, commencing [May] 25, 2022, the Trustee will transfer from the Revenue Fund and deposit into the following respective accounts (each of which the Trustee will establish and maintain within the Revenue Fund) the following amounts, in the following order of priority, the requirements of each such account or fund (including the making up of any deficiencies in any such account resulting from lack of Payments sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account or fund subsequent in priority:

(1) To the Interest Account, one-sixth of the aggregate amount of interest becoming due and payable during the next succeeding Interest Payment Date on all Bonds then Outstanding, until the balance in said account is equal to said aggregate amount of interest; provided that from the date of delivery of the Bonds until the first Interest Payment Date with respect to the Bonds (if less than 6 months), transfers to the Interest Account shall be sufficient on a monthly pro rata basis to pay the interest becoming due and payable on said Interest Payment Date;

(2) To the Principal Account, one-twelfth of the aggregate amount of principal of the Bonds becoming due, to redeem or pay on the next Principal Payment Date, in each case until the balance in said Principal Account is equal to said aggregate amount of such principal and Mandatory Sinking Account Payments; provided that from the date of delivery of the Bonds until the first Principal Payment Date with respect to the Bonds (if less than 12 months), transfers to the Principal Account shall be sufficient on a monthly pro rata basis to pay the principal becoming due and payable on said Principal Payment Date;

(3) To the Reserve Account, (a) the greater of (i) the amount designated for deposit to the Reserve Account in a written direction of the Corporation, and (ii) one-twelfth (1/12) of the aggregate amount of each prior withdrawal from the Reserve Account for the purpose of making up a deficiency in the Interest Account or Principal Account (until deposits on account of such withdrawal are sufficient to fully restore the amount withdrawn), provided that no deposit need be made into the Reserve Account if the balance in said account is at least equal to the Reserve Account Requirement, and (b) in the event the balance in said account shall be less than the Reserve Account Requirement due to valuation of the Eligible Securities deposited therein in accordance with the Bond Indenture, the amount necessary to increase the balance in said account to an amount at least equal to the Reserve Account Requirement (until deposits on account of such valuation deficiency are sufficient to increase the balance in said account to said amount); and

(4) To the Administration Fund, an amount equal to one-twelfth of the annual Administrative Fees and Expenses.

Any moneys remaining in the Revenue Fund after the foregoing transfers will be transferred on June 1 of each year, commencing June 1, 2022, by the Trustee to the Corporation, free and clear of the lien of the Bond Indenture.

See “APPENDIX E – FORM OF BOND INDENTURE” attached hereto.

### **The Loan Agreement**

The Authority and the Corporation will execute the Loan Agreement to provide for the loan by the Authority to the Corporation of proceeds from the sale of the Bonds. The Authority will assign its rights in the Loan Agreement (except for certain unassigned rights, including the right to receive any Administrative Fees and Expenses payable to the Authority, any right to be indemnified, held harmless or defended and rights to inspection and to receive notices, certificates and opinions, express rights to give approvals, consents, or waivers, and the obligation of the Corporation to make deposits pursuant to the Tax Certificate) to the Trustee and will assign Obligation No. 2 to the Trustee. Pursuant to the Loan Agreement, the Corporation will be required to make loan repayments sufficient to pay the principal, premium, if any, and interest on the Bonds when due. See “APPENDIX F – FORM OF LOAN AGREEMENT” herein.

Pursuant to the Loan Agreement, the Corporation covenants that it will instruct or cause the Landlord to cause Encore, pursuant to the Lease, to pay Rent (as defined in the Lease) directly to the Master Trustee for deposit in the Gross Revenue Fund. See “APPENDIX F – FORM OF LOAN AGREEMENT” attached hereto. Rent under the Lease is payable by Encore solely from the Gross School Revenues, as defined herein, which are derived from the operations of the School, and any other charter schools that Encore may operate in the Facility in the future. See “THE LEASE – Payment of Rent” herein. Revenues generated from any other schools whose charters are held and/or that are operated and/or managed by Encore, or assets and revenues generated from sources other than the School, are not available for payment of Rent or otherwise available to the Authority, Master Trustee, Trustee, Investors and/or Bondholders.

Encore is not a party to, and is not liable under, the Loan Agreement. See “APPENDIX F – FORM OF LOAN AGREEMENT” attached hereto.

### **The Master Indenture**

***Joint and Several Obligations of the Members of the Obligated Group but not the Lessee.*** Under the Master Indenture, the Corporation, as the Obligated Group Representative, may authorize the issuance, on behalf of the Members of the Obligated Group, of Obligations to evidence or secure Indebtedness or other obligations. All Members of the Obligated Group are jointly and severally liable with respect to the payments due in respect of each Obligation issued under the Master Indenture, including Obligation No. 2. The Members of the Obligated Group are required to make payment on Obligation No. 2 in amounts sufficient to pay when due the principal of and premium, if any, and interest on the Bonds.

**Neither the Corporation nor Encore is a member of the Obligated Group. Encore is not a party to the Master Indenture and is obligated solely as lessee under the Lease, in respect of payment from the sources specified therein relating to the School, and is not responsible, party to or otherwise obligated under the Bond Indenture, the Master Indenture or the Supplemental Master Indenture to make payments directly under the Loan Agreement, Obligation No. 2 or the Bonds. The Corporation is the Obligated Group Representative and sole member of the Landlord, but is not liable under Obligation No. 2 or a source of payment or security for the Bonds. The Corporation is obligated as the borrower under the Loan Agreement, however the source of revenues for the satisfaction of the Corporation’s obligations under the Loan Agreement is limited solely to the Gross Revenues of the Obligated Group.**

Subject to the provisions of the Master Indenture permitting withdrawal from the Obligated Group, the obligation of each Member to make Required Payments is a continuing one and is to remain in effect until all

Required Payments have been paid in full in accordance with the Master Indenture. All moneys from time to time received by the Obligated Group Representative or the Master Trustee to reduce liability on Obligations, whether from or on account of the Members or otherwise, will be regarded as payments in gross without any right on the part of any one or more of the Members to claim the benefit of any moneys so received until the whole of the amounts owing on Obligations has been paid or satisfied and so that in the event of any such Member's filing bankruptcy, the Obligated Group Representative or the Master Trustee will be entitled to prove up the total indebtedness or other liability on Obligations Outstanding as to which the liability of such Member has become fixed.

Each such Obligation will be a primary obligation and will not be treated as ancillary to or collateral with any other obligation and will be independent of any other security so that the covenants and agreements of each Member under the Master Indenture will be enforceable without first having recourse to any such security or source of payment and without first taking any steps or proceedings against any other Person. The Obligated Group Representative and the Master Trustee are each empowered to enforce each covenant and agreement of the Master Indenture, and to enforce the making of Required Payments.

For a more detailed discussion of entry to or withdrawal from the Obligated Group, see “– Membership in Obligated Group” and “– Withdrawal from Obligated Group.” All capitalized terms used and not defined herein have the meanings listed in “APPENDIX E – SUMMARY OF PRINCIPAL BOND DOCUMENTS” attached hereto.

**Gross Revenue Fund.** The Members of the Obligated Group agree in the Master Indenture that, unless otherwise provided in a Related Supplement or if the Related Bonds issued thereunder are payable in full from funds that are subject to the Intercept, so long as any of the Obligations remain Outstanding, all of the Gross Revenues of the Obligated Group are required to be deposited as soon as practicable upon receipt in a fund designated as the “Gross Revenue Fund.” Under the Master Indenture, “Gross Revenues” means all revenues, income, receipts and money received by or on behalf of the Members from all lawfully available sources, including (a) gross revenues derived from the operation and possession of each Member's facilities; (b) gifts, grants, bequests, donations and contributions, exclusive of any gifts, grants, bequests, donations and contributions to the extent specifically restricted by the donor to a particular purpose inconsistent with their use for the payment of Required Payments; (c) proceeds derived from (i) accounts receivable, (ii) securities and other investments, (iii) inventory and other tangible and intangible property, and (iv) contract rights and other rights and assets now or hereafter owned by each Member; and (d) rentals received from the lease of space; provided, however, that Gross Revenues does not include (1) income derived from Defeasance Obligations that are irrevocably deposited in escrow to pay the principal of or interest on any Indebtedness; (2) any gains or losses resulting from the early extinguishment of Indebtedness, the sale, exchange or other disposition of Property not in the ordinary course of business, or the reappraisal, reevaluation or write-up of assets, or any other extraordinary gains or losses; (3) net unrealized gain (losses) on investments on investments and Financial Products Agreements; (4) proceeds of borrowing; (5) condemnation proceeds; (6) insurance proceeds; and (7) income derived from, or accounts receivable for, repayment to any Member of loans made by any other Member or Members.

Subject to the provisions of the Master Indenture, the Members shall establish and maintain the Gross Revenue Fund, in one or more accounts at such banking institution or institutions as the Members shall from time to time designate in writing to the Master Trustee for such purpose (the “Depository Bank(s)”). Subject only to the provisions of the Master Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, each Member, respectively, pledges, and to the extent permitted by law grants a security interest to the Master Trustee in, the Gross Revenue Fund and all of the Gross Revenues of the Obligated Group to secure the payment of Required Payments and the performance by the Members of their other obligations under the Master Indenture. Each Member, respectively, is required to execute and cause to be filed Uniform Commercial Code financing statements, is required to execute and cause to be sent to each Depository Bank and to the Master Trustee a notice of the security interest granted under the Master Indenture and is required to execute and deliver such other documents (including, but not limited to, control

agreements and continuation statements) as may be necessary or reasonably requested by the Master Trustee in order to perfect or maintain as perfected such security interest or give public notice thereof.

Amounts in the Gross Revenue Fund, if any, may be used and withdrawn by any Member at any time for any lawful purpose, except as provided in the Master Indenture. In the event that any Member is delinquent for more than one business day in the payment of any Required Payment with respect to any Obligation issued pursuant to a Related Supplement, the Master Trustee, upon notice from the Obligated Group Representative or actual knowledge of such delinquency, will notify the Obligated Group Representative and the Depository Bank(s) of such delinquency. Unless such Required Payment or payment in respect of Ground Rent is paid, or provision for payment is duly made, in a manner satisfactory to the Master Trustee, within five days of receipt of such notice, the Master Trustee will cause the Depository Bank(s) to transfer the Gross Revenue Fund to the name and credit of the Master Trustee. The Gross Revenue Fund will, upon its creation, be held in the name and to the credit of the Master Trustee until six months after the amounts on deposit in said account are sufficient to pay in full, or have been used to pay in full, all Required Payments in default and all other Events of Default known to the Master Trustee have been made good or cured to the satisfaction of the Master Trustee or provision deemed by the Master Trustee to be adequate has been made therefor, whereupon the Gross Revenue Fund (except for the Gross Revenues required to make such payments or cure such defaults) will be returned to the name and credit of the appropriate Members.

During any period that the Gross Revenue Fund, if any, is held in the name and to the credit of the Master Trustee, the Master Trustee is required to use and withdraw amounts in said Fund from time to time:

(1) FIRST, to make Required Payments as such payments become due (whether by maturity, redemption, acceleration or otherwise), and, if such amounts are not sufficient to pay in full all such payments due on any date, then to the payment of Required Payments ratably without any discrimination or preference; and

(2) SECOND, to such other payments in the order which the Master Trustee, in its discretion, shall determine to be in the best interests of the Holders of Obligations without discrimination or preference.

During any period that the Gross Revenue Fund, if any, is held in the name and to the credit of the Master Trustee, the Members shall not be entitled to use or withdraw any of the Gross Revenues of the Obligated Group unless and to the extent that the Master Trustee at its sole discretion so directs for the payment of current or past due operating expenses of the Members; provided, however, that the Members will be entitled to use or withdraw any amounts in the Gross Revenue Fund which do not constitute Gross Revenues of the Obligated Group. Each Member agrees to execute and deliver all instruments as may be required to implement the provisions of the Master Indenture with respect to the Gross Revenue Fund. Each Member further agrees that a failure to comply with the terms of the Master Indenture with respect to the Gross Revenue Fund shall cause irreparable harm to the Holders and will entitle the Master Trustee, with or without notice, to take immediate action to compel the specific performance of the obligations of the Members as provided in the Master Indenture.

***Grant of Security Interest.*** In addition to any security interest granted (i) under any Mortgage and (ii) as described under the heading “ – Gross Revenue Fund” above, the Members grant to the Master Trustee a continuing security interest in all of its presently existing and hereafter acquired or arising Collateral (as defined in the Master Indenture) in order to secure the prompt payment and performance and observance of all of the Members’ Obligations. The Members acknowledge and affirm that such security interest in the Collateral has attached to all Collateral without further act on the part of the Master Trustee or the Members. The Members consent to the foregoing grant of a security interest in the Collateral, regardless of where located.

The Members authorize the Master Trustee to file financing statements perfecting the security interest granted in the Master Indenture in any jurisdiction, and if requested, will deliver financing statements and

other documents to the Master Trustee and will take such other actions as may from time to time be requested by the Master Trustee in order to maintain a first perfected security interest in and, if applicable, control of, the Collateral for the Master Trustee. Any financing statement filed by the Master Trustee may be filed in any filing office in any jurisdiction and may (i) indicate the Collateral (1) as all assets of the Members or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC, or (2) by any other description which reasonably approximates the description contained in this section of the Master Indenture, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (1) whether the Members are an organization, the type of organization and any organization identification number issued to the Members, and (2) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. The Members also agrees to furnish any such information described in the foregoing sentence to the Master Trustee promptly upon request.

The Members will, if so requested by the Master Trustee, furnish to the Master Trustee, as often as the Master Trustee requests, statements and schedules further identifying and describing the Collateral and such other reports and information in connection with its Collateral as the Master Trustee may request, all in such reasonable detail as the Master Trustee may specify. The Members also agree to take any and all actions necessary to defend title to the Collateral against all persons and to defend the security interest of the Master Trustee in its Collateral and the priority thereof against any Lien not expressly permitted under the Master Indenture.

The Members' exact legal name, state of organization, FEIN, if any, and charter or organizational identification number is accurately set forth in each Related Supplement. The Members' chief executive office is located at the address set forth in the Master Indenture, and there are no other locations where any Member conducts business or Collateral is kept. The Members will not, without the prior written consent of the Master Trustee (which consent the Master Trustee shall not be obligated to provide absent the written direction of the Majority Obligation Holders), (i) change either of its names, entity types or ownership structures, (ii) reorganize or reincorporate under the laws of another jurisdiction, or (iii) change its address where Collateral is kept.

***Debt Service Coverage Ratio.*** Pursuant to the Master Indenture, each Member covenants and agrees to fix, charge and collect, or cause to be fixed, charged and collected, rental rates, fees and charges for the use of its Facilities and for the services furnished or to be furnished by the Members so that the Debt Service Coverage Ratio of the Obligated Group as a whole at the end of each Fiscal Year is not less than 1.00:1.00. If the Debt Service Coverage Ratio of the Obligated Group falls below 1.00:1.00, it will constitute an Event of Default under the Master Indenture.

“Debt Service Coverage Ratio” means for any Fiscal Year the ratio determined by dividing the Income Available for Debt Service for such Fiscal Year by the Debt Service Requirement for such Fiscal Year.

“Income Available for Debt Service” means, unless the context provides otherwise, with respect to the Members as to any period of time, the Gross Revenues less expenses of the Members relating to the operation and management of the Facilities, and less rent paid pursuant to any Ground Leases; provided that no determination thereof shall take into account: (a) any gain or loss resulting from either the early extinguishment or refinancing of Indebtedness or the sale, exchange or other disposition of capital assets not made in the ordinary course of business; (b) gifts, grants, bequests, donations and contributions, exclusive of any gifts, grants, bequests, donations and contributions to the extent specifically restricted by the donor to a particular purpose inconsistent with their use for the payment of Required Payments; (c) the net proceeds of insurance (other than business interruption insurance) and condemnation awards; (d) adjustments to the value of assets or liabilities resulting from changes in generally accepted accounting principles; (e) unrealized gains or losses that do not result in the receipt or expenditure of cash, including the extinguishment of debt; and (f) nonrecurring items which do not involve the receipt, expenditure or transfer of assets.

“Debt Service Requirement” means, for any Fiscal Year for which such determination is made, the aggregate of the scheduled payments to be made with respect to principal (or mandatory sinking fund or installment purchase price or lease rental or similar payments) and interest on Outstanding Long-Term Indebtedness of the Members during such period.

**Required Lease Covenants.** Pursuant to the Master Indenture, each Member covenants and agrees that each Lease will contain the following provisions:

(a) **Extraordinary Monthly Rent.** In the event that the Lessee under a Lease receives a notice (each an “Extraordinary Monthly Rent Notice”) from either the lessor under such Lease (the “Lessor”) or the Master Trustee stating the Master Trustee has not received the payment of Rent with respect to a Related Project (as defined in the Master Indenture) on or before the date that such required payment is due, then Lessee shall pay the Extraordinary Monthly Rent to the Master Trustee within three (3) Business Days after Lessee’s receipt of such Extraordinary Monthly Rent Notice. The Lessor shall covenant in such Lease to immediately provide the Lessee with a copy of any Extraordinary Monthly Rent Notice received by Lessor pursuant to the terms of the Master Indenture.

The definition of “Base Rent” set forth under the related Lease shall include, as one component, the “Extraordinary Monthly Rent.”

Initially, the Member will be the only Member of the Obligated Group, and the lease of the Facility to Encore for operation of the School will be the only “Lease” within the meaning of the Master Indenture. Consequently, there will initially be no source for the Extraordinary Monthly Rent payments described in the preceding paragraph.

(b) **Liquidity Covenant.** The Lessee will calculate Consolidated Days Cash on Hand for the Obligated Group Schools as of the last day of each Fiscal Year, commencing with the Fiscal Year ending June 30, 2017, based upon its audited financial statements for such Fiscal Year and file such reports with Master Trustee. For each calculation date, the Lessee, on behalf of the Obligated Group Schools, will maintain Consolidated Days Cash on Hand as of the last day of each Fiscal Year equal to or greater than 45 days.

“*Consolidated Days Cash on Hand*” means (i) the sum of Cash and Cash Equivalents of the Obligated Group Schools, excluding the proceeds of Indebtedness, as shown on the Lessee’s audited financial statements for each Fiscal Year (“Cash on Hand”); divided by (ii) the Average Daily Expenses for Obligated Group Schools (as calculated for the most recent Fiscal Year ending before such date).

“*Average Daily Expenses for Obligated Group Schools*” means (A) cash requirements during such Fiscal Year related to or payable from revenues attributable to the schools operated by the Lessee under the Lease, which have been financed with Obligations issued under the Master Indenture (the “Obligated Group School”) (excluding from such calculation all depreciation and other non-cash items), and including within such calculation on behalf of the Obligated Group Schools in the aggregate (i) all Operating Expenses for such Fiscal Year for the Obligated Group Schools, and (ii) the maximum Base Rent payable under the Lease for the Obligated Group Schools between the Lessee and any Member of the Obligated Group for that year or any other year, and (iii) the maximum annual debt service payable by the Obligated Group Schools on all other Obligated Group School Indebtedness, divided by (B) 365.

The Lessee will provide a certificate to the Lessor and Master Trustee at the time of delivery of its annual audited financial statements for each Fiscal Year indicating whether the Lessee, on behalf of the Obligated Group Schools, has met the requirement set forth above. If the certificate indicates that such cash balance requirement has not been met, the Lessee covenants to retain an Independent Consultant, at the expense of the Lessee, on behalf of the Obligated Group Schools, within 45 days, to make recommendations to increase such balances in the then-current Fiscal Year to the required level or, if in the opinion of the Independent Consultant the attainment of such level is impracticable, to the highest level attainable in such

Fiscal Year. The Independent Consultant selected and appointed by the Lessee may be rejected upon the written request of the holders of not less than a majority in aggregate principal amount of the Related Bonds then Outstanding; if so rejected, the Lessee covenants to use its best efforts to appoint a new Independent Consultant within 45 days thereof. Any Independent Consultant will be required to submit its recommendations to the Lessors and Master Trustee within 90 days after being so retained. The Lessee, on behalf of the Obligated Group Schools, agrees to implement the recommendations of the Independent Consultant, to the extent permitted by law.

No proceeds of any Indebtedness will be considered unrestricted available cash for purposes of such calculation.

In the event the Lessee, on behalf of the Obligated Group Schools, fails to have such an amount on deposit, it will not be a default or Event of Default under the Lease.

(c) Base Rent Coverage Ratio Covenant. Lessee covenants and agrees to calculate for each Fiscal Year its Base Rent Coverage Ratio for each Lease based on its audited financial statements for such Fiscal year, and to provide a copy of such calculation for such period to the applicable Lessor and the Master Trustee annually commencing with the Fiscal Year ending June 30, 2017. The Lessee also covenants to maintain its Net Operating School Revenue so that its Base Rent Coverage Ratio at the end of the each Fiscal Year is not less than 1.10 to 1.00; provide that, except as provided below, the Lessee's failure to achieve the required Base Rent Coverage Ratio will not constitute an Event of Default under any Lease if the Lessee promptly engages an Independent Consultant to prepare a report, to be delivered to the Lessee, the Lessor and Trustee within 45 days of engagement, with recommendations for meeting the required Base Rent Coverage Ratio or, if in the opinion of the Independent Consultant the attainment of such level is impracticable, to the highest level attainable in such Fiscal Year. The Independent Consultant selected and appointed by the Lessee may be rejected upon the written request of the holders of not less than a majority in aggregate principal amount of the Related Bonds then Outstanding; if so rejected, the Lessee covenants to use its best efforts to appoint a new Independent Consultant within 45 days thereof. Any Independent Consultant will be required to submit its recommendations to the Lessors and Master Trustee within 90 days after being so retained. The Lessee, on behalf of the Obligated Group School, agrees to implement the recommendations of the Independent Consultant, to the extent permitted by law. Notwithstanding the foregoing, the Lessee's failure to achieve a Base Rent Coverage Ratio of 1.00 to 1.00 will constitute an Event of Default under the Lease.

*“Additional Rent”* means (i) all amounts required to reimburse the lessor under a Lease, or satisfy such lessor's obligations, for any fees, expenses, taxes, indemnities, assessments or other payments that the Borrower is obligated to pay under the terms of the Loan Agreement, including, but not limited to, such amounts as described in the Loan Agreement; and (b) any other amounts required to be paid by such lessor in order for the lessor to meet its obligations under the Bond Documents on a full and timely basis.

*“Base Rent Coverage Ratio”* means for any period of time the ratio determined by dividing (i) Net Operating School Revenue by (ii) the amount of scheduled Base Rent under the Lease plus debt service on all Indebtedness of the Lessee.

*“Gross School Revenue”* means all revenue, income, receipts and money received by or on behalf of the Lessee from all lawfully available sources attributable to its operation of the applicable Obligated Group School and to any other charter school operated by the Lessee in the property subject to the Lease, calculated in accordance with GAAP, consistently applied.

*“Indebtedness of the Lessee”* means all obligations for borrowed money, installment sales and capitalized lease obligations, incurred or assumed by a Lessee, including Guaranties, Long-Term Indebtedness, Short-Term Indebtedness or any other obligation for payments of principal and interest with respect to money borrowed or payments under leases treated as indebtedness under GAAP.

“*Net Operating School Revenue*” means the Lessee’s Gross School Revenue (defined above) minus its Operating Expenses (defined below); provided, that no determination thereof will take into account: (a) any gain or loss resulting from either the early extinguishment or refinancing of Obligated Group School Indebtedness or the sale, exchange or other disposition of capital assets not made in the ordinary course of business; (b) gifts, grants, bequests, donations or contributions, and income therefrom, to the extent specifically permanently restricted by the donor or by law to a particular purpose inconsistent with their use for the payment of Operating Expenses; (c) the net proceeds of insurance (other than business interruption insurance) and condemnation awards; (d) adjustments to the value of assets or liabilities resulting from changes in GAAP; (e) unrealized gains or losses that do not result in the receipt or expenditure of cash; and (f) nonrecurring items which involve the receipt, expenditure or transfer of assets.

“*Obligated Group School Indebtedness*” means Indebtedness (as such term is defined in the Master Indenture) related to or payable from revenues of the applicable Obligated Group School and to any other charter school operated by Encore Education in the Facility subject to the Lease.

“*Operating Expenses*” means except as provided below, all unrestricted expenses of the Lessee, attributable to operations of the applicable Obligated Group School and to any other charter school operated by the Lessee at the Facility, including maintenance, repair expenses, utility expenses, equipment lease and other rental expense (excluding the Base Rent and the Extraordinary Monthly Rent, if any, but including Additional Rent and Expenses as defined in the Lease), administrative and legal expenses, miscellaneous operating expenses, advertising and promotion costs, payroll expenses (including taxes), the cost of material and supplies used for current operations of the Lessee, the cost of vehicles, equipment leases and service contracts, taxes upon the operations of the Lessee not otherwise mentioned herein, charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which are such as may reasonably be expected to be incurred in accordance with GAAP, calculated in accordance with GAAP, consistently applied. “Operating Expenses” shall exclude, however, i) depreciation and amortization, and (ii) any expenses which are treated as extraordinary in accordance with GAAP.

(d) Enrollment Covenant. Encore shall maintain annual enrollment at the School of at least 700 students, commencing as of October 15, 2022 and tested annually as of each October 15 thereafter (the “October Count Date”), with such enrollment to be calculated in the same way as reported to the California Department of Education (“CDE”).

Commencing on or before November 1, 2022 and on or before November 1 of each year thereafter, Encore shall report to the Trustee and post to the Electronic Municipal Market Access website its enrollment for each October Count Date.

In the event the enrollment at the School is less than 700 as of any October Count Date, Encore covenants to retain an Independent Consultant, at the expense of Encore, on behalf of the Obligated Group Schools, within 45 days, to make recommendations to increase such balances in the then-current Fiscal Year to the required level or, if in the opinion of the Independent Consultant the attainment of such level is impracticable, to the highest level attainable in such Fiscal Year. The Independent Consultant selected and appointed by Encore may be rejected upon the written request of the holders of not less than a majority in aggregate principal amount of the Related Bonds then Outstanding; if so rejected, Encore covenants to use its best efforts to appoint a new Independent Consultant within 45 days thereof. Any Independent Consultant will be required to submit its recommendations to the Lessors and Master Trustee within 90 days after being so retained. Encore, on behalf of the Obligated Group Schools, agrees to implement the recommendations of the Independent Consultant, to the extent permitted by law.

Upon submission of the Independent Consultant's report, Encore is required to arrange for payment of the amount owed to the Independent Consultant and issue a written certificate to the Trustee indicating its acceptance of the recommendations of the consultant within thirty (30) days of receiving the report of the Independent Consultant. So long as Encore is otherwise in full compliance with its obligations under the



Lease, including following the recommendations of the Independent Consultant, it shall not constitute an Event of Default under the Lease if the enrollment of the School is less than the required amount, so long as such enrollment is above 665 students.

***Limitations on Additional Indebtedness.*** Each Member covenants and agrees that it will not incur any Additional Indebtedness except as follows:

(a) Long-Term Indebtedness may be incurred if each Member obtains the prior written consent of the Majority Obligation Holders;

(b) Long Term Indebtedness may be incurred for the purpose of refunding any Outstanding Indebtedness, if such Long Term Indebtedness fully pays the Outstanding Obligations in full;

(c) Short Term Indebtedness may be incurred by any Member if such Member obtains the prior written consent of the Majority Obligation Holders;

(d) Indebtedness consisting of purchase money obligations with respect to any item of equipment related to the Facilities may be incurred in the aggregate principal amount of up to \$50,000;

(e) Indebtedness consisting of leases which are considered operating leases under generally accepted accounting principles may be incurred with the prior written consent of the Majority Obligation Holders;

(f) Subordinated Indebtedness may be incurred with the prior written consent of the Majority Obligation Holders; or

(g) No Member shall enter into a Financial Products Agreement.

See “APPENDIX G – MASTER INDENTURE AND FORM OF SUPPLEMENTAL MASTER INDENTURE NO. 2” attached hereto.

***Insurance.*** Each Member covenants and agrees that it will keep (or cause to be kept) insurance (including builder’s all-risk insurance during any period of construction at a Facility) against loss or damage to any structure constituting any part of the Facilities by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. All insurance provided pursuant to this subsection shall be in an amount equal to the greater of (i) one hundred percent (100%) of the replacement cost (without deduction for depreciation) of all buildings, structures and fixtures constituting any part of the Facilities owned by such Member, or (ii) the principal amount of the Related Bonds then outstanding under any Related Bond Indenture, and shall be subject to a deductible not to exceed \$100,000 per occurrence.

Each Member covenants and agrees to procure and maintain (or caused to be procured or maintained), throughout the term of any Related Bond Indenture, business interruption insurance or rent loss insurance to cover loss, total or partial, of the use of any structures constituting any part of the Facilities as the result of any of the hazards covered by the insurance required by, in an amount sufficient to pay the Required Payments for a period of at least twelve (12) months. Proceeds of such insurance in the amount of at least twelve (12) months of Required Payments shall be deposited into the “Insurance and Condemnation Proceeds Fund” created under the Master Indenture and applied to the payment of the Required Payments, in installments as the proceeds are paid to each Member.

Each Member covenants and agrees that it will maintain (or caused to be maintained) (i) general liability insurance of no less than \$1,000,000 per occurrence and (ii) worker's compensation insurance as required by the laws of the State.

An Insurance Consultant shall review the insurance requirements of each Member with respect to the Facilities from time to time (but not less frequently than once every five years) commencing July 1, 2021. If such review indicates that any Member should increase any of the coverages required hereof, each Member shall review such recommendation with the governing body of each Member and shall increase such coverage.

Each Member hereby covenants that it will use its best efforts to apply for any grants, loans or other relief available from each state government, as applicable, or the federal government to obtain amounts necessary to rebuild any portion of the Facilities destroyed or damaged in connection with an uninsured or underinsured calamity causing destruction or damage; provided, however, that each Member shall not be required to accept such amounts if doing so would jeopardize the integrity of each Member's programs.

See "APPENDIX G – MASTER INDENTURE AND FORM OF SUPPLEMENTAL MASTER INDENTURE NO. 2" attached hereto for information on the application of insurance proceeds.

**Amendment of Lease.** There shall be no amendment, modification or termination of any of the Leases without the prior written consent of the Master Trustee. The Master Trustee shall give such written consent only if:

- (a) the Holders of a majority in principal amount of the related Tax-Exempt Bonds then Outstanding consent in writing to such amendment, modification or termination; and
- (b) the Master Trustee shall receive an Opinion of Bond Counsel substantially to the effect that such amendment, modification or termination will not, in and of itself, adversely affect any exclusion of interest on the Related Bonds that are Tax-Exempt Bonds from gross income for purposes of federal income taxation.

**Membership in Obligated Group.** Additional Members may be added to the Obligated Group from time to time provided that prior to such addition the Master Trustee receives:

- (a) a copy of a resolution of the Governing Body of the proposed new Member which authorizes the execution and delivery of a Related Supplement and compliance with the terms of the Master Indenture;
- (b) a Related Supplement executed by the Obligated Group Representative, the new Member and the Master Trustee pursuant to which the proposed new Member (1) agrees to become a Member, (2) agrees to be bound by the terms and restrictions imposed by the Master Indenture and the Obligations, and (3) irrevocably appoints the Obligated Group Representative as its agent and attorney-in-fact and grants to the Obligated Group Representative full power to execute Related Supplements authorizing the issuance of Obligations and to execute and deliver Obligations;
- (c) an Opinion of Counsel to the Master Trustee to the effect that (1) the proposed new Member has taken all necessary action to become a Member, and upon execution of the Related Supplement, such proposed new Member will be bound by the terms of the Master Indenture and (2) the addition of such Member will not cause the Master Indenture or any Obligations to be subject to registration under the Securities Act of 1933, as amended, or the Trust Indenture Act of 1939, as amended (or, that any such registration, if required, has occurred);
- (d) an Independent Consultant's or Accountant's report, or an Officer's Certificate, as appropriate, to the effect that the condition described in the Limitations on Additional Indebtedness section of

the Master Indenture would be met for the incurrence of one dollar of additional Long-Term Indebtedness immediately following the addition of such new Member;

(e) an Opinion of Bond Counsel to the effect that the addition of such Member will not result in the inclusion of interest on any Related Bonds that purports to be a Tax-Exempt Bond in gross income for purposes of federal income taxation, nor cause the Master Indenture nor the Obligations issued under the Master Indenture to be subject to registration under the Securities Act of 1933, as amended or the Trust Indenture Act of 1939, as amended (or unless such registration, if required, has occurred);

(f) an Officer's Certificate to the effect that no Member, immediately after the addition of such new Member, would be in default in the performance or observance of any covenant or condition of the Master Indenture; and

(g) a duly executed and delivered Mortgage encumbering the all Property, Plant and Equipment of such new Member, subject only to Permitted Liens.

***Withdrawal from Obligated Group.*** Any Member may withdraw from the Obligated Group, and be released from further liability or obligation under the provisions of the Master Indenture, provided that prior to such withdrawal the Master Trustee receives:

(a) an Officer's Certificate to the effect that, immediately following withdrawal of such Member, no Member would be in default in the performance or observance of any covenant or condition of this Master Indenture;

(b) an Opinion of Bond Counsel to the effect that the withdrawal of such Member is in compliance with the conditions contained in this Section, and such withdrawal will not result in the inclusion of interest on any Related Bonds that purports to be a Tax-Exempt Bond in gross income for purposes of federal income taxation, nor cause this Master Indenture nor the Obligations issued under this Master Indenture to be subject to registration under the Securities Act of 1933, as amended, or the Trust Indenture Act of 1939, as amended (or unless such registration, if required, has occurred);

(c) an Officer's Certificate to the effect that, to the best of such Officer's knowledge, the withdrawal of such Member will not cause a downgrade or withdrawal of any then-current rating on the Related Bonds outstanding under the Master Indenture by the related rating agency; and

(d) prior written consent of the Majority Obligation Holders.

Upon compliance with the conditions contained in this Section the Master Trustee shall execute any documents reasonably requested by the withdrawing Member to evidence the termination of such Member's obligations under the Master Indenture (including without limitation termination of the pledge of such Member's Gross Revenues) under any Related Supplements and under all Obligations (including, without limitation, reconveyance of the Mortgage encumbering such Member's Property, Plant and Equipment for the benefit of the Master Trustee).

***Limitations on Liens.*** Each Member of the Obligated Group has agreed in the Master Indenture that it will not create, assume or suffer to be created or permit the existence of any Lien upon any of its Property or Gross Revenues except for the Mortgages (as defined herein); provided that the following types of Liens are permitted: (i) a Lien that is subordinate to the Obligations or (ii) a Permitted Lien. Notwithstanding the foregoing, each Member further covenants and agrees in the Master Indenture that if such a Lien is created or assumed by any Member, it will make or cause to be made effective a provision whereby all Obligations will be secured prior to any such Indebtedness or other obligation secured by such Lien; provided, however, that notwithstanding the provisions of the Master Indenture, each Member may create, assume or suffer to exist

Permitted Liens. See “APPENDIX G – MASTER INDENTURE AND FORM OF SUPPLEMENTAL MASTER INDENTURE NO. 2” attached hereto.

**Other Covenants.** The Member of the Obligated Group has agreed to other covenants in the Master Indenture, including without limitation, limitations on guaranties; limitations on consolidation, merger, sale or conveyance; and limitations on sale, lease or other disposition of assets. For a description of these covenants see “APPENDIX C – SUMMARY OF PRINCIPAL BOND DOCUMENTS – MASTER INDENTURE – Particular Covenants of the Corporation and Each Member” attached hereto.

## **Mortgage**

Pursuant to the Master Indenture, and in connection with the issuance of the Prior Bonds and Obligation No. 1, the Landlord entered into a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, made as of November 1, 2016, relating to the Facility (the “Mortgage”) to secure the obligations of the Obligated Group under the Master Indenture.

Pursuant to the Master Indenture, the Landlords have agreed to supplement such Mortgage or to execute and deliver such other deeds of trust or mortgages as may be necessary from time to time to grant to the Master Trustee a first priority lien on their interest in any Property, Plant and Equipment of the Members, subject to certain permitted liens and applicable ground leases. The Mortgage also creates current and absolute assignments of the rents under the Lease in favor of the Master Trustee. See “THE LEASE” herein.

In connection with the Bonds, the Mortgaged Property consists of the Landlord’s interest in all real property and personal property that constitute the Facility at which Encore operates the School. Pursuant to the Master Indenture and in connection with the execution and delivery of the Mortgage, the Landlord has covenanted to obtain or cause to be maintained, ALTA lender’s title insurance policies on the Landlord’s interest in the Facility in an aggregate amount not less than the aggregate principal amount of the Bonds, insuring the lien of the Mortgage held by the Master Trustee, subject only to Permitted Liens, issued by a title insurance company qualified to do business in the State of California. See “APPENDIX G – MASTER INDENTURE AND FORM OF SUPPLEMENTAL MASTER INDENTURE NO. 2” attached hereto.

## **THE LEASE**

*The following section contains brief descriptions of the Lease. All references in this Private Placement Memorandum to the Lease are qualified in their entirety by reference to the form of Lease, attached hereto as Appendix H. See “APPENDIX H – FORM OF LEASE” attached hereto.*

## **General**

In connection with the Prior Bonds, the Landlord and Encore entered into a Lease Agreement, dated as of November 1, 2016, between the Landlord, as lessor, and Encore, as lessee (the “Original Lease”). The Prior Lease was previously amended by that First Amendment to Lease Agreement, dated as of September 1, 2019 (the Original Lease, as amended, the “Prior Lease”).

In connection with the issuance of the Bonds, the Prior Lease will be amended and restated by that certain Amended and Restated Lease Agreement, dated as of May 1, 2022, between the Landlord, as lessor, and Encore, as lessee (the “Lease”). The primary source of Gross Revenues for the Members of the Obligated Group are the payments of Rent received pursuant to the Lease. Under the Lease, the Landlord leases to Encore, and Encore leases from the Landlord, the Facility. The Lease has a term commencing on May 1, 2022, and expiring on June 30, 20\_\_.

## Payment of Rent

Pursuant to the Lease, Encore will make monthly payments of Rent in advance on the 20th day of each calendar month. “Rent,” as defined under the Lease, comprises the following: (i) the monthly payment of Base Rent (as defined in the Lease); (ii) Additional Rent (as defined in the Lease); (iii) Expenses (as defined in the Lease); and (iv) any other monetary obligations of Encore to the Landlord or to third parties arising under the terms of the Lease. See “APPENDIX H – FORM OF LEASE” attached hereto.

Under the Lease, in the event that Encore receives an Extraordinary Monthly Rent Notice from either the Landlord or the Master Trustee stating that the Master Trustee has not received the payment of Rent with respect to a Related Project (as defined in the Master Indenture) on or before the date that such required payment is due, then Encore is required to pay to the Master Trustee, within three Business Days after its receipt of the Extraordinary Monthly Rent Notice, the Extraordinary Monthly Rent. As used in the Lease, the “Extraordinary Monthly Rent” means the amount set forth in such Extraordinary Monthly Rent Notice, which shall be Encore’s Proportionate Share, under the Lease, of the Extraordinary Monthly Rent. As used in the Lease “Proportionate Share” means the amount required to be paid by Encore to ensure that all of the required Rent with respect to all of the Related Projects has been timely paid. There is no assurance that the amount of Extraordinary Monthly Rent will be sufficient to cover any Rent not paid by any other Related Project.

Encore has covenanted to cause all payments of Base Rent and Additional Rent under the Lease to be received by the Trustee on behalf of the Landlord in lawful money of the United States on or before the day on which such payments are due, without offset or deduction. Encore has agreed to take such action as may be necessary to include all payments of Rent due under the Lease in its annual budget, to make, as necessary, annual appropriations for all such payments and to take such action annually as will be required to provide funds in such year for such payments of Rent.

Pursuant to the Lease, Encore covenants that payment of educational management fees, if any, paid to Encore in connection with the School will be subordinate to payments of Rent under the Lease. See “— Certain Covenants of Encore under the Lease – Financial Covenants – Subordination of Collection of Educational Management Fees” below.

The source of payment for the obligations of Encore under the Lease will be limited solely and exclusively to assets and revenues derived from operations of the School operated at the Facility, and any other charter school operated by Encore therein. Revenue derived from operations of one Obligated Group School is only available to pay Rent due with respect to another Obligated Group School through the Extraordinary Monthly Rent provisions described above. No other assets or revenues of Encore will be available to satisfy its obligations under the Lease, except at the election of Encore. Accordingly, if operations of the School failed to provide sufficient revenue to provide for the payment of Rent under the Lease, excess revenues produced by operations of any other charter school operated by Encore may not be available for the payment thereof. See “CERTAIN RISK FACTORS” herein.

## Certain Covenants of Encore under the Lease

**General.** The Lease contains various covenants (including reporting covenants), representations and warranties made by Encore to the Landlord. Covenants include:

- (i) restrictions on the use of the Premises to the operation of a charter school;
- (ii) compliance by Encore with applicable laws, including all environmental laws, and private restrictions;
- (iii) sublease and assignment restrictions without the Landlord’s consent;

- (iv) covenants to maintain insurance policy coverages required pursuant to the Lease;
- (v) indemnification of the Landlord pursuant to the Lease terms;
- (vi) covenant to take all reasonable actions to maintain the School's charter;
- (vii) limitations on disposition of property, plant and equipment of Encore;
- (viii) covenant not to incur further indebtedness; and
- (ix) covenant not to take any action or omit to take any action that, if taken or omitted, would cause Encore to lose status as an organization described under Section 501(c)(3) of the Code.

***Financial Covenants.*** The Lease contains certain financial covenants on the part of Encore, which are summarized below.

***Base Rent Coverage Ratio.*** In accordance with the Master Indenture, the Lease contains a covenant substantially in the form of the required Base Rent Coverage Ratio provisions set forth in the Master Indenture. Under the Lease, Encore has agreed to comply with a covenant substantially in the form of the covenant set forth in the Master Indenture. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – The Master Indenture – Required Lease Covenants" herein.

***Consolidated Days Cash on Hand.*** In accordance with the Master Indenture, the Lease requires Encore to calculate and report Consolidated Days Cash on Hand for the Obligated Group Schools as set forth in the Master Indenture. For each calculation date, Encore, on behalf of the Obligated Group Schools, will maintain Consolidated Days Cash on Hand as of the last day of each Fiscal Year equal to or greater than 45 days.

***Limitations on Obligated Group School Indebtedness.*** Encore covenants that it will not incur, assume or guarantee ("incur"), any Obligated Group School Indebtedness (secured or unsecured), except Obligated Group School Indebtedness with respect to purposes specifically benefiting Encore, and except (a) if the Holders of a majority in principal amount of the Bonds then Outstanding consent in writing to such indebtedness, or (b) unsecured or secured, as permitted by the Lease, as provided below.

(a) ***Nonrecourse School Indebtedness.*** To the extent permitted by applicable law and if no Event of Default under the Lease, or an event that with the giving of notice or passage of time or both would constitute an Event of Default under the Lease, has occurred and is continuing, Encore may incur or assume Nonrecourse School Indebtedness (as defined below), Short-Term School Indebtedness (as defined below), and Interim Indebtedness (as defined below) to a total aggregate principal amount outstanding at any time not in excess of the greater of: (1) 25% of Operating Expenses in any Fiscal Year, or (2) the maximum amount of advance apportionment and principal apportionment due to the School in any fiscal year that is deferred at any time or subject to deferral pursuant to Section 14041.6 of the California Education Code or Sections 16325.5 and 16326 of the California Government Code, or any subsequent legislation authorizing additional deferrals of such apportionments (collectively "Maximum Deferred Apportionment").

"Nonrecourse School Indebtedness" means all Obligated Group School Indebtedness with respect to which the obligee is prevented by applicable law or contractual arrangement from exercising recourse, or any other right or remedy exercisable by a creditor, against all or any part of the Premises or the Improvements in order to pay, satisfy or discharge all or any part of the Obligated Group School Indebtedness.

(b) *Short-Term School Indebtedness.* Encore may incur Short-Term School Indebtedness (as defined below) for working capital purposes as in its judgment is deemed expedient, provided that in no event will Encore incur Short-Term School Indebtedness, together with outstanding Nonrecourse School Indebtedness and Interim Indebtedness (defined below) in excess of (i) for any such Obligated Group School Indebtedness incurred in the Fiscal Year ending June 30, 2020, \$4,000,000; (ii) for any such Obligated Group School Indebtedness incurred in the Fiscal Year ending June 30, 2021, \$2,250,000; and (iii) beginning July 1, 2021, the greater of (1) 25% of Operating Expenses in any Fiscal Year, or (2) the Maximum Deferred Apportionment.

“Short-Term School Indebtedness” means all Obligated Group School Indebtedness having an original maturity less than or equal to one year and not renewable at the option of Encore for a term greater than one year from the date of original incurrence or issuance; provided however, that any Short Term Indebtedness that has been issued as revenue anticipation notes (“RANS”) will not be included or counted as Short Term Indebtedness to the extent that the RANS are secured by deferred state apportionment revenues expressly pledged and deposited in an intercept account to pay such RANS; and provided further that, notwithstanding any other provision of Encore, Encore’s 2016 Revenue Anticipation Notes, Series A are permitted thereunder as Short-Term School Indebtedness.

(c) *Interim Indebtedness.* Encore may incur Interim Indebtedness (as defined below) to finance or refinance existing capital needs as in its judgment is deemed expedient, provided that in no event will Encore incur Interim Indebtedness, together with outstanding Nonrecourse School Indebtedness and Short-Term School Indebtedness, on a combined basis, is in excess of the greater of: (1) 25% of Operating Expenses in any Fiscal Year, or (2) the Maximum Deferred Apportionment.

“Interim Indebtedness” means all Obligated Group School Indebtedness having an original maturity less than or equal to five years and not renewable at the option of Encore for a term greater than five years from the date of original incurrence or issuance.

(d) *Charter School Revolving Fund Loan Program.* Notwithstanding the foregoing limitations on Obligated Group School Indebtedness, Encore shall be permitted to obtain loans with respect to the School pursuant to the Charter School Revolving Loan Program established under California Education Code Sections 41365 through 41367 (“Charter School Start-up Loans”) and any such Charter School Start-up Loans existing with respect to any School will not be taken into account in applying the foregoing limitations on Non-Recourse Indebtedness, Short-Term School Indebtedness, and Interim Indebtedness.

Gross School Revenue Pledge. Encore pledges and, to the extent permitted by law, grants a security interest to the Landlord and the Master Trustee in all of the Gross School Revenues of Encore to secure the payment of all Rent payable under the Lease and the performance by Encore of all other obligations under the Lease. Encore shall execute and cause to be filed Uniform Commercial Code financing statements, shall execute and cause to be sent to the Landlord and to the Master Trustee a notice of the security interest granted under the Master Indenture and shall execute and deliver such other documents (including, but not limited to, control agreements and continuation statements) as may be necessary or reasonably requested by the Landlord or Master Trustee in order to perfect or maintain as perfected such security interest or give public notice thereof. Notwithstanding anything to the contrary contained in the Lease, neither the Master Trustee nor any other Person (other than Encore) shall be responsible for any initial filings of any financing statements, or the information contained therein (including the exhibits thereto), the perfection or priority of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any continuation statements, modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code. Encore authorizes the Master Trustee to file continuation statements on behalf of Encore, and such costs associated therewith shall be deemed Additional Rent under the Lease, and Landlord shall collect such amounts from Encore and pay the same over to the Master Trustee,

provided that the Trustee shall have no obligation to file any continuation statements on behalf of Encore in any circumstance.

**Intercompany Borrowing.** The Gross School Revenues shall not fund any intercompany loans or be used to pay any lease expenses of Encore other than facilities leases benefiting the School or as otherwise permitted under the Lease.

**Subordination of Collection of Educational Management Fees.** So long as the Bonds remain outstanding, an educational management fee, if any, paid to Encore in connection with management services provided and related to or payable from revenues attributable to the School and to any other charter school operated by Encore in the property subject to the Lease, shall be subordinate to the payment of Rent due under the Lease.

**Change in Financial Accounting Under GAAP.** If any pending or future change in financial accounting under GAAP, including but not limited to a change in the treatment of leases, shall lead to a materially different result in a calculation under any financial covenant in the Lease, then such financial covenant shall be calculated based on GAAP in effect as of the date of the Lease as if such change in financial accounting had never occurred.

***Financial Reporting.*** The Lease requires that Encore, as tenant thereunder, provide to the Landlord, and to the Trustee or Master Trustee upon written request, the following information:

- (i) If Encore is undertaking any construction at the Facility, not later than 60 days after the end of each quarter, a construction progress report with respect to any such construction until such construction is substantially complete.
- (ii) Quarterly unaudited financial information and operating data of the School not later than 60 days after the end of each quarter.
- (iii) Quarterly, not later than 60 days after the end of each quarter, a report of the School's quarterly enrollment data and waitlist data by grade for the previous fiscal quarter.
- (iv) Prior to the end of each fiscal year, a copy of the annual budget of the School for the subsequent Fiscal Year.
- (v) Quarterly, not later than 60 days after the end of each quarter, a year to date comparison of the revenue and expenditures in the unaudited financial statements for such quarter to the annual budget for the applicable fiscal year.
- (vi) Quarterly, not later than 60 days after the end of each quarter, a copy of any recommendations of any Independent Consultant received in accordance with the Master Indenture pursuant to the liquidity covenant and coverage ratio covenant under the Lease described above.
- (vii) Annually, no later than six (6) months after the close of each fiscal year, commencing with the Fiscal Year ending June 30, 2022, copies of the audited financial statements of Encore and the School for the prior fiscal year prepared in accordance with generally accepted accounting principles applicable to nonprofit corporations from time to time, if available.
- (viii) Annually, no later than six (6) months after the close of each fiscal year, commencing with the Fiscal Year ending June 30, 2022, the certifications and calculations of the Consolidated Days Cash on Hand for the Obligated Group Schools and the Base Rent Coverage Ratio for each Obligated Group School as described in the Liquidity Covenant and Coverage Ratio covenant under the Lease described above.



- (ix) Such other information as may be reasonably requested by the Borrower, the Authority, the Trustee or Master Trustee

### **Intercreditor Agreement**

[TO COME]

### **CERTAIN RISK FACTORS**

*Investment in the Bonds involves substantial risks. The following information should be considered by prospective investors in evaluating the Bonds. However, the following does not purport to be an exclusive listing of risks and other considerations which may be relevant to investing in the Bonds, and the order in which the following information is presented is not intended to reflect the relative importance of any such risks. Certain factors which could result in a reduction of revenues available to the Obligated Group and a corresponding reduction in payments made to the Authority are discussed herein.*

A number of factors could have an adverse impact on the ability of Encore to generate revenues needed to meet its obligations under the Lease, which could, in turn, have an adverse effect on the ability of the Corporation and the Members of the Obligated Group to generate sufficient revenues to meet their respective obligations to make payments due under the Loan Agreement and Obligation No. 2. The ability of Encore to generate sufficient revenues to make payments under the Lease is dependent upon a number of elements, including State budget pressures, demand for charter schools, the ability of the School to provide the educational services and classes demanded by parents or to attract students generally, changes in the level of confidence in the public school system in general or public charter schools in particular, competition, faculty recruitment, demographic changes, legislation, governmental regulations, changes in immigration policy, litigation and the School's ability to achieve enrollment and fundraising levels. This, in turn, is affected by numerous circumstances both within and outside the control of the Obligated Group and Encore, including a continuation of favorable governmental policies and programs with respect to public charter schools (see "APPENDIX D – CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING" attached hereto); the competitive appeal and perceived quality of the School's curriculum; the ability and energy of the School's faculty and administration; and the benevolence of the School's supporters. There can be no assurance given that revenues of the Obligated Group or the revenues of Encore attributable to the School will not decrease. Any and all financial projections are only good faith estimates and are not intended as a representation or warranty as to the future financial condition of the members of the Obligated Group or Encore.

See "APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOLS, THE CORPORATION AND THE OBLIGATED GROUP," "APPENDIX B – AUDITED FINANCIAL STATEMENTS OF ENCORE FOR THE FISCAL YEAR ENDED JUNE 30, 2021" and "APPENDIX C – YEAR-TO-DATE AND PROJECTED FINANCIAL INFORMATION OF ENCORE FOR THE FISCAL YEARS ENDING JUNE 30, 2022 AND JUNE 30, 2023" attached hereto.

### **Sufficiency of Revenues**

The Bonds are payable primarily from Payments which are derived from payments received under the Loan Agreement and Obligation No. 2. The Landlord has also encumbered the Facility with a Mortgage as security for the obligation to make the payments under the Master Indenture, including Obligation No. 2.

The Corporation's primary expected source of the revenues for payment of its obligations under the Loan Agreement will be the Rent payments the Landlord receives from Encore pursuant to the Lease. The Lease provides that Encore will be obligated to pay rent thereunder only from revenues derived from operation of the School. See "THE LEASE" herein. Based on present circumstances, including the successful operating history of the School, Encore believes it will generate a sufficient amount of such revenues to meet its payment

obligations under the Lease representing the source of payment by the Corporation and the Landlord of debt service on the Bonds. However, the School's charter may be terminated or not extended or renewed, or the basis of the assumptions utilized by Encore and the Corporation to formulate such beliefs may otherwise change. No representation or assurance can be made that the Obligated Group generate or will continue to generate sufficient revenues to meet their obligations under the Loan Agreement and Obligation No. 2 with respect to the Bonds.

AS NOTED ELSEWHERE HEREIN, THE OBLIGATION OF ENCORE TO MAKE PAYMENTS UNDER THE LEASE IS A SPECIAL OBLIGATION LIMITED SOLELY TO THE GROSS REVENUES OF THE SCHOOL, WHICH INCOME DERIVES SOLELY FROM THE OPERATION OF THE SCHOOL AND NOT THE OTHER CHARTER SCHOOLS OPERATED BY OR ANY OTHER REVENUES OF ENCORE. NEITHER THE GENERAL REVENUES NOR THE REVENUES ENCORE MAY DERIVE FROM THE OPERATION OF CHARTER SCHOOLS OTHER THAN THE SCHOOL, NOR FROM ANY SCHOOLS ENCORE MAY OPERATE IN THE FUTURE, ARE PLEDGED TO MAKE PAYMENTS WITH RESPECT TO THE LEASE OR THE BONDS. SEE "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" HEREIN.

Moreover, although in addition to the property subject to the Lease, the Corporation and its affiliates may own and lease other facilities through its affiliates to other charter schools, and Encore has in the past and may in the future establish and operate other charter schools, the obligations represented by the Loan Agreement and Obligation No. 2 are not secured generally by such properties of the Corporation's affiliates nor by the revenues of Encore that are not derived from operation of the School.

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 AND SECURED BY THE PLEDGE OF CERTAIN REVENUES UNDER THE BOND 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.

### **Outbreak of Disease; Coronavirus**

An outbreak of disease or similar public health threat, such as the novel coronavirus ("COVID-19") outbreak, or fear of such an event, could have an adverse impact on Encore's and the School's financial condition and operating results. The spread of COVID-19 has had significant negative impacts throughout the world, including the regions in which the School operates. Encore closed its school facilities in March 2020 and transitioned to remote learning and instruction for the remainder of the 2019-20 school year.

In compliance with State guidelines, Encore began the 2020-21 school year exclusively through remote learning and instruction, and beginning in [\_\_\_\_\_] 2020 transitioned to a hybrid remote and in-person learning program. Encore returned to 100% in-person instruction for the 2021-22 school year.

The World Health Organization has declared the COVID-19 outbreak to be a pandemic, and states of emergency have been declared by the State and the United States. The purpose behind these declarations are to coordinate and formalize emergency actions and across federal, State and local governmental agencies, and

to proactively prepare for a wider spread of the virus. On March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed by the President of the United States. The CARES Act appropriates over \$2 trillion to, among other things, (i) provide cash payments to individuals, (ii) expand unemployment assistance and eligibility, (iii) provide emergency grants and loans for nonprofit organizations and small businesses, (iv) provide loans and other assistance to corporations, including the airline industry, (v) provide funding for hospitals and community health centers, (vi) expand funding for safety net programs, including child nutrition programs, and (vii) provide aid to state and local governments.

The CARES Act also creates an above-the-line deduction on 2020 federal income taxes for all taxpayers for total charitable contributions of up to \$300 and increases the existing cap on annual contributions for taxpayers who itemize and allows employers to delay payment of the employer portion of federal payroll taxes in 2020. Additionally, the CARES Act appropriates \$13.5 billion for formula-grants to States, which will then distribute 90 percent of funds to local educational agencies to use for coronavirus-response activities, and \$3 billion to governors to allocate at their discretion for emergency support grants to local educational agencies.

The American Rescue Plan Act of 2021 signed into law on March 11, 2021, includes a \$122.8 billion Elementary and Secondary Schools Emergency Relief Fund for purposes related to the COVID-19 pandemic.

State law allows charter schools to apply for a waiver to hold them harmless from the loss of LCFF funding based on attendance and state instructional time penalties when they are forced to close schools due to emergency conditions. In addition, the Governor of the State has enacted Executive Order N-26-20 (“Executive Order N-26-20”), which (i) generally streamlines the process of applying for such waivers for closures related to COVID-19 and (ii) directs charter schools to use LCFF apportionment to fund distance learning and high quality educational opportunities, provide school meals and, as practicable, arrange for the supervision of students during school hours.

On March 17, 2020, Senate Bill 89 (“SB 89”) and Senate Bill 117 (“SB 117”) were signed by the Governor, both of which take effect immediately. SB 89 amends the Budget Act of 2019 by appropriating \$500,000,000 from the State general fund for any purpose related to the Governor’s March 4, 2020 emergency proclamation. SB 117, among other things, (i) specifies that for charter schools that comply with Executive Order N-26-20, the ADA reported to the State Department of Education for the second period and the annual period for apportionment purposes for the 2019-20 school year only includes all full school months from July 1, 2019 through February 29, 2020, (ii) prevents the loss of funding related to an instructional time penalty because a charter school closed due to the COVID-19 by deeming the instructional days and minutes requirements to have been met during the period of time the school was closed due to COVID-19, (iii) requires a charter school to be credited with the ADA it would have received had it been able to operate its After School Education and Safety Program during the time the school was closed due to COVID-19, and (iv) appropriates \$100,000,000 from the State general fund to the State Superintendent to be apportioned to certain local educational agencies for purposes of purchasing personal protective equipment, or paying for supplies and labor related to cleaning school sites.

On March 19, 2020, the Governor ordered all California residents to stay home or at their place of residence to protect the general health and well-being, except as needed to maintain continuity of 16 critical infrastructure sectors described therein (the “Stay Home Order”).

On June 29, 2020, Senate Bill 98 (“SB 98”), the education omnibus bill to the 2020-21 State Budget, was signed by the Governor, which took effect immediately. SB 98 provides that distance learning may be offered by a charter school during the 2020-21 academic year on a local educational agency or schoolwide level as a result of an order or guidance from a State public health officer or a local public health officer or for pupils who are medically fragile or would be put at risk by in-person instruction, or who are self-quarantining because of exposure to COVID-19. SB 98 provides requirements for distance learning, including, but not limited to: (i) confirmation or provision of access for all pupils to connectivity and devices adequate to participate in the educational program and complete assigned work, (ii) content aligned to grade level standards

that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction, (iii) support for pupils who are not performing at grade level or need support in other areas, (iv) special education services, (v) designated and integrated instruction in English language development for English learners, and (vi) daily live interaction with certificated employees and peers. In addition, SB 98 provides that charter schools will generally be funded based on ADA from the 2019-20 fiscal year, imposes limits on layoffs for certain classified and certificated employees during fiscal year 2020-21, suspends the annual instructional minutes requirement, and waives the requirement for adopting an LCAP or annual update to the LCAP for fiscal year 2020-21, while imposing a new requirement to adopt a learning continuity and attendance plan by September 30, 2020.

On August 28, 2020, the Governor released a revised system of guidelines for reopening - Blueprint for a Safer Economy ("Blueprint"). Blueprint assigns each of the State's 58 counties into four color-coded tiers - purple, red, orange and yellow - in descending order of severity, based on the number of new daily cases of COVID-19 and the percentage of positive tests. Counties must remain in a tier for at least three weeks before advancing to the next one. To move forward, a county must meet the next tier's criteria for two consecutive weeks. If a county's case rate and positivity rate fall into different tiers, the county remains in the stricter tier. Implementation of the guidelines as part of a phased reopening depended on local public health conditions, including community preparedness measures.

On June 11, 2021, the Governor issued two executive orders. The first order rescinded several previous executive orders effective June 15, 2021, including the Stay Home Order and the order that led to the establishment of the Blueprint. The second order began the process of winding down the State's COVID-19 related executive orders in several phases: by June 30, 2021 (including most of Order N-26-20); by July 31, 2021; and by September 30, 2021. Under the order's timeline, by September 30, 2021, nearly 90% of the executive actions taken since March 2020 will have been lifted. In addition, on June 11, 2021, the California Department of Public Health issued an order that took effect on June 15, 2021. The order replaced the previous public health orders, allowing all sectors to return to usual operations, with limited exceptions for events characterized by large crowds (greater than 5,000 attendees indoors and 10,000 attendees outdoors), which will require (indoors) or recommend (outdoors) vaccine verification and/or negative testing through October 1, 2021. Face coverings are required in certain settings, such as on public transit, indoors in schools and childcare settings, and in healthcare settings, as well as, for unvaccinated individuals, in all indoor public settings and businesses. Additionally, Californians are required to follow existing guidance for K-12 schools, childcare programs, and other supervised youth activities.

To date there have been numerous confirmed cases of COVID-19 in the county in which the School operates, and health officials are expecting the number of confirmed cases to grow. The outbreak has resulted in the imposition of restrictions on mass gatherings and widespread temporary closings of businesses, universities and schools (including the School). The U.S. is restricting certain non-US citizens and permanent residents from entering the country. In addition, stock markets in the U.S. and globally have been volatile, with significant declines attributed to coronavirus concerns.

Potential impacts to Encore, the School, the Obligated Group and the Corporation associated with the COVID-19 outbreak include, but are not limited to, increasing costs and challenges relating to establishing distance learning programs or other measures to permit instruction while schools remain closed, decreased demand for Encore's services, increased competition from established virtual or on-line schools or other distance learning programs, potential decline in academic assessment results due to transition to distance learning programs, disruption of the regional and local economy with corresponding effects on students and their families, adverse effects on State revenues that may affect budgeting and appropriation for charter schools and public education generally. Additionally, the State's Smarter Balanced Assessment Consortium standardized testing was cancelled for the 2019-20 school year. The economic consequences and the declines in the U.S. and global stock markets resulting from the spread of COVID-19, and responses thereto by local, State, and the federal governments, could have a material impact on the investments in the State pension trusts, which could materially increase the unfunded actuarial accrued liability of the STRS and PERS Defined

Benefit Programs, which, in turn, could result in material changes to Encore's required contribution rates in future fiscal years.

The COVID-19 outbreak is ongoing, and the ultimate geographic spread of the virus, the duration and severity of the outbreak, and the economic and other of actions that may be taken by governmental authorities to contain the outbreak or to treat its impact are uncertain. The ultimate impact of COVID-19 on operations and finances of Encore, the Corporation and the Obligated Group is unknown. There can be no assurances that the spread of COVID-19, or the responses thereto by local, State, or the federal government, will not adversely impact enrollment of the School or participation in any Encore distance learning programs or, notwithstanding actions by the State, materially adversely impact the financial condition or operations of Encore, the Corporation or the Obligated Group. For example, if it is perceived that competitors of the School, including traditional public schools or other charter schools, are better equipped to handle the spread of COVID-19 or similar future outbreaks or to provide distance learning, it could lead to lower enrollment in the future. Additionally, there can be no assurance that costs of technology to Encore will not increase, or that third-party vendors will continue to be available in the future, each of which could result in increased costs and difficulty in providing distance learning in the future.

Additional information with respect to events surrounding the outbreak of COVID-19 and responses thereto can be found on State and local government websites, including but not limited to: the Governor's office (<http://www.gov.ca.gov>) and the California Department of Public Health (<https://covid19.ca.gov/>). *The information on such websites is not incorporated herein by reference, and neither the Corporation nor Encore assumes any responsibility for the accuracy of the information on such websites.*

### **Operating History; Reliance on Projections**

See Appendix A for information regarding projected enrollment of the School. No assurance is given that such projections will be met, or that the number of students attending the School may not diminish in the future. The projections of revenues and expenses contained in Appendix C are based upon the number of students projected to be enrolled at the School and were prepared by Encore for the Corporation and have not been independently verified by any party other than Encore.

No feasibility studies have been conducted with respect to operation of the Facility pertinent to the Bonds. The projections are "forward-looking statements" and are subject to the general qualifications and limitations described herein. The Placement Agent has not independently verified Encore's projections set forth in Appendices A and C or otherwise and makes no representations nor gives any assurances that such projections, or the assumptions underlying them, are complete or correct. Further, the projections relate only to a limited number of fiscal years, and consequently do not cover the entire period that the Bonds will be outstanding.

ENCORE PREPARED THE PROJECTIONS BASED ON ASSUMPTIONS ABOUT FUTURE STATE FUNDING LEVELS AND FUTURE OPERATION OF THE FACILITY, INCLUDING STUDENT ENROLLMENT AND EXPENSES. THERE CAN BE NO ASSURANCE THAT ACTUAL ENROLLMENT REVENUES AND EXPENSES WILL BE CONSISTENT WITH THE ASSUMPTIONS UNDERLYING SUCH PROJECTIONS. MOREOVER, NO GUARANTEE CAN BE MADE THAT THE PROJECTIONS OF REVENUES AND EXPENSES INCLUDED HEREIN WILL CORRESPOND WITH THE RESULTS ACTUALLY ACHIEVED IN THE FUTURE BECAUSE THERE CAN BE NO ASSURANCE THAT ACTUAL EVENTS WILL CORRESPOND WITH THE PROJECTIONS' UNDERLYING ASSUMPTIONS. ACTUAL OPERATING RESULTS MAY BE AFFECTED BY MANY FACTORS, INCLUDING, BUT NOT LIMITED TO, INCREASED COSTS, LOWER THAN ANTICIPATED REVENUES (AS A RESULT OF INSUFFICIENT ENROLLMENT, REDUCED STATE OR FEDERAL AID PAYMENTS, OR OTHERWISE), EMPLOYEE RELATIONS, CHANGES IN TAXES, CHANGES IN APPLICABLE GOVERNMENT REGULATIONS, CHANGES IN DEMOGRAPHIC TRENDS, CHANGES IN EDUCATION COMPETITION AND CHANGES IN LOCAL OR GENERAL ECONOMIC CONDITIONS. REFER TO APPENDIX A, ATTACHED HERETO, TO REVIEW THE PROJECTIONS, THEIR

UNDERLYING ASSUMPTIONS, AND THE OTHER FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER SIGNIFICANTLY FROM PROJECTED RESULTS. REFER TO “INTRODUCTION” ABOVE, FOR QUALIFICATION AND LIMITATIONS APPLICABLE TO FORWARD-LOOKING STATEMENTS.

### **Dependence on State Aid Payments that are Subject to Annual Appropriation and Political Factors**

California charter schools such as the School may not charge tuition and have no taxing authority. The primary source of revenue generated by charter schools is aid provided by the State for all public schools. The amount of State aid received with respect to any individual school is based on a variety of factors. The amount of aid available in any year to pay the per pupil allowance is subject to appropriation by the California Legislature. The Legislature bases its decisions about appropriations on many factors, including the State’s economic performance. Moreover, because some public officials, their constituents, commentators and others have viewed charter schools as controversial, political factors may also come to bear on charter school funding. As a result, the Legislature may not appropriate funds, or may not appropriate funds in a sufficient amount, for the School to generate sufficient revenue to allow Encore to meet its obligations under the Lease representing debt service payments on the Bonds. No liability would accrue to the State in such event, and the State would not be obligated or liable for any future payments or any damages. If the State were to withhold State aid payments for any reason, even for a reason that is ultimately determined to be invalid or unlawful, the School could be forced to cease operations.

### **Possible Offsets to State Apportionment**

Section 41344 of the Education Code provides that if an audit or review requires any of the School to repay prior year apportionments because of significant audit exceptions, including penalty payments (“Audit Exceptions”), the Superintendent of Public Instruction (the “Superintendent”) and the Director of the Department of Finance (the “Director”), or their designees, will jointly establish a plan for the annual repayment of Audit Exceptions (the “Audit Repayment Plan”), which under certain circumstances can extend for a period of up to eight equal annual payments. The State Controller withholds from the State School Fund the amounts specified in the Audit Repayment Plan. If the Superintendent and the Director do not establish an Audit Repayment Plan, the State Controller withholds the entire amount of the Audit Exceptions from the next apportionment.

The State Controller may reduce the funding available in the payment schedules for these apportionments to offset for funds owing to the State. These offsets include, but are not limited to, the following: Charter School Revolving Loan (Education Code Section 41365), Class Size Reduction (Education Code Section 52124); Audit Repayment (Education Code Sections 41341, 41344); and Accounts Receivable (Government Code Section 12419.5), in addition to other possible authorized or required offsets, or additional offsets not yet authorized by legislation. None of the foregoing offsets is currently applicable to the School.

### **Default Under the Lease; No Assurance Regarding Subsequent Tenant**

If there is a default by the Corporation under the Loan Agreement attributable to a default by Encore under the Lease, the Obligated Group will likely not have sufficient funds to satisfy their obligations under the Loan Agreement and Obligation No. 2, absent re-leasing – or in appropriate cases, selling – the Facility. If Encore were to default under the Lease, there is no assurance that the Landlord would be able to find a new tenant for the Facility which could generate revenues in a sufficient amount to allow the Corporation and members of the Obligated Group to make payments under the Loan Agreement and Obligation No. 2 to satisfy debt service on the Bonds or a buyer that would purchase the Facility for a sufficient amount to allow the Corporation to repay principal and interest with respect to the Loan. This risk is heightened by the fact that the Facility has been improved specifically for use as a charter school campus and may be legally restricted to that use.

### **Survival of Lease after a Bond Default and Foreclosure**

The Corporation, the Landlord, Encore, and the Master Trustee will enter into a Subordination, Non-Disturbance and Attornment Agreement in connection with the Facility (the “SNDA”). The SNDA addresses the priority of the rights between Encore and the Master Trustee. The SNDA provides that Encore’s rights under the Lease to the use, possession and enjoyment of the Facility will not be disturbed by the Master Trustee so long as no event of default exists under the Lease. The non-disturbance portion assures Encore that its rights to the Facility will be preserved (“nondisturbed”) on specified conditions within control of Encore if the Corporation defaults on its Loan with the Authority and the Master Trustee forecloses on the Facility. The attornment component of the SNDA provides that Encore will continue its obligations under the Lease if a new landlord takes over the Lease.

### **Additional Indebtedness and Additional Obligated Group School Indebtedness**

The Master Indenture permits the issuance of Additional Indebtedness on a parity basis with Obligation No. 1 and Obligation No. 2 if certain conditions are met. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – The Master Indenture – Limitations on Additional Indebtedness” herein. The Corporation (either itself or through affiliates) may acquire, construct and equip additional charter schools in the future. If it does, or for certain other expenses, it may issue Additional Indebtedness which may or may not be on a parity basis with Obligation No. 1 and Obligation No. 2 and may or may not be issued through the Master Indenture. If secured on a parity basis, any such parity indebtedness would be entitled to share ratably with the holders of the Bonds and any other holder of parity debt in any moneys realized from the exercise of remedies in the event of a default by the Corporation to the extent provided in the Bond Documents. The amount of any such Additional Indebtedness is undetermined at this time. The issuance of Additional Indebtedness may adversely affect the investment security of the Bonds.

Pursuant to the Lease, Encore may also issue additional indebtedness, subject to certain conditions and limitations. See “THE LEASE – Certain Covenants of Encore under the Lease – Financial Covenants – Limitation on Liens on Gross School Revenues” herein. The issuance of such additional Encore indebtedness may adversely affect the investment security of the Bonds.

***Prior Bonds and Prior Intercept.*** The Prior Issuer previously issued its Charter School Revenue Bonds (Encore Education Obligated Group) Series 2016A and Series 2016B (Taxable), which are currently outstanding in the aggregate principal amount of \$15,305,000.

The Corporation’s obligations under the Prior Loan Agreement are secured by the Prior Intercept, whereby the State Controller’s Office makes apportionments to UMB Bank, N.A., as trustee for the Prior Bonds, in amounts sufficient to repay the Prior Bonds and related costs. Under the laws of the State, no party, including Encore, the Corporation or any of their respective creditors (including the Trustee for the Bonds) have any claim to the money apportioned or to be apportioned to the Prior Trustee by the State Controller pursuant to the Prior Intercept.

Although Obligation No. 2 is senior to Obligation No. 1 under the Master Indenture, and payment of Base Rent under the Lease relating to the Bonds is payable senior to that related to the Prior Bonds, the Prior Intercept is functionally senior in position to the County Intercept relating to the Bonds with regard to State apportionment funding, as the Prior Intercept directs State apportionments to be sent directly by the State Controller’s Office to the Prior Trustee before remaining amounts are remitted by the State to SBCOE and available to fund the County Intercept related to the Bonds.

### **Addition and Removal of Members**

The Master Indenture permits the addition of Members under the Obligated Group, but it also permits the removal of Members, subject to certain conditions and limitations. See “SECURITY AND SOURCES OF

PAYMENT FOR THE BONDS – The Master Indenture – Withdrawal from Obligated Group.” Any such withdrawal of Members from the Obligated Group may decrease the revenues available for payment of debt service on the Bonds and may adversely affect the investment security of the Bonds.

### **Reserve Account**

The Bond Indenture establishes the Reserve Account within the Revenue Fund for payment of principal of and interest on the Bonds to the extent the Revenues are insufficient to make such payments. Although the Corporation believes such reserve to be reasonable and anticipates that the Revenues will be sufficient to cover the debt service on the Bonds, there is no assurance that funds on deposit in the Reserve Account and future Revenues will be sufficient to cover debt service on the Bonds.

### **Purchases and Transfers of Bonds Restricted to Qualified Institutional Buyers**

As described in the “NOTICE TO INVESTORS” that precedes the Table of Contents of this Private Placement Memorandum, the Bonds are to be sold (including in secondary market transactions) only to Qualified Institutional Buyers. The Bond Indenture contains provisions limiting transfers of the Bonds and beneficial interests therein to Qualified Institutional Buyers. The face of each Bond will contain a legend indicating that the Bond is subject to transfer restrictions as set forth in the Bond Indenture. The Bonds will be issued in minimum denominations of \$250,000 and any integral multiple of \$5,000 in excess thereof. In light of these restrictions, purchasers should not expect that there will be an active secondary market for the Bonds. Although the Bond Indenture contains provisions that call for removal of transfer restrictions and reduction in minimum denominations in the event the Bonds are rated “A-” or “A3,” or better, as applicable, by Fitch, S&P, or Moody’s, there can be no assurance that any such credit rating will be received.

There can be no assurance that there will be a secondary market for the purchase or sale of the Bonds, and there may be no market for the Bonds depending upon prevailing market conditions, the financial condition or market position of firms who make up the secondary market and the financial position and results of operations of Encore and the Obligated Group.

Investors should be aware that they might be required to bear the financial risks of this investment for an indefinite period of time and/or that to the extent there is a secondary market for the Bonds, the secondary market price of the Bonds may be affected as a result of the restrictions. If a trading market for the Bonds develops, future trading prices of such Bonds will depend on many factors, including, among other things, prevailing interest rates and the market for similar instruments. Depending upon those and other factors, the Bonds may trade at a discount from their principal amount.

### **Tax Related Issues**

**Prior Bonds.** The tax-exempt status of the Prior Bonds depends upon the maintenance by the Corporation and Encore of their respective statuses as organizations described in Section 501(c)(3) of the Code. The maintenance of such status is contingent on compliance with general rules promulgated in the Code and related regulations regarding the organization and operation of tax-exempt entities, including the operation for charitable and educational purposes and avoidance of transactions which may cause the assets of either to inure to the benefit of private individuals.

In recent years, the Internal Revenue Service (the “IRS”) has increased the frequency and scope of its audit and other enforcement activity regarding tax-exempt organizations and, in particular, charter schools. As a result, tax-exempt organizations are increasingly subject to a greater degree of scrutiny. The primary penalty available to the IRS under the Code with respect to a tax-exempt entity engaged in unlawful private benefit is the revocation of tax-exempt status. Although the IRS has not frequently revoked the Section 501(c)(3) status of nonprofit corporations, it could do so in the future. Loss of tax-exempt status by the Corporation or Encore could potentially result in loss of tax exemption of interest on the Prior Bonds and of other existing and future



tax-exempt debt of members of the Obligated Group, if any, and defaults in covenants regarding the Prior Bonds and other existing and future tax-exempt debt, if any, would likely be triggered.

Less onerous sanctions have been enacted which enforce rules applicable to Section 501(c)(3) organizations, but these sanctions do not replace the other remedies available to the IRS as mentioned above.

The Corporation received a determination letter from the Internal Revenue Service (the “IRS”) on February 9, 2016, confirming its status as a public charity exempt from federal income tax under the Code, as a supporting organization. On November 15, 2018, the Corporation’s federal tax exempt status was automatically revoked by the IRS for not filing its required tax returns for three consecutive years. The Corporation has covenanted in the Loan Agreement to file all overdue tax returns and seek to obtain retroactive reinstatement of its federal tax exempt status as soon as possible. There can be no assurance that the Corporation’s federal tax exempt status will be reinstated on any particular timeline, or at all, and the Corporation cannot predict what, if any, effect the revocation of its federal tax exempt status will have on the Prior Bonds.

**State Income Tax Exemption.** The Corporation is not currently deemed exempt from State income tax. The loss by Encore or, in the future, the Corporation of federal tax exemption might trigger a challenge to its State income tax exemption. Such event could be adverse and material.

**Exemption from Property Taxes.** In recent years, State, county and local taxing authorities have been undertaking audits and reviews of the operations of tax-exempt corporations with respect to their real property tax exemptions. The management of the Corporation and Encore believe that Facility is exempt from California real property taxation.

**Factors That Could Affect the Security Interest in the Facility; Superior Liens**

The Master Trustee’s security interest in the Facility may be subordinated to the interest and claims of others in several instances. Some examples of cases of subordination of prior claims are (i) statutory liens, (ii) rights arising in favor of the United States of America or any agency thereof, (iii) present or future prohibitions against assignment in any statutes or regulations, (iv) constructive trusts, equitable liens or other rights impressed or conferred by any state or federal court in the exercise of its equitable jurisdiction, (v) federal or state bankruptcy or insolvency laws that may affect the enforceability of the Loan Agreement, (vi) rights of third parties in amounts not in the possession of the Master Trustee, and (vii) claims that might arise if appropriate financing or continuation statements are not filed in accordance with the California Uniform Commercial Code as from time to time in effect.

**Limitations of Appraisals**

Appraisals are estimates of value and not an assurance of what any particular property would bring on sale. Appraisals also are subject to numerous other limitations set forth therein. Potential investors should not assume that the appraised value set forth in “THE FACILITY – Appraisal” represent reliable estimates of what the Facility would bring in liquidation following an Event of Default.

The Appraiser has not been engaged to update or revise the estimates contained in the Appraisal since its effective date.

**Limitations on Value of the Facility and to Remedies Under the Mortgage**

**Maintenance of Value.** The Facility is located in a region that has experienced significant real property market volatility over the past several years. There can be no assurance made that, should the Members of the Obligated Group default in making the payments due under Obligation No. 2, including in the

event Encore defaults in making the Rent payments due under the Lease, the Facility could be foreclosed upon and sold for the amounts owed under Obligation No. 2.

**Hazardous Substances.** While governmental taxes, assessments and charges are common claims against the value of property, other less common claims may be relevant. One of the most serious in terms of the potential reduction in the value that may be realized is a claim with regard to hazardous substances. In general, the Corporation or Encore may be required by law to remedy conditions of the Facility relating to release of hazardous substances. The federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, sometimes referred to as “CERCLA” or the “Superfund Act,” is the most well-known and widely applicable of these laws. California laws with regard to hazardous substances are stringent and similar to certain federal acts. Under many of these laws, the owner (or operator) is obligated to remedy a hazardous substance condition of property whether or not the owner (or operator) had or has anything to do with the creation or handling of the hazardous substance. The effect, therefore, should the Facility be affected by a hazardous substance, is generally to reduce the marketability and value of the parcel by the cost of remedying the condition. Further, such liabilities may arise not simply from the existence of a hazardous substance but from the method of handling the hazardous substance. Any of these potentialities could significantly affect the value of the Facility that would be realized upon a default and foreclosure.

**Foreclosure.** There are two methods of foreclosing on a deed of trust or mortgage under California law, by nonjudicial sale and by judicial sale. Foreclosure under a deed of trust may be accomplished by a nonjudicial trustee’s sale under the power of sale provision in the deed of trust. Prior to such sale, the trustee must record a notice of default and election to sell and send a copy to the trustor, to any person who has recorded a request for a copy of the notice of default and notice of sale, to any successor in interest of the trustor and to certain other parties discernable from the real property records. The trustee then must wait for the lapse of at least three months after the recording of the notice of default and election to sell before establishing the trustee’s proposed sale date and giving a notice of sale (in a form mandated by California statutes). The notice of sale must be posted in a public place and published once a week for three consecutive calendar weeks, with the first such publication preceding the trustee’s sale by at least 20 days. Such notice of sale must be posted on the property and sent, at least 20 days prior to the trustee’s sale, to the trustor, to each person who has requested a copy, to any successor in interest of the trustor, to the beneficiary of any junior deed of trust and to certain other parties discernable from the real property records. In addition, the notice of sale must be recorded with the county recorder at least 14 days prior to the date of sale. The trustor, any successor in interest of the trustor in the trust property, or any person having a junior lien or encumbrance of record may, during the statutory reinstatement period, which extends to five days prior to the sale date, cure any monetary default by paying any delinquent installments of the debt then due under the terms of the deed of trust and certain other obligations secured thereby (exclusive of principal due by virtue of acceleration upon default) plus costs and expenses actually incurred in enforcing the obligation and certain statutorily limited attorneys’ and trustees’ fees. Following a nonjudicial sale, neither the trustor nor any junior lienholder has any right of redemption, and the beneficiary may not ordinarily obtain a deficiency judgment against the trustor.

Should foreclosure under a deed of trust be sought in the form of a judicial foreclosure, it is generally subject to most of the delays and expenses of other lawsuits and may require several years to complete. The primary advantage of a judicial foreclosure is that the beneficiary is entitled, subject to other limitations, to obtain a deficiency judgment against the trustor to the extent that the amount of the debt is in excess of the fair market value of the property. Following a judicial foreclosure sale, the trustor or its successors in interest may redeem the property for a period of one year (or a period of only three months if the proceeds of sale are sufficient to satisfy the debt, plus interest and costs). In addition, in order to assure collection of any rents assigned as additional collateral under the Mortgage, a receiver for the Facility may be appointed by a court.

**Damage, Destruction or Condemnation.** Although the Landlord will be required to obtain certain insurance against damage or destruction as set forth in the Master Indenture, there can be no assurance that any portion of the Facility will not suffer losses for which insurance cannot be or has not been obtained or that the

amount of any such loss, or the period during which the Landlord, as a result of damage or destruction to the Facility, cannot generate revenues, will not exceed the coverage of such insurance policies.

If the Facility, or any portion thereof, is damaged or destroyed, or is taken in a condemnation proceeding, the proceeds of insurance or any condemnation award for the Facility, or any portion thereof, must be applied as provided in the Master Indenture to restore or rebuild the Facility or to redeem Bonds. There can be no assurance that the amount of revenues available to restore or rebuild the Facility, or any portion thereof, or to redeem Bonds will be sufficient for that purpose, or that any remaining portion of the Facility will generate revenues sufficient to pay the expenses of the Corporation and the Loan Repayments.

**Seismic.** The Facility is located in a seismically active region of California. The occurrence of severe seismic activity could result in substantial damage to the Facility, which could adversely affect the ability of Encore to operate the Facility or make payments due under the Lease and/or the ability of the Corporation to make the Loan Repayments and could adversely affect the value of the Facility. Neither the Corporation nor the Landlord are obligated by the Loan Agreement or Master Indenture to maintain earthquake insurance on any portion of the Facility and there can be no assurance that the Corporation or the Landlord will obtain such coverage in the future.

**Flood.** Neither the Corporation nor the Landlord are obligated by the Loan Agreement or Master Indenture to maintain flood insurance on any portion of the Facility and there can be no assurance that the Corporation or the Landlord will obtain such coverage in the future. The Facility is not located in special flood hazard areas as designated by the Federal Emergency Management Agency.

**Environmental Risks.** There are potential risks relating to liabilities for environmental hazards with respect to the ownership of any real property. If hazardous substances are found to be located on a property, owners of such property may be held liable for costs and other liabilities related to the removal of such substances which costs and liabilities could exceed the value of the Facility or any portion thereof. See “THE FACILITY” herein for a description of environmental reports regarding the Facility.

## **Bankruptcy**

The rights and remedies of the Beneficial Owners of the Bonds are subject to various provisions of the Federal Bankruptcy Code (the “Bankruptcy Code”). If the Corporation, the Landlord or Encore were to become a debtor in a bankruptcy case, its revenues and certain of its accounts receivable and other property created or otherwise acquired after the filing of such petition and for up to 90 days prior to the filing of such petition may not be subject to the security interest created under the Mortgage for the benefit of the Master Trustee. The filing would operate as an automatic stay of the commencement or continuation of any judicial or other proceeding against such entity, and its property, and as an automatic stay of any act or proceeding to enforce a lien upon or to otherwise exercise control over such property. If the bankruptcy court so ordered, the property of the Corporation or a Member, including accounts receivable and proceeds thereof, could be used for the financial rehabilitation of such entity despite the security interest of the Trustee therein. While the Bankruptcy Code requires that the interest of the Trustee as lien owner be adequately protected before the collateral may be used by the Corporation or a Member, such protection could take the form of a replacement lien on assets acquired or created after the bankruptcy petition is instituted. The rights of the Trustee to enforce liens and security interests against the Corporation’s or Member’s assets could be delayed during the pendency of the rehabilitation proceedings.

The Corporation, a Landlord or Encore could file a plan for the reorganization of its debts in any such proceeding which could include provisions modifying or altering the rights of creditors generally, or any class of them, secured or unsecured. The plan, when confirmed by a court, binds all creditors who had notice or knowledge of the plan and discharges all claims against the debtor provided for in the plan. No plan may be confirmed unless certain conditions are met, among which are that the plan is in the best interests of creditors, is feasible and has been accepted by each class of claims impaired thereunder. Each class of claims has

accepted the plan if at least two thirds in dollar amount and more than one half in number of the class cast votes in its favor. Even if the plan is not so accepted, it may be confirmed if the court finds that the plan is fair and equitable with respect to each class of non-accepting creditors impaired thereunder and does not discriminate unfairly.

### **Factors Associated with the School's Operations**

There are a number of factors affecting schools generally that could have an adverse effect on the School and on Encore's financial position and ability operate the Facility as a charter school and, consequently, on the Corporation's ability to make Loan Repayments necessary to make debt service payments on the Bonds. These factors include, but are not limited to: (i) failure to qualify for statutory reimbursement under state programs; (ii) increasing costs of compliance with federal, state or local laws or regulations, including, but not limited to, laws or regulations concerning environmental quality, work safety and accommodation of persons with disabilities; (iii) taxes or other charges imposed by federal, state or local governments; (iv) the ability to attract a sufficient number of students; (v) changes in existing statutes pertaining to the powers of the School and disruption of the School's operations by real or perceived threats against the School, its staff members or students; and (vi) decline in the reputation of the School or the ability of the School and its management to provide educational services desired and accepted by the population it serves.

Potential purchasers should be aware that the School faces constant competition for students and there can be no assurance that the School will continue to attract and retain the number of students that are needed to generate revenues sufficient to make payments on the Lease that are the source of revenue to debt service on the Bonds. Neither the Corporation nor Encore can assess or predict the ultimate effect of the foregoing factors on its operations or financial results of its operations or on its ability to make payments required under the Lease, the Loan Agreement or Obligation No. 2.

### **State Financial Difficulties**

Charter schools, like all public schools, depend on revenues from the State for a large portion of their operating budgets. The availability of State funds for public education is a function of constitutional and statutory provisions affecting school district revenues and expenditures, the condition of the State economy (which affects total revenue available to the State School Fund) and the annual State budget process. Decreases in State revenues may adversely affect education appropriations made by the Legislature. As noted, the Legislature bases its decisions about appropriations on many factors, including the State's economic performance, and, because some public officials, their constituents, commentators and others have viewed charter schools as controversial, political factors may also come to bear on charter school funding. See "CERTAIN RISK FACTORS – Dependence on State Aid Payments that are Subject to Annual Appropriation and Political Factors" above.

The State has previously experienced severe financial difficulties. In prior years, the State's response to its financial difficulties has had a significant impact on Proposition 98 funding and settle-up treatment, as further described in "APPENDIX D – CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING" attached hereto. In the past, the State has sought to avoid or delay paying settle-up amounts when funding has lagged the guaranteed amount. The State has also sought to avoid increases in the minimum guarantee through various mechanisms by treating any excess appropriations as advances against subsequent years' Proposition 98 minimum funding levels rather than current-year increases; by deferring State aid payments from one fiscal year to the next; and by suspending Proposition 98. Continued decreases in State revenues may adversely affect education appropriations made by the Legislature. None of the Corporation, Encore or any other party to the Bond transaction can predict how State income or State education funding will vary over the entire term of the Bonds. No party to the Bond transaction takes any responsibility for informing owners of the Bonds about any such changes.

Information about the financial condition of the State, as well as its budget and spending for education, is available and regularly updated on various State-maintained websites, including those of the LAO, the Department of Finance and the California State Controller. In addition, various State of California official statements, which contain summaries of current and past State budgets and the impact of those budgets on State education funding, may be found at the website of the California State Treasurer, [www.treasurer.ca.gov](http://www.treasurer.ca.gov). Such information is prepared by the respective State entity maintaining each such website and not by any of the parties to this transaction. The parties to this transaction take no responsibility for the accuracy, completeness or timeliness of such information or the continued accuracy of the internet addresses noted herein, and no such information is incorporated herein by these references.

### **Budget Delays and Restrictions on Disbursement of State Funds during a Budget Impasse**

The State Constitution specifies that an annual budget will be proposed by the Governor by January 10 of each year for the next fiscal year (the “Governor’s Budget”). Under State law, the annual proposed Governor’s Budget cannot provide for projected expenditures in excess of projected revenues for the ensuing fiscal year. State law also requires the Governor to update the Governor’s Budget projections and budgetary proposals by May 14 of each year (the “May Revision”). The May Revision is normally the basis for final negotiations between the Governor and Legislature to reach agreement on appropriations and other legislation to fund State government for the ensuing fiscal year (the “Budget Act”).

The Budget Act must be approved by a majority vote of each House of the Legislature and must be in balance. The budget becomes law upon the signature of the Governor. Text of proposed and adopted budgets may be found at the website of the Department of Finance, [www.dof.ca.gov](http://www.dof.ca.gov), currently under the heading “California Budget.” Analyses of budgets are prepared by the Legislative Analyst’s Office at [www.lao.ca.gov](http://www.lao.ca.gov). Such information is prepared by the respective State entity maintaining each such website and not by any of the parties to this transaction. The parties to this transaction take no responsibility for the accuracy, completeness or timeliness of such information or the continued accuracy of the internet addresses noted herein, and no such information is incorporated herein by these references.

The State Legislature is required to approve a State Budget Act no later than June 15 of each year. The State Legislature has failed to approve the State Budget Act by the deadline therefor in a number of years. Failure by the State to adopt a Budget Act restricts the California State Controller’s ability to disburse State funds after the beginning of the ensuing fiscal year. See “APPENDIX D – CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING” attached hereto regarding the ability of the State Controller to disburse State funds in such situations. Any State budget delay would delay the State’s appropriation of funds and could negatively impact Encore’s ongoing viability and its ongoing ability to make payments under the Lease representing debt service on the Bonds.

### **Key Management**

The creation of, and the philosophy of teaching in, charter schools generally initially may reflect the vision and commitment of a few key persons on the board of directors and/or the upper management of the charter school or its management organization (“Key Directors/Managers”). Loss of any such Key Directors/Managers, and the inability of the Corporation or Encore to find comparable qualified replacements, could adversely affect their respective operations or financial results.

See “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto for information regarding the management and leadership of the Corporation, Encore and the School.

## **Other Limitations on Enforceability of Remedies**

There exists common law authority and authority under various state statutes pursuant to which courts may terminate the existence of a nonprofit corporation or undertake supervision of its affairs on various grounds, including a finding that the corporation has insufficient assets to carry out its stated charitable purposes or has taken some action which renders it unable to carry out such purposes. Such court action may arise on the court's own motion or pursuant to a petition of a state attorney general or other persons who have interests different from those of the general public, pursuant to the common law and statutory power to enforce charitable trusts and to see to the application of their funds to their intended charitable uses.

In addition to the foregoing, the realization of any rights under the Loan Agreement, the Bond Indenture and the Mortgage upon a default depends upon the exercise of various remedies specified in the Loan Agreement, the Bond Indenture and the Mortgage. These remedies may require judicial action which is often subject to discretion and delay. Under existing law, certain of the remedies specified in the Loan Agreement, the Bond Indenture and the Mortgage may not be readily available or may be limited. For example, a court may decide not to order the specific performance of the covenants contained in the Loan Agreement, the Bond Indenture or the Mortgage. Accordingly, the ability of the Authority, the Trustee or the Master Trustee to exercise remedies under the Loan Agreement, the Bond Indenture and the Mortgage, as applicable, upon an Event of Default could be impaired by the need for judicial or regulatory approval.

## **Specific Risks of Charter Schools**

***Charter School Law.*** The Charter School Law is evolving. Amendments are made relatively frequently and legislative and public attitudes are still forming. Certain amendments have been described elsewhere in this Private Placement Memorandum. It is likely that additional changes will be made in the future, some of which may be adverse to charter schools in general may affect the financial viability of the School.

See "APPENDIX D – CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING" attached hereto for more information on recent and pending legislation relating to charter schools.

***Non-Renewal or Revocation of Charters.*** The Charter School Law enables charter authorizers to grant five-year charters which may be renewed after evaluation and can be revoked at any time because of either educational non-performance or fiscal mismanagement. See "APPENDIX D – CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING" attached hereto. While management of Encore believes that it has a stable relationship with representatives of Hesperia Unified School District, the State Board of Education, and representatives of the San Bernardino County board of Education, each of which, under appropriate circumstances, is authorized to grant charters under the Charter School Law, there is no assurance that there will not be a non-renewal or revocation of a charter.

See "APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP" attached hereto for information about the current status of the charter for the School.

***Legal Challenges.*** In addition to non-renewal or revocation, a charter may also be subject to challenge by an interested third-party. No assurance can be given that a School's charter will not be subjected to legal challenge. See "ABSENCE OF MATERIAL LITIGATION – The Corporation" herein and "APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP" attached hereto. Any failure of Encore to have a charter for the School in place could well have a material adverse effect on the Landlord or the Corporation and their ability to generate revenues necessary to make payments under the Loan Agreement and Obligation No. 2 which are expected to provide sufficient revenues to satisfy the debt service requirements for the Bonds.

**Budgetary Constraints.** Charter schools are funded primarily from State and local tax revenues and budgetary pressures at the State or local level may jeopardize future funding levels, which may adversely affect the ability of the Corporation and the Landlord to make payments under the Loan Agreement and Obligation No. 2. See “APPENDIX D – CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING” attached hereto.

**Enrollment Levels.** Encore’s revenues and financial strength will depend in part upon maintaining certain enrollment levels at the School. A reduction in enrollment for the School will have a direct result of reducing revenues available to pay amounts due under the Lease. See “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto.

**Risk of Reduction in ADA Funding.** Since the majority of funds for the School’s operations come from the State on the basis of ADA, the School is subject to State funding reductions or restrictions that might affect all public school districts and charter schools. Among other such risks, over time the State may not increase ADA-based funding commensurate with increases in the cost of school operations, or the State may even decrease ADA-based funding.

ADA-based funding is determined by actual attendance, and not by student enrollment data. Regardless of the statewide level of ADA-based funding, the School is subject to loss of revenue if enrollment should decrease, or if average daily attendance should decrease even if enrollment remains steady, whether due to student illness, truancy or other factors. Such a loss of revenues could adversely affect the ability of Encore to make Rent payments due under the Lease and, consequently, the ability of the Corporation and the Landlord to make payments under the Loan Agreement and Obligation No. 2.

In addition, the Charter School Law prohibits a charter school from imposing fees or charges for its educational services. Therefore, the School is dependent upon receipt of ADA-based funding, as well as philanthropic support. There is little Encore or the Corporation can do to increase revenues, other than for the School to admit a larger number of students.

In the 2020-21 Fiscal Year, charter schools with growing enrollment faced a restriction in ADA-based funding related to the 2020-21 State Budget’s “hold harmless” feature, which denied funding for growth in ADA above 2019-20 levels. In this way, the 2020-21 Budget provision functioned as a cap on ADA (the “ADA Cap”), with a limiting effect expected to impact educational agencies with growing enrollment. See “APPENDIX D – CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING” attached hereto. On September 18, 2020, the Governor signed into law Senate Bill 820 (“SB 820”) which provided for funding based on the lesser of (a) certified enrollment as of the October 2020 data reported in the California Longitudinal Pupil Achievement Data System, and the applicable statewide attendance rate for the 2019-20 Fiscal Year (for elementary school districts or high school districts), and (b) either (i) qualifying projected enrollment in its most recent 2020-21 budget adopted on or before June 30, 2020, or in its adopted 2019-20 second interim report and the applicable statewide attendance rate for the 2019-20 Fiscal Year (for elementary school districts or high school districts), or (ii) qualifying projected ADA in its most recent 2020-21 budget adopted on or before June 30, 2020, or in its adopted 2019-20 second interim report. SB 820 did not provide additional funding for ADA growth over 2019-20 levels in nonclassroom-based charter schools.

No assurance can be made that ADA growth in future fiscal years will be funded. In addition, proposals, including future State budget actions, may extend the ADA Cap to future fiscal years or impose additional reductions or restrictions of ADA funding. Any such limitations may adversely affect the finances and/or operations of Encore and the Corporation.

**Compliance with the Elementary and Secondary Education Act.** Prior to the adoption of the ESSA (defined below), the No Child Left Behind Act of 2001 (the “NCLB”) served as the primary federal law with respect to K-12 education. NCLB employed the concept of Adequate Yearly Progress (“AYP”) to measure

and hold schools and school districts responsible for student achievement. In California, the NCLB subjected California schools to an annual AYP determination. AYP was calculated by using a formula set by the California Department of Education. It measured participation rates, math and reading performance, and graduation rate targets for the elementary, middle and high school levels. In connection with the adoption of ESSA, the federal government has repealed the AYP requirement.

Under California law, if a school received Title I funds and did not make AYP for two consecutive years, the school was placed on “Program Improvement” status and the school was required to develop a school improvement plan. If the school did not achieve AYP goals for a third year, “corrective action” was undertaken, which could include the provision of supplemental educational services for low-performing, low-income students. A school that continued to fail to make AYP was required to take corrective action and undergo restructuring plans. Failure to meet AYP for years subsequent to the second year carried further consequences under the NCLB. Under California law, the right to operate a charter school may be terminated if the school fails to make or meet reasonable progress toward achievement of goals, objectives, content standards, pupil performance standards or applicable federal requirements.

In March 2014, the State of California was granted a one-year waiver by the U.S. Department of Education from using test results of academic assessments to calculate AYP under the then-existing NCLB, in order to facilitate the state’s transition to the new California Assessment of Student Performance and Progress (“CAASPP”) system. In March 2015, the California State Board of Education requested another one-year waiver from the U.S. Department of Education. In May 2015, the U.S. Department of Education granted the additional one-year waiver, with certain conditions.

In December 2015, the Every Student Succeeds Act of 2015 (“ESSA”) was passed by Congress and signed by the President in connection with the amendment and reauthorization of the Elementary and Secondary Education Act of 1965. With the passage of ESSA, states are no longer required to produce AYP, but are required to develop new accountability systems by 2017-18. See “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto. ESSA, among other things, prohibits officers and employees of the federal government from mandating, directing or controlling a state, local education agency or school’s specific instructional content, academic standards and assessments, curriculum, or program of instruction, as a condition of eligibility to receive funds under ESSA.

***State Retirement Systems.*** Encore is currently a member employer of the State’s STRS and PERS retirement systems (see “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto). Although Encore does not anticipate withdrawing from or otherwise terminating its membership in STRS or PERS, there can be no assurance that State law or federal law under the Code, including IRS rulings and other guidance, will permit charter schools to continue to participate in the STRS or PERS Governmental Plans (as defined in Section 414(d) of the Code).

The STRS and PERS retirement system have substantial system-wide unfunded liabilities. If Encore were to withdraw from STRS or PERS, voluntarily or otherwise, it could be liable for its share of the unfunded liabilities of the systems. Neither Encore nor the Corporation can predict what liabilities, if any, would result if Encore’s member employer status in the retirement system were to terminate, or what impact any such a termination would have on Encore’s finances and operations.

### **Claims and Insurance Coverage**

Litigation could arise from the corporate and business activities of Encore or the Corporation. Such litigation may result as a result of either Encore’s or the Corporation’s status as an employer. Many of these risks are covered by insurance, but some are not. For example, claims arising from wrongful termination or sexual molestation claims and business disputes may not be covered by insurance or other sources. Such



claims may, in whole or in part, constitute a significant liability of Encore or the Corporation if determined or settled adversely, as may any additional claims for other torts, accidents, or environmental enforcement actions, to the extent such claims exceed the limits of applicable insurance coverage.

The Corporation and Encore covenant and agree in the Master Indenture and the Lease that they will maintain, or caused to be maintained, property, general liability and business interruption insurance with respect to the Facility at levels set forth therein. The Corporation and Encore are not obligated by the Master Indenture or the Lease to maintain earthquake insurance and there can be no assurance that the Corporation or Encore will obtain such coverage in the future. See “APPENDIX F – FORM OF LOAN AGREEMENT” and “APPENDIX G – MASTER INDENTURE AND FORM OF SUPPLEMENTAL MASTER INDENTURE NO. 2” attached hereto.

### **Risk of Noncontinued Philanthropy or Grants**

In the past, Encore has received income from unrestricted gifts and donations or grants to supplement operating revenues to finance operations and capital needs. Gifts, grants and donations are expected to continue. However, there can be no assurance that projections of this non-operating revenue will be realized or will not decrease, adversely affecting the financial condition of Encore.

### **Use of Facility**

No assurance can be given as to whether a challenge to the educational use of the Facility brought would result in an interruption of the School’s operations and have a material negative impact on the Revenues. Any court order prohibiting the educational use of the Facility would entitle the Master Trustee to submit a claim on the lender’s title insurance policy. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Mortgage” herein.

### **No Rating on the Bonds**

The Bonds are not rated, and the Corporation does not contemplate making application to any rating agency for the assignment of a rating to the Bonds. See “NO RATING” herein.

### **SB 740 Funding**

Effective beginning the 2017-18 fiscal year, reimbursable costs under the SB 740 program are limited to either of the following conditions: (i) reimbursable facility rent or lease costs do not exceed the prior year’s costs on file with the Authority as of the 2016–17 fiscal year, subject to a cost-of-living adjustment; or (ii) the rent or lease costs of new facility agreements are at or below market rate based on an independent appraisal paid for by the charter school.

In order to be eligible for the SB 740 program, a charter school must be in good standing with its chartering authority and be in compliance with the terms of its charter at the time of application submission, and without interruption throughout the term of the grant. The Authority relies on information from the chartering authority regarding a school’s good standing and compliance with the terms of its charter. See “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto for information on the current status of the charter for the School.

Encore has received SB 740 funding in the past and expects to continue receiving such funding relating to facilities costs of the Facility. However, there can be no assurances that Encore will continue to qualify for or receive SB 740 funding, or that such funding will not be reduced or eliminated by the State in the future. See “CERTAIN RISK FACTORS – Specific Risks of Charter Schools” herein, and “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE

OBLIGATED GROUP” and “APPENDIX D – CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING” attached hereto. The financial projections set forth in Appendix C attached hereto assume the receipt of SB 740 funding relating to the School in fiscal year 2021-22 and future fiscal years, and a failure to receive such funding would negatively affect Encore’s finances.

### **Cybersecurity**

Encore, like many other public and private entities, relies on a technology environment to conduct its operations. As a recipient and provider of personal, private, or sensitive information, Encore is subject to multiple cyber threats including, but not limited to, hacking, viruses, malware and other attacks on computer and other sensitive digital networks and systems. Entities or individuals may attempt to gain unauthorized access to Encore’s digital systems for the purposes of misappropriating assets or information or causing operational disruption and damage. [Within the last five years, Encore has not experienced attacks on its computer operating systems which resulted in a breach of its cybersecurity systems that are in place. No assurances can be given that Encore’s efforts to manage cyber threats and attacks will be successful or that any such attack will not materially impact the operations or finances of Encore. Encore carries cybersecurity insurance.]

### **Limited Duties of Trustee**

The Trustee shall have no duty to investigate or analyze documents, including any reports, financial statements, insurance policies, or other material delivered to the Master Trustee or Trustee under the terms of the Master Indenture, the Bond Indenture, the Loan Agreement or the Lease and shall only be required to act on such information if the Master Trustee or Trustee, as applicable, has actual or deemed knowledge of an Event of Default thereunder. Such items include but are not limited to: insurance certificates and financial reporting. Therefore, the Master Trustee or Trustee may only be able to identify and declare an Event of Default in connection with a non-payment or failure to deliver certain documents by a date certain under the Master Indenture, Loan Agreement or the Lease, as applicable.

In addition, the Indenture permits moneys in the Working Capital Fund, Cost of Issuance Fund and Revenue Fund to be invested and reinvested by the Trustee in Eligible Securities only. The Trustee will rely solely on the written direction of the Corporation in investing and reinvesting such moneys, without further investigation or independent determination as to whether such investments constitute Eligible Securities.

See “APPENDIX E – FORM OF BOND INDENTURE” attached hereto.

## **ABSENCE OF MATERIAL LITIGATION**

### **The Authority**

To the knowledge of the Authority, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or threatened against the Authority seeking to restrain or enjoin the sale or issuance of the Bonds, or in any way contesting or affecting any proceedings of the Authority taken concerning the sale thereof, the pledge or application of any moneys or security provided for the payment of the Bonds, the validity or enforceability of the documents executed by the Authority in connection with the Bonds, the completeness or accuracy of this Private Placement Memorandum or the existence or powers of the Authority relating to the sale of the Bonds.

### **The Corporation**

There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the knowledge of the Corporation, threatened in writing against the Corporation seeking to restrain or enjoin the sale or issuance of the Bonds, or in any way

contesting or affecting any proceedings of the Corporation taken concerning the sale thereof, the pledge or application of any moneys or security provided for the payment of the Bonds, the validity or enforceability of the documents executed by the Corporation in connection with the Bonds, the completeness or accuracy of the Private Placement Memorandum or the existence or powers of the Corporation relating to the sale of the Bonds.

## **TAX MATTERS**

In the opinion of Bond Counsel, under existing statutes, regulations, rulings and judicial decisions, interest (and original issue discount) on the Bonds is not excluded from gross income for federal income tax purposes under Section 103 of the Code but is exempt from State of California personal income tax.

Except for certain exceptions, the excess of the stated redemption price at maturity of a Bond over the issue price of a Bond (the first price at which a substantial amount of the Bonds of the same maturity is to be sold to the public) constitutes original issue discount. Original issue discount accrues under a constant yield method. The amount of original issue discount deemed received by the Beneficial Owner of a Bond will increase the Beneficial Owner's basis in the Bond. Beneficial Owners of Bonds should consult their own tax advisor with respect to taking into account any original issue discount on the Bonds.

The amount by which a Bond Beneficial Owner's original basis for determining loss on sale or exchange in the applicable Bond (generally, the purchase price) exceeds the amount payable on maturity (or on an earlier call date) constitutes amortizable bond premium, which the Beneficial Owner of a Bond may elect to amortize under Section 171 of the Code. Such amortizable bond premium reduces the Bond Beneficial Owner's basis in the applicable Bond (and the amount of taxable interest received) and is deductible for federal income tax purposes. The basis reduction as a result of the amortization of Bond premium may result in the Beneficial Owner of a Bond realizing a taxable gain when a Bond is sold by the Beneficial Owner for an amount equal to or less (under certain circumstances) than the original cost of the Bond to the Beneficial Owner. The Beneficial Owners of the Bonds that have a basis in the Bonds that is greater than the principal amount of the Bonds should consult their own tax advisors with respect to whether or not they should elect to amortize such premium under Section 171 of the Code.

In the event of a legal defeasance of a Bond, such bond might be treated as retired and "reissued" for federal tax purposes as of the date of the defeasance, potentially resulting in recognition of taxable gain or loss to the applicable Bond Beneficial Owner generally equal to the difference between the amount deemed realized from the deemed redemption and reissuance of the Bond Beneficial Owner's adjusted tax basis in such bond.

The federal income tax discussion set forth above with respect to the Bonds is included for general information only and may not be applicable depending upon a Beneficial Owner's particular situation. The ownership and disposal of the Bonds and the accrual or receipt of interest with respect to the Bonds may otherwise affect the tax liability of certain persons. Bond Counsel expresses no opinion regarding any such tax consequences. **BEFORE PURCHASING ANY OF THE BONDS, ALL POTENTIAL PURCHASERS SHOULD CONSULT THEIR INDEPENDENT TAX ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES RELATING TO THE BONDS AND THE TAXPAYER'S PARTICULAR CIRCUMSTANCES.**

A copy of the proposed form of opinion of Bond Counsel for the Bonds is included herewith in Appendix J.

## **APPROVAL OF LEGALITY**

The validity of the Bonds and certain other legal matters are subject to the approving opinions of Stradling Yocca Carlson & Rauth, a Professional Corporation, Bond Counsel to the Authority, the approval of

certain matters for the Authority by Kutak Rock LLP, the approval of certain matters for the Placement Agent by Quarles & Brady LLP, as Placement Agent’s counsel, and the approval of certain matters by Musick, Peeler & Garrett LLP, as counsel to the Corporation. Bond Counsel, the Placement Agent and its counsel will receive compensation contingent upon the sale and delivery of the Bonds. A complete copy of the proposed form of Bond Counsel opinion is contained in Appendix J hereto. Neither Bond Counsel nor the Authority undertakes any responsibility for the accuracy, completeness or fairness of this Private Placement Memorandum. Musick, Peeler & Garrett LLP will also render certain opinions pertaining to Encore.

### **NO RATING**

The Bonds are not rated. Neither of the Corporation nor the Authority has made or contemplates making application to any rating agency for the assignment of a rating to the Bonds, except as noted below with respect to the Corporation. See “CERTAIN RISK FACTORS – No Rating on the Bonds” herein.

### **LIMITED OFFERING OF BONDS**

The Bonds are exempt from registration under federal securities law but are being offered only to a limited number of sophisticated investors and will be sold only to purchasers who are Qualified Institutional Buyers. By purchasing the Bonds, each investor is deemed to have made the acknowledgments, representations, warranties and agreements set forth under the heading “TRANSFER RESTRICTIONS” herein.

### **PLACEMENT AGENT**

The Authority and the Corporation have engaged Stifel, Nicolaus & Company, Incorporated (the “Placement Agent”) to act as Placement Agent in connection with the limited offering of the Bonds. The Placement Agent has not underwritten the Bonds and is not responsible for the accuracy or the completeness of the information included in this Private Placement Memorandum or any other information or documentation that the purchasers of the Bonds have received or relied upon in making their decision to purchase and own the Bonds.

The Placement Agent has entered into a Placement Agent Agreement relating to the limited offering and sale of the Bonds by the Authority. Pursuant to the Placement Agent Agreement, the Placement Agent has agreed to arrange for the limited offering of the Bonds by the Authority, subject to the satisfaction of certain conditions, with qualified purchasers. The Placement Agent will be paid a fee for its Placement Agent services in the amount of \$ \_\_\_\_\_, in accordance with the Placement Agent Agreement.

### **ADDITIONAL INFORMATION**

The Corporation has furnished all information herein relating to the Corporation, and Encore has furnished all information herein relating to Encore. Any statements herein involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact, and no representation is made that any of such statements will be realized. Neither this Private Placement Memorandum nor any statement which may have been made orally or in writing with respect to this Private Placement Memorandum is to be construed as a contract with the Beneficial Owner of any Bond.

All of the summaries of the provisions of the Bonds, Bond Indenture, Loan Agreement, Master Indenture and Lease set forth herein (exclusive of financial and statistical data), and all other summaries and references to such other materials not purporting to be quoted in full, are only brief outlines of certain provisions thereof and are made subject to all of the detailed provisions thereof, to which reference is hereby made for further information, and do not purport to be complete statements of any or all such provisions of such documents. All estimates and assumptions herein have been made on the best information available and

are believed to be reliable, but no representations whatsoever are made that such estimates or assumptions herein will be realized. To the extent statements made herein involve anything other than matters of opinion, whether or not expressly so stated, they are intended merely as such and not as representations of fact.

The information set forth herein, or in the Appendices, should not be construed as representing all of the conditions affecting Encore or the Corporation. The appendices attached hereto are a part of this Private Placement Memorandum.

The summaries of or references to constitutional provisions, statutes, resolutions, agreements, contracts, financial statements, reports, publications and other documents or compilations of data or information set forth in this Private Placement Memorandum do not purport to be complete statements of the provisions of the items summarized or referred to and are qualified in their entirety by the actual provisions of such items, copies of which are either publicly available or available upon request and the payment of a reasonable copying, mailing and handling charge from Stifel, Nicolaus & Company, Incorporated, 2121 Avenue of the Stars, Suite 2100, Los Angeles, CA 90067.

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**MISCELLANEOUS**

NONE OF THE INFORMATION IN THIS PRIVATE PLACEMENT MEMORANDUM HAS BEEN SUPPLIED OR VERIFIED BY THE AUTHORITY OTHER THAN THE INFORMATION UNDER THE CAPTIONS “THE AUTHORITY” AND “ABSENCE OF MATERIAL LITIGATION – THE AUTHORITY.” THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AS TO THE ACCURACY (OTHER THAN IN THE SECTIONS IDENTIFIED ABOVE) OR COMPLETENESS OF INFORMATION IN THIS LIMITED OFFERING MEMORANDUM.

The distribution and use of this Private Placement Memorandum have been approved by the Authority, the Corporation and Encore.

WESTERN ENCORE PROPERTIES  
INCORPORATED

By: \_\_\_\_\_ /s/ [NAME]  
Authorized Signatory

ENCORE EDUCATION CORPORATION, as  
Lessee

By: \_\_\_\_\_ /s/ Dr. Sabrina Bow  
Chief Executive Director

**APPENDIX A**

**CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL,  
THE CORPORATION AND THE OBLIGATED GROUP**

**APPENDIX B**

**AUDITED FINANCIAL STATEMENTS OF ENCORE FOR THE FISCAL YEAR  
ENDED JUNE 30, 2021**



**APPENDIX C**

**YEAR-TO-DATE AND PROJECTED FINANCIAL INFORMATION OF ENCORE FOR THE  
FISCAL YEARS ENDING JUNE 30, 2022 AND JUNE 30, 2023**

## APPENDIX D

### CALIFORNIA CHARTER SCHOOLS, RELATED STATUTES, AND FUNDING CHARTER SCHOOLS

#### General

This section provides a brief overview of California’s charter school law. Prospective purchasers of the Bonds should note that the overview contained in this section and the summary of relevant law noted by cross-reference in the sections that follow are provided for the convenience of prospective purchasers but are not and do not purport to be comprehensive. Additional information regarding various aspects of charter school funding in California is available on numerous State-maintained websites and through other publicly available sources.

Under State Law, charter schools are largely independent schools operating as part of the public school system under the exclusive control of the officers of the public schools. A charter school is usually created or organized by a group of teachers, parents and community leaders, or a community-based organization, and is usually sponsored by an existing local public school district or county board of education. Specific goals and operating procedures for the charter school are detailed in a “charter” granted by the sponsoring board to the charter organizers.

A charter school is generally exempt from the laws governing school districts, except where specifically noted in the law. Charter schools in the State are created pursuant to Part 26.8 (beginning with Section 47600) of Division 4 of Title 2 of the State Education Code (the “Charter School Law”). The law also requires that a public charter school be nonsectarian in its programs, admission policies, employment practices and all other operations, and prohibits the conversion of a private school to a charter school. Public charter schools may not charge tuition and may not discriminate against any pupil on the basis of ethnicity, national origin, gender or disability. State public charter schools are required to participate in the State Testing and Reporting Program.

According to the Charter School Law, the purpose of a charter school is to: (1) improve pupil learning; (2) increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils identified as academically low achieving; (3) encourage the use of different and innovative teaching methods; (4) create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; (5) provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; (6) hold schools accountable for meeting measurable pupil outcomes and provide schools a way to shift from a rule-based to a performance-based system of accountability; and (7) provide vigorous competition within the public school system to stimulate continual improvements in all public schools.

Anyone may write a charter. However, for a new charter school (not conversion of an existing traditional public school), charter developers must present a petition to the governing board of the local school district (or other chartering authority) containing the signatures of either: (1) a number of teachers meaningfully interested in teaching at the school equal to at least 50 percent of the number of teachers the charter school estimates will be employed during the charter school’s first year of operation, or (2) a number of parents or legal guardians representing at least 50 percent of the number of pupils expected to enroll at the school in its first year. For conversion schools, Charter School Law requires signatures of at least 50 percent of the permanent status teachers at the school to be converted. Pupils may not be required to attend a charter school nor may teachers be compelled to teach there. Charters are granted for a maximum term of five years, and may be renewed for new five-year terms without limitation upon satisfaction of certain criteria described below; provided, however, that under certain circumstances, high-performing charter schools may be renewed for a period of between five seven years.

Generally, each charter school is funded to its statutory entitlement after the local contribution is taken into account. Local funding comes from the chartering school district or other sponsoring local education agency in lieu of property taxes (generally funded from the school district's own property tax receipts), while the State funds the balance directly through the county office of education. The proportion coming from the State will vary from district to district depending on the amount of local property taxes collected. In addition, charter schools receive certain State funding and lottery funds based upon pupil attendance, and may be eligible for other special programmatic aid from State and federal grants. Charter schools are prohibited from charging tuition under the Charter School Law.

For additional information regarding funding of education in the State and information relating to certain risks and other considerations relevant to a decision to invest in the Bonds, see "STATE FUNDING OF EDUCATION" herein and "CERTAIN RISK FACTORS – Specific Risks of Charter Schools" in the forepart of this Private Placement Memorandum.

### **Chartering Authority**

Under the Charter School Law, the local school district governing board serves as the primary chartering authority. A petitioner may seek approval of a charter from a county board of education if the pupils to be served are pupils that would normally be provided direct education and related services by the county office of education. A petitioner may also seek approval from a county board of education for a countywide charter school, which may be granted only if the county board finds that the proposed countywide charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates only in one school district in the county. See "— Countywide Benefit Charter Schools" below. Petitioners may request the county board of education to review a charter petition if the petition has been previously denied by the local school district governing board.

If the governing board of a school district denies a petition and the county lacks an independent county board of education, the petitioner may elect to submit the petition for the establishment of a charter school to the state board. If the denial of a charter petition is reversed by the state board, the state board shall designate the governing board of the school district in which the charter school is located as the chartering authority.

If the county board of education denies a petition, the petitioner may appeal that denial to the state board. The state board shall either hear the appeal or summarily deny review of the appeal based on the documentary record. If the state board hears the appeal, the state board may affirm the determination of the governing board of the school district or the county board of education, or both of those determinations, or may reverse only upon a determination that there was an abuse of discretion. If the denial of a charter petition is reversed by the state board, the state board shall designate, in consultation with the petitioner, either the governing board of the school district or the county board of education in which the charter school is located as the chartering authority.

For information concerning the charter granted with respect to the School, see "APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP" attached hereto.

### **Elements of a Charter Petition**

Each charter petition, at a minimum, must contain reasonably comprehensive descriptions of each of sixteen required elements. They are:

1. A description of the educational program of the charter school.

2. The annual goals for the charter school for all pupils and for each subgroup of pupils, and specific annual actions to achieve those goals.
3. If the proposed charter school will serve high school pupils, the manner in which the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.
4. The measurable pupil outcomes identified for use by the charter school.
5. The method by which pupil progress in meeting those pupil outcomes is to be measured.
6. The charter school's governance structure, including parental involvement.
7. The qualifications to be met by individuals employed by the charter school.
8. Procedures to ensure health and safety of pupils and staff. These procedures shall include: that each employee of the charter school furnish the charter school with a criminal record summary; the development of a school safety plan; and that the school safety plan be reviewed and updated by March 1 of every year by the charter school.
9. The means by which the charter school will achieve a balance of racial and ethnic pupils, special education pupils, and English learner pupils, including redesignated fluent English proficient pupils, reflective of the general population residing in the chartering district.
10. Admission policies and procedures, consistent with the requirements in Education Code Section 47605(e).
11. The manner in which annual, independent financial audits will be conducted, and the manner in which audit exceptions and deficiencies will be resolved to the satisfaction of the chartering authority.
12. The procedures by which pupils may be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the charter school for any reason.
13. Provisions for employee coverage under the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.
14. The public school attendance alternatives for pupils residing within the district who choose not to attend charter schools.
15. A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.
16. The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.
17. A declaration of whether or not the charter school will be deemed the exclusive public school employer of the employees of the charter school for purposes of the Educational Employment Relations Act.
18. A description of the procedures for closure of the school, including the disposition of assets and the maintenance and transfer of pupil records.

Under the accountability requirements of Assembly Bill 1137 (“AB 1137”), signed into law in October 2003, districts or other agencies that grant charter authority must identify a contact person for charter schools, visit each charter school at least once a year, and ensure that charter schools submit all required reports (including fiscal reports that must be sent four times a year to the district and local county office of education). In addition, the district must monitor the fiscal condition of its charter schools and notify the State Department of Education whenever a charter is granted, denied, revoked, or the charter school will cease operation. AB 1137 also required that charter schools show a certain level of academic performance to have their charters renewed.

### **Approval or Denial of Charter Petition**

No later than 60 days after receiving a petition, the governing board of the school district will hold a public hearing on the provisions of the charter, at which time the governing board of the school district will consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents. Following review of the petition and the public hearing, the governing board of the school district will either grant or deny the charter within 90 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension.

The governing board of the school district will publish all staff recommendations, including the recommended findings and, if applicable, the certification from the county superintendent of schools prepared pursuant to paragraph (8) below, regarding the petition at least 15 days before the public hearing at which the governing board of the school district will either grant or deny the charter. At the public hearing at which the governing board of the school district will either grant or deny the charter, petitioners will have equivalent time and procedures to present evidence and testimony to respond to the staff recommendations and findings.

In reviewing petitions for the establishment of charter schools authorized by a school district, the chartering authority will be guided by the intent of the State Legislature that charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged. The governing board of the school district will grant a charter for the operation of a school if it is satisfied that granting the charter is consistent with sound educational practice and with the interests of the community in which the school is proposing to locate. The governing board of the school district shall consider the academic needs of the pupils the school proposes to serve.

The governing board of the school district will not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

- (1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school;
- (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition;
- (3) The petition does not contain the number of required signatures;
- (4) The petition does not contain an affirmation of each of the admission conditions described in Education Code Section 47605(e);
- (5) The petition does not contain reasonably comprehensive descriptions of all of the elements described in “— Elements of a Charter Petition” herein; and

- (6) The petition does not contain a declaration of whether or not the charter school will be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 of the Government Code.
- (7) The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school. A written factual finding under this paragraph shall detail specific facts and circumstances that analyze and consider the following factors:
  - (A) The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings.
  - (B) Whether the proposed charter school would duplicate a program currently offered within the school district and the existing program has sufficient capacity for the pupils proposed to be served within reasonable proximity to where the charter school intends to locate.
- (8) The school district is not positioned to absorb the fiscal impact of the proposed charter school. A school district satisfies this paragraph if it has a qualified interim certification pursuant to Section 1240 of the Education Code and the county superintendent of schools, in consultation with the County Office Fiscal Crisis and Management Assistance Team, certifies that approving the charter school would result in the school district having a negative interim certification pursuant to Section 1240 of the Education Code, has a negative interim certification pursuant to Section 1240 of the Education Code, or is under state receivership. Charter schools proposed in a school district satisfying one of these conditions shall be subject to a rebuttable presumption of denial.

In reviewing petitions for the establishment of charter schools within the school district, the governing board of the school district will give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Board of Education.

If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education will review the petition pursuant to the same process by which a school district reviews a charter school petition.

If the governing board of a school district denies a petition and the county board of education has jurisdiction over a single school district, the petitioner may elect to submit the petition for the establishment of a charter school to the state board. The state board will review the petition pursuant to the same process by which a school district reviews a charter school petition. If the denial of a charter petition is reversed by the state board, the state board shall designate the governing board of the school district in which the charter school is located as the chartering authority.

If the county board of education denies a petition, the petitioner may appeal that denial to the state board. The state board will either hear the appeal or summarily deny review of the appeal based on the documentary record. If the state board hears the appeal, the state board may affirm the determination of the governing board of the school district or the county board of education, or both of those determinations, or may reverse only upon a determination that there was an abuse of discretion. If the denial of a charter petition is reversed by the state board, the state board will designate, in consultation with the petitioner, either the governing board of the school district or the county board of education in which the charter school is located as the chartering authority.

If either the county board of education or the state board fails to act on a petition within 180 days of receipt, the decision of the governing board of the school district to deny the petition will be subject to judicial review.

### **Charter Renewal**

A chartering authority may grant one or more renewals of a charter petition. Except as otherwise described herein, each renewal will be for a period of five years. Renewals and material revisions of charters are governed by the same standards and criteria as initial approvals of charter petitions, and will include, but not be limited to, a reasonably comprehensive description of any new requirement of charter schools enacted into law after the charter was originally granted or last renewed.

AB 130 (as defined herein), which was signed into law by the Governor on July 9, 2021, automatically extends by two years the term of all existing charter schools whose term expires between January 1, 2022 and June 30, 2025, inclusive. See “– Amendments to the Charter School Law” below.

A charter school that, concurrently with its renewal, proposes to expand operations to one or more additional sites or grade levels must request a material revision to its charter, which may be made only with the approval of the chartering authority and is governed by the standards and criteria of an initial approval or denial of a charter petition. Paragraphs numbered (7) and (8) under the heading “– Approval or Denial of Charter Petition” above may not be used to deny a renewal of an existing charter school, but may be used to deny a proposed expansion constituting a material revision.

The chartering authority shall consider the schoolwide performance and performance of all subgroups of pupils served by the charter school on the state indicators included in the California School Dashboard and the performance of the charter school on the local indicators included in the California School Dashboard. The chartering authority shall provide greater weight to performance on measurements of academic performance in determining whether to grant a charter renewal. In addition to the state and local indicators, the chartering authority shall consider clear and convincing evidence, demonstrated by verified data, showing either of the following:

- (A) The school achieved measurable increases in academic achievement, as defined by at least one year’s progress for each year in school.
- (B) Strong postsecondary outcomes, as defined by college enrollment, persistence, and completion rates equal to similar peers.

The chartering authority may deny a charter renewal only upon making written findings, setting forth specific facts to support the findings, that the charter school has failed to meet or make sufficient progress toward meeting standards that provide a benefit to the pupils of the school, that closure of the charter school is in the best interest of pupils and, if applicable that its decision provided greater weight to performance on measurements of academic performance.

***Authorizer Shall Renew.*** The chartering authority shall not deny renewal for a charter school if either of the following apply for two consecutive years immediately preceding the renewal decision; provided, however, that a charter school eligible for technical assistance shall not qualify for renewal under this provision:

- (A) The charter school has received the two highest performance levels schoolwide on all the state indicators included in the California School Dashboard for which it receives performance levels; and

(B) For all measurements of academic performance, the charter school has received performance levels schoolwide that are the same or higher than the state average and, for a majority of subgroups performing statewide below the state average in each respective year, received performance levels that are higher than the state average.

The chartering authority that granted the charter may renew a charter pursuant to this paragraph for a period of between five and seven years.

Notwithstanding the above, the chartering authority may deny renewal of a charter school upon a finding that the school is demonstrably unlikely to successfully implement the program set forth in the petition due to substantial fiscal or governance factors, or is not serving all pupils who wish to attend. The chartering authority may deny renewal of a charter school pursuant to this provision only after it has provided at least 30 days' notice to the charter school of the alleged violation and provided the charter school with a reasonable opportunity to cure the violation, including a corrective action plan proposed by the charter school.

***Authorizer Shall Not Renew.*** The chartering authority shall not renew a charter if either of the following apply for two consecutive years immediately preceding the renewal decision:

(A) The charter school has received the two lowest performance levels schoolwide on all the state indicators included in the California School Dashboard for which it receives performance levels.

(B) For all measurements of academic performance, the charter school has received performance levels schoolwide that are the same or lower than the state average and, for a majority of subgroups performing statewide below the state average in each respective year, received performance levels that are lower than the state average.

The chartering authority shall consider the following factors, and may renew a charter that meets the criteria above only upon making both of the following written factual findings, specific to the particular petition, setting forth specific facts to support the findings:

(A) The charter school is taking meaningful steps to address the underlying cause or causes of low performance, and those steps are reflected, or will be reflected, in a written plan adopted by the governing body of the charter school.

(B) There is clear and convincing evidence showing either of the following:

(i) The school achieved measurable increases in academic achievement, as defined by at least one year's progress for each year in school.

(ii) Strong postsecondary outcomes, as defined by college enrollment, persistence, and completion rates equal to similar peers.

For a charter renewed pursuant to this provision, the chartering authority may grant a renewal for a period of two years.

### **Countywide Benefit Charter Schools**

Education Code Section 47605.6 provides for the creation of countywide benefit charter schools to operate at one or more sites within the geographic boundaries of a county and that provide instructional services that are not generally provided by a county office of education. A county board of education may approve a countywide charter only if it finds, in addition to the other requirements of the Charter School Law, that the educational services to be provided by the charter school will offer services to a pupil population that



will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county.

The provisions governing denial of a charter petition for school district governing boards also apply to the denial of a charter petition for countywide benefit charters. A county board of education will deny a petition if it finds one or more of the following: (i) the charter school presents an unsound educational program for the pupils to be enrolled in the charter school, (ii) petitioners are demonstrably unlikely to successfully implement the program set forth in the petition, (iii) the petition does not contain the number of required signatures, (iv) the petition does not contain an affirmation of each of the enumerated conditions described in Education Code Section 47605(e), (v) the petition does not contain reasonably comprehensive descriptions of the educational program of the school, measurable pupil outcomes and certain other factors, as required by State law, (vi) the petition does not contain a declaration of whether or not the charter school will be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 of the Government Code, and (vii) any other basis that the county board of education finds justifies the denial of the petition. If a petition for a countywide benefit charter is denied, or the renewal of an existing countywide benefit charter is denied, the petition may not be submitted to the State Board of Education (“SBE”) for review.

The School does not operate pursuant to a countywide benefit charter. See “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto.

### **Charter Management Organizations**

As the number of charter schools operating pursuant to the Charter School Law has increased over time, nonprofit organizations have been established, referred to as charter management organizations (“CMOs”), to manage the operations of several charter schools for the purpose of achieving certain economic and operational efficiencies. CMOs centralize or share certain functions and resources among multiple charter schools, including but not limited to accounting, human resources, marketing, purchasing, property management and administration. CMOs may operate at the regional or statewide level. Encore functions as a CMO for the School. See “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto.

### **Charter Revocation**

A charter may be revoked if the charter granting authority finds, based on substantial evidence, that a charter school (i) has committed a material violation any of the conditions, standards or procedures set forth in its charter, or (ii) has failed to meet or to pursue any of the student outcomes identified in its charter, or (iii) has failed to meet generally accepted accounting principles, or engages in fiscal mismanagement, or (iv) has violated any provision of law. Prior to revoking a charter, the charter granting authority must notify the charter school of the violation, afford the charter school a reasonable opportunity to remedy the violation (unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils), and, upon failure to do so, give written notice of intent to revoke and notice of facts in support of revocation to the charter school and hold a public hearing on the matter. An adverse decision by a school district governing board may be appealed to the county board of education and an adverse decision by the county board, directly or on appeal, may be appealed to the SBE. See “CERTAIN RISK FACTORS – Specific Risks of Charter Schools – Non-Renewal or Revocation of Charters” in the forepart of this Private Placement Memorandum.

In addition, the SBE may take action based on the recommendation of the State Superintendent of Public Instruction, including but not limited to revocation of a school’s charter, upon a finding of (i) gross financial mismanagement that jeopardizes the financial stability of the charter school, (ii) illegal or substantially improper use of charter school funds for the personal benefit of any officer, director or fiduciary

of the charter school, (iii) substantial and sustained departure from measurably successful practices such that continuing departure would jeopardize the educational development of the school’s pupils, or (iv) failure to improve pupil outcomes across multiple state and school priorities identified in the charter. Regulations promulgated by the SBE require the California Department of Education to identify and notify the SBE of each charter school that is determined to warrant action pursuant to clause (iii) of the immediately preceding sentence by November 1 of each year. Under these regulations, charter schools so notified are required to be given an opportunity to submit written information as to why its charter should not be revoked. Any resulting action to revoke a charter is effective at the end of the fiscal year in which the action is taken, unless the SBE identifies departures at the school that are so significant as to be cause for immediate revocation and closure of the charter school. The regulations require the SBE to hold a public hearing to consider action including but not limited to charter revocation not later than March 31. See “CERTAIN RISK FACTORS – Specific Risks of Charter Schools – Non-Renewal or Revocation of Charters” in the forepart of this Private Placement Memorandum.

In the past, Encore has received notices from Hesperia Unified School District, its authorizer, of violations of its charter. See “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto for more information on the current status of the School’s charter. In addition, as noted above, any future adverse decision by the governing board of Hesperia Unified School District may be appealed to the San Bernardino County Board of Education and an adverse decision by such Board of Education may be appealed to the SBE.

### **Amendments to the Charter School Law**

The Legislature has amended the Charter School Law frequently since its initial adoption in 1992, and legislative and public attitudes are still evolving. Neither Encore nor any charter school has any control over State legislative or regulatory decision making that could affect the operations or ongoing funding sources for the School.

Neither the Corporation nor Encore makes any representation as to whether any proposed amendments to the Charter School Law will be enacted into law, or what, if any, impact such proposed amendments would have on the Corporation or Encore.

Assembly Bill 130 (“AB 130”) was signed into law by the Governor on July 9, 2021. AB 130 was an omnibus budget trailer bill relating to the State’s budget for the 2021-22 fiscal year. Among other things, AB 130 provided for the following:

- All charter schools whose term expires on or between January 1, 2022 and June 30, 2025 will automatically have their term extended by two years.
- The existing moratorium on the establishment of new nonclassroom-based charter schools is extended from January 1, 2022 to January 1, 2025.
- Require certain high-poverty schools (including charter schools) to apply to operate a federal universal meal service and provide breakfast and lunch free of charge through such program to all pupils at such school upon State approval.
- Expands the State’s existing transitional kindergarten program to require admission of all children having their fourth birthday before September 1, which program previously only required admission of four-year-old children having their fifth birthday between September 2 and December 2, to be phased in between the 2022-23 school year and 2025-26 school year.

Assembly Bill 1505 (“AB 1505”) was signed into law by the Governor on October 3, 2019. The provisions of AB 1505 amending existing law relating to the review, approval and appeal of charter petitions

became operative on July 1, 2020. AB 1505 made various changes to provisions relating to the review of charter school petitions and renewals by authorizers, including the following:

- Requiring a charter school that, concurrently with its renewal, proposes to expand operations to one or more additional sites or grade levels shall request a material revision to its charter. A material revision to the provisions of a charter petition may be made only with the approval of the chartering authority. A material revision of a charter is governed by the standards and criteria described in Education Code Section 47605.
- Adding additional factors for a school district to consider when reviewing a charter school petition, including the interests of the community, the academic needs of the pupils, by which means the charter school will achieve a balance of racial and ethnic pupils, special education pupils, and English learner pupils, including redesignated fluent English proficient pupils, that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted, the fiscal impact on the school district, and whether the charter school would substantially undermine existing services, academic offerings or programmatic offerings of the school district. The factors may not be used to deny a renewal of an existing charter school, however may be used to deny a proposed expansion constituting a material revision.
- Renewals of existing charter school petitions will not be subject to the authorizer’s evaluation of the fiscal impact on the school district, so long as the renewal does not request an expansion to additional sites or grade levels.
- Authorizers must deny a renewal if the charter school has received certain low performance levels on the California School Dashboard for the most recent two years prior to renewal, unless the authorizer makes certain findings.
- Authorizers may not deny a renewal, and may renew for a term between 5 and 7 years, if the charter school has received certain high performance levels on the California School Dashboard for the most recent two years prior to renewal, unless the authorizer makes certain findings.
- Petitions denied by a school district and county may only be granted on appeal to the State Board of Education if the State Board of Education finds an abuse of discretion by the school district or county. If approved on State appeal, the State Board of Education will designate either the school district or the county as the authorizer. The State Board of Education will no longer be able to authorize Statewide benefit charters.
- All charter school teachers will be required to be certified by June 30, 2025.
- No new nonclassroom-based charter schools may be approved from January 1, 2020 through January 1, 2022.

On September 30, 2020, the Governor signed into law Assembly Bill 2765 (“AB 2765”). AB 2765 makes any construction, alteration, demolition, installation or repair work done on a charter school subject to prevailing wages, when such work is paid for, in whole or in part, with proceeds of conduit revenue bonds issued on or after January 1, 2021, unless such charter school has an average daily attendance not exceeding 80 pupils.

**Growth in Charter Schools in California**

California has the largest concentration of charter schools in the nation with approximately 690,000 students enrolled in charter schools for the 2020-21 school year (up approximately 15,300 students from the prior school year), which was approximately 11.5% of total state-wide enrollment in the 2020-21 school year (up from approximately 11.0 percent of total state-wide enrollment in the prior school year). The following table shows the total number of charter schools in California by year since 1998-99.

**TOTAL CHARTER SCHOOLS IN CALIFORNIA  
Fiscal Years 1998-99 Through 2020-21**

<i>Fiscal Year</i>	<i>Number of Charter Schools</i>
2020-21	1,296
2019-20	1,304
2018-19	1,323
2017-18	1,275
2016-17	1,254
2015-16	1,230
2014-15	1,182
2013-14	1,130
2012-13	1,063
2011-12	982
2010-11	912
2009-10	809
2008-09	746
2007-08	682
2006-07	585
2005-06	560
2004-05	502
2003-04	443
2002-03	408
2001-02	349
2000-01	299
1999-00	235
1998-99	177

**STATE FUNDING OF EDUCATION**

**General**

The Charter School Law provides that the State legislature intended “each charter school be provided with operational funding that is equal to the total funding that would be available to a similar school district serving a similar pupil population . . .” As is true for school districts in the State, charter schools’ revenue is derived primarily from two sources: a State portion funded from the State’s general fund and a locally generated portion derived from each sponsoring school district’s share of the local *ad valorem* property tax. Decreases in State revenues, or in the legislative appropriations made to fund education, may significantly affect charter schools’ operations.

**Adoption of Annual State Budget.** According to the State Constitution, the Governor of the State is required to propose a budget to the State Legislature no later than January 10 of each year, and a final budget must be adopted by the State Legislature no later than June 15, although this deadline has been breached in previous years. Historically, the budget required a two-thirds vote of each house of the State Legislature for passage. However, on November 2, 2010, the State’s voters approved Proposition 25, which amended the

State Constitution to lower the vote requirement necessary for each house of the State Legislature to pass a budget bill and send it to the Governor. Specifically, the vote requirement was lowered from two-thirds to a simple majority (50% plus one) of each house of the State Legislature. This lower vote requirement also applies to trailer bills that appropriate funds and are identified by the State Legislature “as related to the budget in the budget bill.” The budget becomes law upon the signature of the Governor, who may veto specific items of expenditure. Under Proposition 25, a two-thirds vote of the State Legislature is still required to override any veto by the Governor. School district budgets must generally be adopted by July 1, and revised by the school board within 45 days after the Governor signs the budget act to reflect any changes in budgeted revenues and expenditures made necessary by the adopted State budget. The Governor signed the fiscal year 2021-22 State budget on June 28, 2021.

Failure by the State to adopt a budget may restrict the State Controller’s ability to disburse State funds. Under the rule of *White v. Davis* (also referred to as *Jarvis v. Connell*), a State Court of Appeal decision reached in 2002 and later refined by a California Supreme Court decision in 2003, the State Controller may be able to disburse State funds after the beginning of the fiscal year prior to the adoption of the State budget bill or emergency appropriation if the expenditure, among other things, is (i) authorized by a continuing appropriation found in statute, (ii) mandated by the State Constitution (such as appropriations for salaries of elected state officers), or (iii) mandated by federal law (such as payments to State workers at no more than minimum wage). The State Controller has consistently stated that basic State funding for schools is continuously appropriated by statute, but that special and categorical funds may not be appropriated without an adopted budget. Should the State Legislature fail to pass a budget or emergency appropriation before the start of any fiscal year, Encore and the Corporation might experience delays in receiving certain expected revenues. See “CERTAIN RISK FACTORS” in the forepart of this Private Placement Memorandum.

State income tax and other receipts can fluctuate significantly from year to year, depending on economic conditions in the State and the nation. Because funding for education is closely related to overall State income, as described in this section, funding levels can also vary significantly from year to year, even in the absence of significant education policy changes. A brief description of the adopted State budget for fiscal year 2021-22 is included below; however, no prediction can be made as to how State income or State education funding will vary over the entire term to maturity of the Bonds, and neither the Corporation nor Encore take any responsibility for informing Beneficial Owners of the Bonds as to any such annual fluctuations. Information about the State budget and State spending for education is regularly available at various State maintained websites. Text of proposed and adopted budgets may be found at the website of the Department of Finance, [www.dof.ca.gov](http://www.dof.ca.gov), under the heading “California Budget.” An impartial analysis of the budget is posted by the Office of the Legislative Analyst at [www.lao.ca.gov](http://www.lao.ca.gov). In addition, various State of California official statements, many of which contain a summary of the current and past State budgets and the impact of those budgets on school districts in the State, may be found at the website of the State Treasurer, currently located at [www.treasurer.ca.gov](http://www.treasurer.ca.gov), and the Electronic Municipal Market Access (“EMMA”) website of the Municipal Securities Rulemaking Board, currently located at <http://emma.msrb.org>. The information referred to is prepared by the respective entities maintaining each website and not by Encore or the Corporation, and neither Encore nor the Corporation can take any responsibility for the continued accuracy of these internet addresses or for the accuracy, completeness or timeliness of information posted there, and such information is not incorporated herein by these references. The information referred to above should not be relied upon in making an investment decision with respect to the Bonds.

***Aggregate State Education Funding.*** Under Proposition 98, a constitutional and statutory amendment adopted by the State’s voters in 1988 and amended by Proposition 111 in 1990 (now found at Article XVI, Sections 8 and 8.5 of the Constitution), a minimum level of funding is mandated for school districts, community college districts, and other State agencies that provide direct elementary and secondary instructional programs, including charter schools.

The Proposition 98 guaranteed amount for education is based on prior year funding, as adjusted through various formulas and tests that take into account State proceeds of taxes, local property tax proceeds,

school enrollment, per capita personal income, and other factors. The State's share of the guaranteed amount is based on State general fund tax proceeds and is not based on the general fund in total or on the State budget. The local share of the guaranteed amount is funded from local property taxes. The total guaranteed amount varies from year to year and throughout the stages of any given fiscal year's budget, from the Governor's initial budget proposal to actual expenditures to post year end revisions, as additional information regarding the various factors becomes available. Over the long run, the guaranteed amount may increase as enrollment and per capita personal income grow.

If, at year end, the guaranteed amount is calculated to be higher than the amount actually appropriated in that year, the difference becomes an additional education funding obligation, referred to as "settle up." If the amount appropriated is higher than the guaranteed amount in any year, that higher funding level permanently increases the base guaranteed amount in future years. The Proposition 98 guaranteed amount is reduced in years when general fund revenue growth lags personal income growth, and may be suspended for one year at a time by enactment of an urgency statute. In either case, in subsequent years when State general fund revenues grow faster than personal income (or sooner, as the State Legislature may determine), the funding level must be restored to the guaranteed amount, the obligation to do so being referred to as "maintenance factor."

In recent years, the State's response to fiscal difficulties has had a significant impact on Proposition 98 funding and settle-up treatment. The State has sought to avoid or delay paying settle-up amounts when funding has lagged the mandated amount. In response, teachers' unions, the State Superintendent and others sued the State or Governor in 1995, 2005, 2009 and 2011 to force them to fund schools in the full amount required. The settlement of the 1995 and 2005 lawsuits has so far resulted in over \$4 billion in accrued State settle-up obligations. However, legislation enacted to pay down the obligations through additional education funding over time, including the Quality Education Investment Act of 2006 (QEIA), have also become part of annual budget negotiations, resulting in repeated adjustments and deferrals of the settle-up amounts.

The State has also sought to preserve general fund cash while avoiding increases in the base guaranteed amount through various mechanisms: by treating any excess appropriations as advances against subsequent years' Proposition 98 minimum funding levels rather than current year increases; by temporarily deferring apportionments of Proposition 98 funds from one fiscal year to the next; by permanently deferring apportionments of Proposition 98 funds from one fiscal year to the next; by suspending Proposition 98, as the State did in fiscal years 2004-05, 2010-11, 2011-12 and 2012-13; and by proposing to amend the Constitution's definition of the guaranteed amount and settle up requirement under certain circumstances. The 2014-15 State Budget and 2015-16 State Budget reversed certain of these trends by, among other things, eliminating certain deferrals, authorizing payments of certain deferred amounts owed to schools subject to State General Fund Revenues and authorizing settle-up payments with respect to deferred apportionments of the Proposition 98 minimum guarantee.

**2021-22 State Budget.** On July 16, 2021, the Governor signed a series of bills representing the State budget for fiscal year 2021-22 (the "2021-22 Budget"). The Governor's signing followed negotiations between the Governor and the State Legislature regarding the final provisions of the 2021-22 Budget, including the expenditure of a large projected State general fund surplus. The State Legislature passed temporary budgetary legislation in June of 2021 to meet the required constitutional deadline. The following is drawn from the DOF summary of the 2021-22 Budget.

The 2021-22 Budget indicates that revenues are up significantly from the forecast included in the Governor's proposed State budget for fiscal year 2021-22, resulting in a large budgetary surplus. This is a result of strong cash trends, two major federal relief bills since the beginning of 2021, continued stock market appreciation, and a significantly upgraded economic forecast from the prior fiscal year. The 2021-22 Budget also reports that the State has received approximately \$285 billion in federal COVID-19 stimulus funding for State programs. Although the 2021-22 Budget acknowledges that building reserves and paying down debts are critical, the 2021-22 Budget allocates approximately 85% of discretionary funds to one-time spending. The

multi-year forecast reflects a budget roughly in balance, although the 2021-22 Budget assumes that risks remain to the economic forecast, including a stock market decline that could reduce State revenues.

For fiscal year 2020-21, the 2021-22 Budget projects total general fund revenues and transfers of \$188.8 billion and authorizes expenditures of \$166.1 billion. The State is projected to end the 2020-21 fiscal year with total available reserves of \$39.8 billion, including \$25.1 billion in the traditional general fund reserve, \$12.3 billion in the BSA, \$1.9 billion in the PSSSA and \$450 million in the Safety Net Reserve Fund. For fiscal year 2021-22, the 2021-22 Budget projects total general fund revenues and transfers of \$175.3 billion and authorizes expenditures of \$196.4 billion. The State is projected to end the 2021-22 fiscal year with total available reserves of \$25.2 billion, including \$4 billion in the traditional general fund reserve, \$15.8 billion in the BSA, \$4.5 billion in the PSSSA and \$900 million in the Safety Net Reserve Fund. The balance in the PSSSA (as defined herein) in fiscal year 2021-22 is projected to trigger school district reserve caps beginning in fiscal year 2022-23.

The 2021-22 Budget sets the Proposition 98 minimum funding guarantee for fiscal year 2021-22 at \$93.7 billion. This results in per-pupil funding of \$13,976 from Proposition 98 funding, growing to \$21,555 when accounting for all funding sources. The Proposed 2021-22 Budget also makes retroactive increases to the minimum funding guarantee in fiscal years 2019-20 and 2020-21, setting them at \$79.3 billion and \$93.4 billion, respectively. Collectively, this represents a three-year increase in the minimum funding guarantee of \$47 billion from the level projected by the 2020-21 State budget. In addition, Test 1 is projected to be in effect over this three year period.

Other significant features relating to K-12 school district funding include the following:

- Local Control Funding Formula:* The 2021-22 Budget funds a compounded COLA of 4.05%, representing an adjustment of 2.31% allocable to fiscal year 2020-21 and a fiscal year 2021-22 adjustment of 1.7%. Additionally, to assist local educational agencies address ongoing fiscal pressures, the 2021-22 Budget also includes \$520 million in Proposition 98 funding to provide a 1% increase in LCFF base funding. This discretionary increase, when combined with the compounded COLA, results in a 5.07% growth in LCFF funding over 2020-21 levels. As result, the adjusted Base Grants for fiscal year 2021-22 are as follows: (i) \$8,093 for grades Kindergarten through 3, (ii) \$8,215 for grades 4 through 6, (iii) \$8,458 for grades 7 and 8, and (iv) \$9,802 for grades 9 through 12. To increase the number of adults providing direct services to students on school campuses, the 2021-22 Budget also includes an ongoing increase to the LCFF Concentration Grant of \$1.1 billion, an increase from 50% to 65%. Local educational agencies that are recipients of these funds will be required to demonstrate in their LCAPs how these funds are used to increase the number of certificated and classified staff on their campuses, including school counselors, nurses, teachers, paraprofessionals, custodial staff, and other student support providers.
- Deferrals:* The State budget for fiscal year 2020-21 deferred approximately \$1.9 billion in K-12 apportionments in fiscal year 2019-20, growing to more than \$11 billion in fiscal year 2020-21. The 2021-22 Budget eliminates in its entirety all K-12 deferrals in fiscal year 2021-22.
- Universal Transitional Kindergarten:* The 2021-22 Budget includes a series of provisions intended to incrementally establish a universal transitional kindergarten for four-year-old children. Full implementation is expected by fiscal year 2025-26. Local educational agencies will be able to use fiscal year 2021-22 for planning and infrastructure development. The 2021-22 Budget indicates that the costs to the State general fund of the plan are projected to be approximately \$600 million in fiscal year 2022-23, growing to approximately \$2.7 billion in fiscal year 2025-26. The 2021-22 Budget includes \$200 million in one-time Proposition 98 funding for planning and implementation grants for all local educational agencies and \$100 million in one-time Proposition 98 funding to train and increase the number of early childhood educators. To build on and

enhance the quality of the existing transitional kindergarten program, the 2021-22 Budget also proposes new ongoing Proposition 98 funding beginning in fiscal year 2022-23 to provide one additional certificated or classified staff person in each transitional kindergarten classroom, reducing adult-to-child ratios from 1:24 to 1:12.

- *Student Supports:* \$3 billion, available over several years, to expand and strengthen the implementation and use of community school models in communities with high levels of poverty. Community schools typically integrate health, mental health and other services for students and families and provide these services directly on school campuses. In addition, the 2021-22 Budget provides \$547.5 million in one-time Proposition 98 funding to assist high school students, particularly those that are eligible for free and/or reduced priced meals, English learners or foster youth, to graduate having completed certain classes required for admission to the California State University and University of California systems.
- *County Offices of Education:* In recognition of the disproportionate impact of the COVID-19 pandemic on youth in foster care, the 2021-22 Budget provides \$30 million in one-time Proposition 98 funding to county offices of education to work with local partners to coordinate and provide direct services to these students.
- *Expanded Learning Time:* \$1.8 billion of Proposition 98 funding as part of a multi-year plan to implement expanded-day, full-year instruction and enrichment for all elementary school students, with a focus on local educational agencies with the highest concentrations of low-income students, English language learners, and youth in foster care. Pursuant to this plan, all local educational agencies will receive funding for expanded learning opportunities based on their number of low-income students, English language learners, and youth in foster care, with local educational agencies with the highest concentrations of these students receiving a higher funding rate. All local educational agencies will be required to offer expanded learning opportunities to the students generating the funding, with the local educational agencies receiving the higher funding rate required to offer expanded learning opportunities to all students. Students will have access to no-cost after school and summer programs, which when combined with regular instructional time, is expected to provide these students with the opportunity for nine hours of developmentally appropriate academics and enrichment activities per instructional day and for six weeks each summer. Additionally, these programs will be required to maintain adult-to-student ratios of no less than 1:10 for Transitional Kindergarten and Kindergarten students and 1:20 for students in first through sixth grades.
- *Educator Preparation, Retention and Training:* \$2.9 billion to support a variety of initiatives intended to further expand the State's educator preparation and training infrastructure, including meeting the needs of early childhood educators.
- *Nutrition:* \$54 million in additional Proposition 98 funding to reimburse all meals served to students, including those who would not normally qualify for reimbursement under the State's existing meal program. Beginning in fiscal year 2022-23, all public schools will be required to provide two free meals per day to any student who requests one, regardless of income eligibility. Further, all schools eligible for the federal universal meals provision program will be required to apply for it, and the State will cover any remaining unreimbursed costs up to the federal free per-meal rate, at an estimated annual cost of \$650 million in Proposition 98 funding. Additionally, the 2021-22 Budget provides \$150 million in one-time Proposition 98 funding for school districts to upgrade kitchen infrastructure and equipment, and to provide training to food service employees.
- *Remote Learning:* The 2021-22 Budget requires that all districts return to full-time in-person instruction for the 2021-22 school year. Consistent with all school years prior to fiscal year 2020-



21, this mode of instruction will be the default for all students, and generally one of only two ways in which local educational agencies can earn State apportionment funding in fiscal year 2021-22. However, to give families a high-quality option for non-classroom based instruction, and to provide local educational agencies with an option to generate state funding by serving students outside the classroom in response to parent requests, the Budget requires school districts and county offices of education to provide students with an independent study option and includes a series of improvements to the State's existing independent study programs.

- *Special Education:* \$1.7 billion to invest in and improve instruction and services for students with disabilities to provide, among other things, learning recovery support, an increase in the State-wide base funding rate for special education funding, a 4.05% COLA to State special education funding, and early intervention services for preschool-aged children.
- *Career Technical Education (CTE):* An increase of \$150 million in ongoing Proposition 98 funding to augment opportunities for local educational agencies to participate in the CTE Incentive Grant Program. The 2021-22 Budget also provides an increase of \$86.4 million in one-time Proposition 98 funding for CTE regional occupational centers or programs operated by joint powers authorities to address costs associated with the COVID-19 pandemic.

For additional information regarding the 2021-22 Budget, see the DOF website at [www.dof.ca.gov](http://www.dof.ca.gov). However, the information presented on such website is not incorporated herein by reference.

**Assembly Bill 86.** On March 5, 2021, the Governor signed into law Assembly Bill 86 ("AB 86"), which provides approximately \$6.6 billion to accelerate the return of in-person school instruction and expand student support. Specifically, AB 86 provides \$2 billion for in-person instruction grants to local educational agencies (with the exception of non-classroom based charter schools and independent study programs) that can be used for, among other things, personal protective equipment, ventilation upgrades and COVID-19 testing. To qualify for the funding, local educational agencies will be required to offer in-person instruction for Kindergarten through second grade, and all grades levels for high-need students, by March 31, 2021, losing 1% of eligible funds for every day thereafter if they do not. Schools in the Blueprint's red, orange or yellow tiers are required to offer in-person instruction to all elementary grades and at least one middle or high school grade or risk losing the same amount of funding. Local educational agencies will forfeit eligibility for all funding if they do not resume in-person instruction by May 15, 2021. Funding will be allocated proportionally on the basis of LCFF funding entitlements, determined as of the fiscal year 2020-21 second principal apportionment certification.

The remaining \$4.6 billion is allocated for supplemental instruction and support for social and emotional well-being. Schools will be able to use the funds for, among other things, providing more instructional time (including summer school), tutoring, learning recovery programs, mental health services, access to school meal programs, programs to address pupil trauma and supports for credit-deficient students. Funding will be allocated proportionally on the basis of LCFF funding entitlements, determined as of the fiscal year 2020-21 second principal apportionment certification. Local educational agencies will also receive an additional \$1,000 for each homeless pupil enrolled in the 2020-21 fiscal year.

AB 86 also codifies several State programs that support the safe re-opening of schools, including (i) setting aside 10% of available vaccines for education workers, (ii) COVID-19-related data reporting requirements, and (iii) additional funding for the State's "Safe Schools For All Team," which provides technical assistance and oversight to schools that experience COVID-19 outbreaks.

**Proposed 2022-23 State Budget.** On January 10, 2022, the Governor released his proposed State budget for fiscal year 2022-23 (the "Proposed 2022-23 Budget"). The following information is drawn from the DOF and LAO overviews of the Proposed 2022-23 Budget.

The Proposed 2022-23 Budget reports that, since the passage of the prior year's budgetary legislation, the State's economy has continued to recover from the recession occasioned by the COVID-19 pandemic. Before accounting for certain required transfers (such as those to the BSA), State revenues are higher than the projections included in the 2021-22 Budget by almost \$28.7 billion over a three-year span from 2020-21 through 2022-23. The Proposed 2022-23 Budget attributes this increase to four main factors: (1) a more robust economic recovery, (2) a greater share of wage gains going to high-wage sectors, (3) a stronger-than-forecast stock market, and (4) higher inflation. The Proposed 2022-23 Budget identifies several risk factors that could affect the current economic and revenue forecasts, including the impact of the COVID-19 Omicron variant or other potential future COVID-19 variants, persistent supply chain issues, increased inflation, stock market volatility and the lack of affordable housing.

For fiscal year 2021-22, the Proposed 2022-23 Budget projects total general fund revenues and transfers of \$196.7 billion and authorizes expenditures of \$210 billion. The State is projected to end the 2021-22 fiscal year with total reserves of \$47.4 billion, including \$20.5 billion in the traditional general fund reserve, \$19.3 billion in the BSA, \$6.7 billion in the PSSSA and \$900 million in the Safety Net Reserve Fund. For fiscal year 2022-23, the Proposed 2022-23 Budget projects total general fund revenues and transfers of \$195.7 billion and authorizes expenditures of \$213 billion. The State is projected to end the 2022-23 fiscal year with total reserves of \$34.6 billion, including \$3.1 billion in the traditional general fund reserve, \$20.9 billion in the BSA, \$9.7 billion in the PSSSA and \$900 million in the Safety Net Reserve Fund. The projected balance in the PSSSA at the conclusion of fiscal year 2021-22 will trigger school district reserve caps in fiscal year 2022-23. See “ – CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING EDUCATION REVENUES AND APPROPRIATIONS – Proposition 2” herein.

The upward revisions of State general fund revenues results in significant increases to the Proposition 98 minimum funding guarantee. Proposition 98 funding for local education agencies for fiscal year 2022-23 is set at \$102 billion (including \$73.1 billion from the State general fund and \$28.9 billion from other sources), an increase of \$8.2 billion (or 8.8%) from the level set by the 2021-22 Budget. The Proposed 2022-23 Budget projects that Test 1 will be in effect in fiscal year 2022-23, as it has been in the prior two fiscal years. To accommodate expected enrollment increases related to the expansion of transition kindergarten (as described more fully below), the Proposed 2022-23 Budget would rebench the Test 1 percentage of State revenues allocated to education.

As a result of increased revenues, the Proposed 2022-23 Budget would also make certain retroactive adjustments to the minimum funding guarantee in fiscal years 2020-21 and 2021-22, setting them at \$95.9 billion and \$99.1 billion, respectively. Together with the funding level for fiscal year 2022-23, this represents a three-year increase in the guarantee of \$16.1 billion over the level included in the 2021-22 Budget.

The Proposed 2022-23 Budget would set total funding for K-12 education at \$119 billion, including \$70.5 billion from the State general fund and \$48.5 billion from other sources. K-12 per-pupil funding would total \$20,855 from all sources, including \$15,261 from Proposition 98 sources. Other significant features relating to K-12 school district funding include the following:

- *Local Control Funding Formula:* The Proposed 2022-23 Budget funds a COLA of 5.33% to LCFF apportionments for local education agencies. The Proposed 2022-23 Budget acknowledges that demographic trends which existed prior to the COVID-19 pandemic have been exacerbated over the past two fiscal years. To allow local education agencies to adjust to enrollment-related funding declines and minimize the impacts of single-year drops in enrollment, the Proposed Budget would amend the LCFF calculation to consider the greater of a local education agency's current year, prior year or average of three prior years' ADA. The Proposed 2022-23 Budget also indicates that the administration intends to engage in outreach and discussions with interested parties to explore options for providing declining enrollment protections to charter schools. Ongoing costs associated with these funding changes are estimated to be approximately \$1.2 billion in Proposition 98 funds.

- *Categorical Programs:* An increase of \$295 million in ongoing Proposition 98 funding to provide a 5.33% COLA for categorical programs that remain outside the LCFF.
- *Universal Transitional Kindergarten:* \$639.2 million to expand eligibility for transitional kindergarten to include all children turning five years old between September 2 and February 2, beginning in the 2022-23 fiscal year. These funds will increase the Proposition 98 minimum guarantee through a rebenching process, as described above. Additionally, the Proposed 2022-23 Budget includes \$383 million in Proposition 98 funding to add one additional certificated or classified employee to every transitional kindergarten class, which is expected to reduce student-to-adult ratios to more closely align with the State's preschool program.
- *Literacy:* The Proposed Budget provides a series of measures to provide access to literacy support systems, including (i) \$500 million in one-time Proposition 98 funding for grants to high-needs schools to train and hire literacy coaches and reading specialists, and (ii) \$200 million in one-time Proposition 98 funding to enable local educational agencies to create and expand multi-lingual school or classroom libraries.
- *Educator Preparation, Retention and Training:* \$54.4 million in Proposition 98 funding and other State funds to continue to support a variety of initiatives intended to further expand the State's educator preparation and training infrastructure.
- *Expanded Learning Time:* \$3.4 billion in ongoing Proposition 98 funding to continue funding a multi-year plan to implement expanded-day, full-year instruction and enrichment for all elementary school students. The Proposed 2022-23 Budget also includes \$937 million in one-time Proposition 98 funding to support expanded learning opportunities infrastructure, with a focus on integrating arts and music programming into enrichment opportunities for students.
- *Special Education:* \$500 million to increase in the State-wide base funding rate for special education funding.
- *College and Career Pathways:* \$1.5 billion in one-time Proposition 98 funding, over four years, to support the development of college and career pathways for high schoolers focused on technology (including computer science, green technology and engineering), health care, education and climate-related fields. Additionally, the Proposed 2022-23 Budget includes \$500 million in one-time Proposition 98 funding, also available over four years, to strengthen and expand student access and participation in dual enrollment opportunities that are also coupled with student advising and support services. These funds are intended to complement \$45 million in higher education funding for pathways and partnerships for STEM, education and health care career preparation.
- *Transportation:* \$1.5 billion in one-time Proposition 98 funding, available over three years, to support school transportation programs with a focus on greening school bus fleets. These funds would include grants of (i) \$500,000 for local educational agencies with high concentrations of low-income, foster youth and English-learning students, and (ii) \$500,000 for local educational agencies to acquire electric school buses and associated infrastructure.
- *Nutrition:* \$596 million in additional Proposition 98 funding to build on prior budgetary legislation to create universal access to subsidized school meals. Additionally, the Proposed 2022-23 Budget provides \$450 million in additional, one-time Proposition 98 funding to upgrade school kitchen infrastructure and equipment to incorporate fresh, minimally-processed, California-grown foods in school meals. Finally, the Proposed 2022-23 Budget provides an additional \$30 million in one-time Proposition 98 funding to support a farm-to-school program

which connects local producers and school food buyers, increases food education opportunities at schools, gardens and farms, and engages schools and students with the agricultural community.

- *Facilities:* \$1.4 billion in State general obligation bond funding to support school construction projects. This represents the final installment available to local education agencies under Proposition 51. See “ – CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING EDUCATION REVENUES AND APPROPRIATIONS – Kindergarten Through Community College Public Education Facilities Bond Act of 2016” herein. The Proposed 2022-23 Budget also provides \$1.3 billion in one-time State general funds in fiscal year 2022-23, and \$925 million of such funds in 2023-24, to support new construction and modernization projects through the State’s school facility program. Finally, the Proposed 2022-23 Budget includes \$30 million in ongoing Proposition 98 funding to support eligible facilities costs for the Charter School Facility Grant Program.

For additional information regarding the Proposed 2022-23 Budget, see the DOF and LAO websites at [www.dof.ca.gov](http://www.dof.ca.gov) and [www.lao.ca.gov](http://www.lao.ca.gov). However, the information presented on such websites is not incorporated herein by reference.

***Future Budgets and Budgetary Actions.*** Neither the Corporation nor Encore can predict what actions will be taken in the future by the State legislature and the Governor to address changing State revenues and expenditures. Neither the Corporation nor Encore also can predict the impact such actions will have on State revenues available in the current or future years for education. The State budget will be affected by national and State economic conditions and other factors over which the Corporation and Encore will have no control. Certain actions or results could produce a significant shortfall of revenue and cash, and could consequently impair the State’s ability to fund schools. The COVID-19 outbreak has already resulted in significant negative economic effects at State and federal levels, and additional negative economic effects are possible, each of which could negatively impact anticipated State revenue levels for fiscal year 2020-21 and beyond. In addition, the outbreak could also result in higher State expenditures, of both a direct nature (such as those related to managing the outbreak) and an indirect nature (such as higher public usage of need-based programs resulting from unemployment or disability). See “CERTAIN RISK FACTORS – Outbreak of Disease; Coronavirus” in the forepart of this Private Placement Memorandum. Neither the Corporation nor Encore also can predict whether the federal government will provide additional funding in amounts sufficient to offset any of the fiscal impacts of the COVID-19 outbreak described above. State budget shortfalls in future fiscal years may also have an adverse financial impact on the financial condition of the Corporation and Encore.

***Prohibitions on Diverting Local Revenues for State Purposes.*** Beginning in 1992-93, the State satisfied a portion of its Proposition 98 obligations by shifting part of the property tax revenues otherwise belonging to cities, counties, special districts, and redevelopment agencies, to school and college districts through a local Educational Revenue Augmentation Fund (“ERAF”) in each county. Local agencies, objecting to invasions of their local revenues by the State, sponsored a statewide ballot initiative intended to eliminate the practice. In response, the State Legislature proposed an amendment to the State Constitution, which the State’s voters approved as Proposition 1A at the November 2004 election. That measure was generally superseded by the passage of a new initiative constitutional amendment at the November 2010 election, known as “Proposition 22.”

The effect of Proposition 22 is to prohibit the State, even during a period of severe fiscal hardship, from delaying the distribution of tax revenues for transportation, redevelopment, or local government projects and services. It prevents the State from redirecting redevelopment agency property tax increment to any other local government, including school districts, or from temporarily shifting property taxes from cities, counties and special districts to schools, as in the ERAF program. This is intended to, among other things, stabilize local government revenue sources by restricting the State’s control over local property taxes. One effect of this amendment will be to deprive the State of fuel tax revenues to pay debt service on most State bonds for

transportation projects, reducing the amount of State general fund resources available for other purposes, including education.

Prior to the passage of Proposition 22, the State invoked Proposition 1A to divert \$1.935 billion in local property tax revenues in 2009-10 from cities, counties, and special districts to the State to offset State general fund spending for education and other programs, and included another diversion in the adopted 2009-10 State budget of \$1.7 billion in local property tax revenues from local redevelopment agencies, which local redevelopment agencies have now been dissolved. Redevelopment agencies had sued the State over this latter diversion. However, the lawsuit was decided against the California Redevelopment Association on May 4, 2010. Because Proposition 22 reduces the State's authority to use or shift certain revenue sources, fees and taxes for State general fund purposes, the State will have to take other actions to balance its budget in some years – such as reducing State spending or increasing State taxes, and school and community college districts that receive Proposition 98 or other funding from the State will be more directly dependent upon the State's general fund.

### **Allocation of State Funding to Charter Schools**

**General Purpose Entitlement.** Under the Charter School Law, each charter school is calculated to have a “general purpose entitlement,” which has in the past been based on the statewide average amount of State aid, local property taxes and other revenue received by school districts of similar type and serving similar pupil populations. The general purpose entitlement is calculated on a per student basis at each of four grade level ranges (grades K-3, grades 4-5, grades 6-8, and grades 9-12) and is multiplied by the charter school's Average Daily Attendance (“ADA”) in each grade level range.

Each charter school's general purpose entitlement is funded from local funding in lieu of property taxes and, to the extent such funding is insufficient to fulfill the entire entitlement, from money appropriated by the State from the State's general fund for education. The local share, which must be transferred in monthly installments to the charter school by the sponsoring local educational agency in lieu of property taxes, is the average amount of property taxes per ADA received by the district, including charter school students, multiplied by the charter school's ADA.

**Local Control Funding Formula.** State Assembly Bill 97 (Stats. 2013, Chapter 47) (“AB 97”), enacted as part of the 2013-14 State budget, establishes a new system for funding school districts, charter schools and county offices of education. Certain provisions of AB 97 were amended and clarified by Senate Bill 91 (Stats. 2013, Chapter 49) (“SB 91”).

**Funding.** The primary component of AB 97, as modified by SB 91, is the implementation of the Local Control Funding Formula (“LCFF”), which replaces the revenue limit funding system for determining State apportionments, as well as the majority of categorical program funding. Under the LCFF, State allocations will be provided on the basis of target base funding grants per unit of ADA (a “Base Grant”) assigned to each of four grade spans (identical to the grade spans previously used for charter school funding). Each Base Grant is subject to certain adjustments and add-ons, as discussed below. LCFF was fully implemented over a period of six fiscal years, by fiscal year 2018-19. Beginning in fiscal year 2013-14, an annual transition adjustment as calculated for each charter school, equal to such charter school's proportionate share of appropriations included in the State budget to close the gap between the prior-year funding level and the target allocation following full implementation of the LCFF. In each year, charter schools had the same proportion of their respective funding gaps closed, with dollar amounts varying depending on the size of the charter school's respective funding gaps.

**Base Grant.** For fiscal year 2013-14, the Base Grants per unit of ADA for each grade span are as follows: (i) \$6,845 for grades K-3; (ii) \$6,947 for grades 4-6; (iii) \$7,154 for grades 7-8; and (iv) \$8,289 for grades 9-12. In each subsequent year, the Base Grants are to be adjusted for cost-of-living increases by applying the implicit price deflator for government goods and services. Following full implementation of the

LCFF, the provision of COLAs are subject to appropriation for such adjustment in the annual State budget. The differences among Base Grants are linked to differentials in statewide average revenue limit rates by district type, and are intended to recognize the generally higher costs of education at higher grade levels.

The Base Grants for grades K-3 and 9-12 are subject to adjustments of 10.4% and 2.6%, respectively, to cover the costs of class size reduction in early grades and the provision of career technical education in high schools. The LCFF also provides additional add-ons to charter schools that received categorical block grant funding pursuant to the Targeted Instructional Improvement and Home-to-School Transportation programs during fiscal year 2012-13.

Supplemental Grant. Charter schools that serve students of limited English proficiency (“EL” students), students from low income families that are eligible for free or reduced priced meals (“LI” students) and foster youth are eligible to receive additional funding grants. Enrollment counts are unduplicated, such that students may not be counted as both EL and LI. Foster youth automatically meet the eligibility requirements for free or reduced priced meals, and are therefore not discussed herein separately. The LCFF authorizes a supplemental grant add-on (each, a “Supplemental Grant”) for charter schools that serve EL/LI students, equal to 20% of the applicable Base Grant multiplied by such charter schools’ respective percentages of unduplicated EL/LI student enrollment.

Concentration Grant. Charter schools whose EL/LI populations exceed 55% of their total enrollment are eligible for a concentration grant add-on (each, a “Concentration Grant”) equal to 50% of the applicable Base Grant multiplied by the percentage of such charter school’s unduplicated EL/LI student enrollment in excess of the 55% threshold; provided that a charter school may not receive a Concentration Grant for a greater proportion of EL/LI than the highest percentage of any school district in which the charter school has a physical location.

For certain charter schools that would have received greater funding levels under the prior revenue limit system, the LCFF provides for a permanent economic recovery target (“ERT”) add-on, equal to the difference between the general purpose funding such charter schools would have received under the prior system in fiscal year 2020-21, and the target LCFF allocations owed to such charter schools in the same year. To derive the projected funding levels, the LCFF assumes the discontinuance of deficit revenue limit funding, implementation of a 1.94% COLA in fiscal years 2014-15 through 2020-21, and restoration of categorical funding to pre-recession levels. The ERT add-on will be paid incrementally over the eight-year implementing period of the LCFF.

The sum of a charter school’s adjusted Base Grants, Supplemental Grants and Concentration Grants will be multiplied by the charter school’s total current year ADA. This funding amount, together with any applicable ERT or categorical block grant add-ons, will yield a district’s total LCFF allocation. Generally, the amount of annual State apportionments received by a school district or charter school will amount to the difference between such total LCFF allocation and such entity’s share of applicable local property taxes. Most school districts and charter schools receive a significant portion of their funding from such State apportionments. As a result, decreases in State revenues may significantly affect appropriations made by the Legislature to school districts and charter schools.

Accountability. The SBE has adopted regulations regarding the expenditure of supplemental and concentration funding. These regulations include a requirement that school districts and charter schools increase or improve services for EL/LI students in proportion to the increase in funds apportioned to such districts/schools on the basis of the number and concentration of such EL/LI students, as well as the conditions under which school districts and charter schools can use supplemental or concentration funding on a school-wide or district-wide basis.

School districts and charter schools are also required to adopt local control and accountability plans (“LCAPs”) disclosing annual goals for all students, as well as certain numerically significant student

subgroups, to be achieved in eight areas of State priority. LCAPs may also specify additional local priorities. LCAPs must specify the actions to be taken to achieve each goal, including actions to correct identified deficiencies with regard to areas of State priority. Charter school LCAPs are required to be included in charter petitions and updated annually. School district and charter school LCAPs must be annually updated and posted on the district or charter school's website using a State-mandated standard reporting format.

**Lottery Funding.** Charter schools receive funding from the State Lottery Fund, which receives all proceeds from, among other sources, the sale of lottery tickets. Lottery funding is allocated to charter schools per unit of ADA. Lottery funds are distributed quarterly by the State Controller's Office. Funding is based on annual average ADA. Lottery funds are identified as either "Proposition 20" funds or "non-Proposition 20" funds. Proposition 20 lottery funds may only be used to purchase instructional materials. Non-Proposition 20 lottery funds are unrestricted, except that they may not be used for acquisition of property, construction of facilities, financing of research, or for other non-instructional purposes. Lottery funding is not included in the charter school categorical block grant. Lottery funding is approximately 2% of public school revenues and is estimated at \$228 per unit of ADA for the 2021-22 fiscal year, of which approximately \$163 is "non-Proposition 20" and \$65 is "Proposition 20" funding.

**Categorical Funding.** Charter schools may apply for and receive categorical funds for many programs that are not included in general purpose entitlement funding, if otherwise eligible, but may not receive aid for programs exclusively or almost exclusively provided by a county office of education.

**SB 740 Facilities Grant Program Funding.** In the 2021-22 fiscal year, charter schools that meet certain criteria are eligible to receive up to \$1,232 per unit of ADA to reimburse an amount up to 75% of their annual facilities rent and lease costs from amounts appropriated under the annual Budget Act (as defined below). This per-ADA amount may increase in future years based on cost of living adjustments. To be eligible for SB 740 benefits: (i) 55% or more of the charter school's students must be eligible for free or reduced priced meals; or (ii) the charter school must be located in the attendance area of a public elementary school in which 55% or more of students are eligible for free or reduced priced meals and the charter school must give a preference in admissions to students who are currently enrolled in that public elementary school and to students who reside in the elementary school attendance area where the charter school is located. See "APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP" attached hereto.

SB 740 facilities funding may be used for costs associated with facilities rents and leases (consistent with the definitions used in the California School Accounting Manual) ("Facility Rents"), and for costs associated with remodeling buildings, deferred maintenance, installing or extending service systems and other built-in equipment, and improving sites (collectively, "Other Costs"). SB 740 facilities funding is not included in the charter school categorical block grant.

SB 740 funding is subject to the annual Budget Act. In the event insufficient funds are appropriated, the available funds are first used to reimburse for Facility Rents (on a pro rata basis if funds are insufficient), and any remaining funds are apportioned to reimburse for Other Costs on a pro rata basis. In addition to the risk of underfunding, should there be any changes to the free and reduced-price meal eligibility data, the amount of grant funds, which is awarded in three disbursements, may be adjusted (or a reimbursement notice provided).

The SB 740 program is administered by the California School Finance Authority ("CSFA"). In prior years, the program has been "undersubscribed," meaning that awards were not limited by the level of appropriation. However, the program was "oversubscribed" in fiscal years 2017-18 through 2019-20, and is expected to be in the current fiscal year, with awards being reduced on a pro-rata basis.

Effective beginning the 2017-18 fiscal year, reimbursable costs under the SB 740 program are limited to either of the following conditions: (i) reimbursable facility rent or lease costs do not exceed the prior year's

costs on file with CSFA as of the 2016–17 fiscal year, subject to a cost-of-living adjustment; or (ii) the rent or lease costs of new facility agreements are at or below market rate based on an independent appraisal paid for by the charter school. See “CERTAIN RISK FACTORS – SB 740 Funding” herein.

Set forth in the following table are historical data regarding SB 740 funding and awards for fiscal years 2016-17 through 2020-21, and projected data for the current fiscal year.

**HISTORICAL SB 740 GRANT AWARDS**  
**Fiscal Years 2016-17 to 2021-22**

	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21</u>	<u>2021-22</u>
A. <b>No. of Schools Awarded</b>	394	417	415	437	424 <sup>(1)</sup>	423 <sup>(1)</sup>
B. <b>Total Amount Awarded</b>	\$97,866,240	\$133,177,000	\$136,786,000	\$136,786,000	\$136,786,000 <sup>(1)</sup>	\$143,520,000 <sup>(1)</sup>
<b>Amount awarded for lease costs</b>	--	116,965,203	124,180,307	136,786,000	136,786,000 <sup>(1)</sup>	143,520,000 <sup>(1)</sup>
<b>Amount awarded for Other Costs</b>	--	16,211,797	12,605,693	--	-- <sup>(1)</sup>	-- <sup>(1)</sup>
C. <b>Total Funds Appropriated to SB 740<sup>(2)</sup></b>	\$112,031,000	\$133,177,000 <sup>(3)</sup>	\$136,786,000	\$136,786,000	\$136,786,000	\$143,520,000
D. <b>Subscription Percentage<sup>(4)</sup></b>	87%	104%	109%	103%	108% <sup>(4)</sup>	104% <sup>(4)</sup>
E. <b>Total Average Daily Attendance (“ADA”)<sup>(5)</sup></b>	140,389	151,630	175,087	165,489	172,143 <sup>(1)</sup>	169,208 <sup>(8)</sup>
F. <b>Average Award Per ADA<sup>(6)</sup></b>	\$691	\$878	\$781	\$827	\$795 <sup>(1)</sup>	\$848 <sup>(1)</sup>
G. <b>Maximum Award Allowed Per ADA<sup>(7)</sup></b>	\$750	\$1,117	\$1,147	\$1,184	\$1,211	\$1,232

<sup>(1)</sup> Figures are current estimates as of November 29, 2021, and subject to change.

<sup>(2)</sup> Funds annually appropriated by the State Legislature toward SB 740 grant awards.

<sup>(3)</sup> Includes an additional approximately \$21.1 million appropriated for the 2017-18 fiscal year in the 2018-19 Budget.

<sup>(4)</sup> From 2013-14 to 2016-17, the SB 740 Program had been undersubscribed. However, for 2017-18, the SB 740 Program was oversubscribed. CSFA made SB 740 awards by first reimbursing lease costs, and then applying a pro-rata reduction in the award amount for applied-for “other costs” spread across all eligible applicants. In 2017-18, lease costs were fully funded at 100%, and other costs were funded at a pro-rata rate of 73.01%. In 2018-19, lease costs were fully funded at 100%, and other costs were funded at a pro-rata rate of 49%. In 2019-20 and 2020-21, CSFA expected to fund lease costs at 97.47% and 92.61%, respectively, and therefore was unable to fund other costs. CSFA expects the SB 740 Program to be oversubscribed in 2021-22 and fund lease cost awards at approximately 94.5%. See “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto.

<sup>(5)</sup> Total ADA from all schools awarded in each fiscal year.

<sup>(6)</sup> Equal to the “Amount Awarded” divided by the “Total ADA.” The Average Award Per ADA is lower than the Maximum Award Allowed Per ADA because a significant number of schools do not qualify for the maximum amount allowed; instead they are capped at 75% of actual rent. For 2020-21 and 2021-22, figures are current estimates because SB 740 applications are still being received and final awards are being calculated.

<sup>(7)</sup> SB 740 Program grant awards are calculated at the lower of: (a) 75% of actual rent paid or (b) maximum award allowed per ADA by State law. From 2012-13 to 2016-17, the maximum award allowed per ADA by State law was \$750 per ADA. Pursuant to a change in State law passed by the State Legislature in June 2017, the maximum award allowed by State law was increased from \$750 per ADA to \$1,117 per ADA, subject to cost of living adjustments. The maximum award for 2021-22 is \$1,232.

<sup>(8)</sup> Total ADA for 2021-22 estimated based on average ADA per applicant in 2020-21.

Source: CSFA.

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**Annual Funding Components.** The following tables describe ADA-based state funding of California charter school education for Fiscal Year 2017-18 through 2021-22 and projected data for the current fiscal year.

**STATE FUNDING OF CHARTER SCHOOL EDUCATION**

**Fiscal Year 2017-18**

	<b>Grades</b>			
	<b>K-3</b>	<b>4-6</b>	<b>7-8</b>	<b>9-12</b>
Target LCFF Base Grant	\$7,193	\$7,301	\$7,518	\$8,712
CTE/CSR Add-ons	748	--	--	227
Lottery <sup>(2)</sup>	194	194	194	194
Total <sup>(1)</sup>	\$8,135	\$7,495	\$7,712	\$9,133

**Fiscal Year 2018-19**

	<b>Grades</b>			
	<b>K-3</b>	<b>4-6</b>	<b>7-8</b>	<b>9-12</b>
Target LCFF Base Grant	\$7,459	\$7,571	\$7,796	\$9,034
CTE/CSR Add-ons	776	--	--	235
Lottery <sup>(2)</sup>	204	204	204	204
Total <sup>(1)</sup>	\$8,439	\$7,775	\$8,000	\$9,473

**Fiscal Year 2019-20**

	<b>Grades</b>			
	<b>K-3</b>	<b>4-6</b>	<b>7-8</b>	<b>9-12</b>
Target LCFF Base Grant	\$7,702	7,818	8,050	9,329
CTE/CSR Add-ons	801	--	--	243
Lottery <sup>(2)</sup>	207	207	207	207
Total <sup>(1)</sup>	\$8,710	\$8,025	\$8,257	\$9,779

**Fiscal Year 2020-21**

	<b>Grades</b>			
	<b>K-3</b>	<b>4-6</b>	<b>7-8</b>	<b>9-12</b>
Target LCFF Base Grant	\$7,702	\$7,818	\$8,050	\$9,329
CTE/CSR Add-ons	801	--	--	243
Lottery <sup>(2)</sup>	199	199	199	199
Total <sup>(1)</sup>	\$8,702	\$8,017	\$8,249	\$9,771

**Fiscal Year 2021-22<sup>(3)</sup>**

	<b>Grades</b>			
	<b>K-3</b>	<b>4-6</b>	<b>7-8</b>	<b>9-12</b>
Target LCFF Base Grant	\$8,093	\$8,215	\$8,458	\$9,802
CTE/CSR Add-ons	842	--	--	255
Lottery <sup>(2)</sup>	228	228	228	228
Total <sup>(1)</sup>	\$9,163	\$8,443	\$8,686	\$10,285

(1) Excludes special education, nutrition, After School Education and Safety, SB 740, Charter School Facility Grants, No Child Left Behind or Every Student Succeeds Act, class size reduction, supplemental instruction, economic impact aid, and National School Lunch Program funding and any private philanthropy, grants, or other fund-raising.

(2) Estimated.

(3) The Fiscal Year 2021-22 funding amounts are preliminary, used for initial budgeting purposes in general. For specific projections with respect to the School, see "APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP" attached hereto.

Sources: California Department of Education.

For a description of the School’s ADA and funding related thereto, see “APPENDIX A – CERTAIN INFORMATION REGARDING ENCORE, THE SCHOOL, THE CORPORATION AND THE OBLIGATED GROUP” attached hereto.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING EDUCATION REVENUES AND APPROPRIATIONS**

### **Limitations on Revenues**

Article XIII A of the California Constitution. Article XIII A of the State Constitution, adopted and known as Proposition 13, was approved by the voters in June 1978. Section 1(a) of Article XIII A limits the maximum ad valorem tax on real property to one percent of “full cash value,” and provides that such tax will be collected by the counties and apportioned according to State law. Section 1(b) of Article XIII A provides that the one-percent limitation does not apply to ad valorem taxes levied to pay interest and redemption charges on: (i) indebtedness approved by the voters prior to July 1, 1978, or (ii) bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast on the proposition, or (iii) bonded indebtedness incurred by a school district or community college district for the construction, reconstruction, rehabilitation or replacement of school facilities or the acquisition or lease of real property for school facilities, approved by 55% of the voters of the district voting on the ballot proposition, but only if certain accountability measures are included in the bond proposition. Charter schools may not conduct bond elections or issue bonds payable from property taxes, but may benefit from the proceeds of bonds issued by the school district in which the charter school is located.

Section 2 of Article XIII A defines “full cash value” to mean the county assessor’s valuation of real property as shown on the Fiscal Year 1975-76 tax bill, or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred. The full cash value may be adjusted annually to reflect inflation at a rate not to exceed 2% per year, or to reflect a reduction in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced in the event of declining property value caused by substantial damage, destruction or other factors. The Revenue and Taxation Code permits county assessors who have reduced the assessed valuation of a property as a result of natural disasters, economic downturns or other factors, to subsequently “recapture” such value (up to the pre decline value of the property) at an annual rate higher than 2%, depending on the assessor’s measure of the restored value of the damaged property. The California courts have upheld the constitutionality of this procedure. Legislation enacted by the State Legislature to implement Article XIII A provides that, notwithstanding any other law, local agencies may not levy any *ad valorem* property tax except the 1% base tax levied by each County and taxes to pay debt service on indebtedness approved by the voters as described above.

Since its adoption, Article XIII A has been amended a number of times. These amendments have created a number of exceptions to the requirement that property be reassessed when purchased, newly constructed or a change in ownership has occurred. These exceptions include certain transfers of real property between family members, certain purchases of replacement dwellings for persons over age 55 and by property owners whose original property has been destroyed in a declared disaster, and certain improvements to accommodate disabled persons and for seismic upgrades to property. These amendments have resulted in marginal reductions in the property tax revenues of local school districts.

Both the California State Supreme Court and the United States Supreme Court have upheld the validity of Article XIII A.

Section 51 of the Revenue and Taxation Code permits county assessors who have reduced the assessed valuation of a property as a result of natural disasters, economic downturns or other factors, to subsequently “recapture” such value (up to the pre decline value of the property) at an annual rate higher than 2%, depending on the assessor’s measure of the restoration of value of the damaged property. The constitutionality of this procedure was challenged in a lawsuit brought in 2001 in the Orange County Superior

Court and in similar lawsuits brought in other counties, on the basis that the decrease in assessed value creates a new “base year value” for purposes of Proposition 13 and that subsequent increases in the assessed value of a property by more than 2% in a single year violate Article XIII A. On appeal, the California Court of Appeal upheld the recapture practice in 2004, and the State Supreme Court declined to review the ruling, leaving the recapture law in place. Charter schools are not directly dependent on local property taxes. To the extent local property taxes fund the general purpose entitlement, losses in local property tax income are required to be made up by the State.

### **Proposition 30**

On November 6, 2012, voters of the State of California approved the Temporary Taxes to Fund Education, Guaranteed Local Public Safety Funding, Initiative Constitutional Amendment (also known as “Proposition 30”), which temporarily increases the State Sales and Use Tax and personal income tax rates on higher incomes. Proposition 30 temporarily imposes an additional tax on all retailers, at the rate of 0.25% of gross receipts from the sale of all tangible personal property sold in the State from January 1, 2013 to December 31, 2016. Proposition 30 also imposes an additional excise tax on the storage, use, or other consumption in the State of tangible personal property purchased from a retailer on and after January 1, 2013 and before January 1, 2017, for storage, use, or other consumption in the State. This excise tax will be levied at a rate of 0.25% of the sales price of the property so purchased. For personal income taxes imposed beginning in the taxable year commencing January 1, 2012 and ending December 31, 2018, Proposition 30 increases the marginal personal income tax rate by: (i) 1% for taxable income over \$250,000 but not over \$300,000 for single filers (over \$340,000 but not over \$408,000 for joint filers), (ii) 2% for taxable income over \$300,000 but not over \$500,000 for single filers (over \$408,000 but not over \$680,000 for joint filers), and (iii) 3% for taxable income over \$500,000 for single filers (over \$680,000 for joint filers). The California Children’s Education and Health Care Protection Act of 2016, also known as Proposition 55, is a constitutional amendment approved by the voters of the State on November 8, 2016. Proposition 55 extends through 2030 the increases to personal income tax rates for high-income taxpayers that were approved as part of Proposition 30. Proposition 55 did not extend the sales tax rate increase enacted under Proposition 30.

The revenues generated from the temporary tax increases will be included in the calculation of the Proposition 98 minimum funding guarantee for school districts and community college districts. From an accounting perspective, the revenues generated from the temporary tax increases will be deposited into the State account created pursuant to Proposition 30 called the Education Protection Account (the “EPA”). Pursuant to Proposition 30, funds in the EPA will be allocated quarterly, with 89% of such funds provided to schools districts and 11% provided to community college districts. The funds will be distributed to school districts and community college districts in the same manner as existing unrestricted per-student funding, except that no school district will receive less than \$200 per unit of ADA and no community college district will receive less than \$100 per full time equivalent student. The governing board of each school district and community college district is granted sole authority to determine how the moneys received from the EPA are spent, provided that, the appropriate governing board is required to make these spending determinations in open session at a public meeting and such local governing boards are prohibited from using any funds from the EPA for salaries or benefits of administrators or any other administrative costs.

### **Proposition 2**

On November 4, 2014, voters approved the Rainy Day Budget Stabilization Fund Act (also known as “Proposition 2”). Proposition 2 is a legislatively-referred constitutional amendment which makes certain changes to State budgeting practices, including substantially revising the conditions under which transfers are made to and from the State’s Budget Stabilization Account (the “BSA”) established by the California Balanced Budget Act of 2004 (also known as Proposition 58).

Under Proposition 2, and beginning in fiscal year 2015-16 and each fiscal year thereafter, the State will generally be required to annually transfer to the BSA an amount equal to 1.5% of estimated State general

fund revenues (the “Annual BSA Transfer”). Supplemental transfers to the BSA (a “Supplemental BSA Transfer”) are also required in any fiscal year in which the estimated State general fund revenues that are allocable to capital gains taxes exceed 8% of the total estimated general fund tax revenues. Such excess capital gains taxes—net of any portion thereof owed to K-14 school districts pursuant to Proposition 98—will be transferred to the BSA. Proposition 2 also increases the maximum size of the BSA to an amount equal to 10% of estimated State general fund revenues for any given fiscal year. In any fiscal year in which a required transfer to the BSA would result in an amount in excess of the 10% threshold, Proposition 2 requires such excess to be expended on State infrastructure, including deferred maintenance.

For the first 15-year period ending with the 2029-30 fiscal year, Proposition 2 provides that half of any required transfer to the BSA, either annual or supplemental, must be appropriated to reduce certain State liabilities, including making certain payments owed to K-14 school districts, repaying State interfund borrowing, reimbursing local governments for State mandated services, and reducing or prefunding accrued liabilities associated with State-level pension and retirement benefits. Following the initial 15-year period, the Governor and the State Legislature are given discretion to apply up to half of any required transfer to the BSA to the reduction of such State liabilities. Any amount not applied towards such reduction must be transferred to the BSA or applied to infrastructure, as described above.

Proposition 2 changes the conditions under which the Governor and the State Legislature may draw upon or reduce transfers to the BSA. The Governor does not retain unilateral discretion to suspend transfers to the BSA, nor does the State Legislature retain discretion to transfer funds from the BSA for any reason, as previously provided by law. Rather, the Governor must declare a “budget emergency,” defined as an emergency within the meaning of Article XIII B of the Constitution or a determination that estimated resources are inadequate to fund State general fund expenditures, for the current or ensuing fiscal year, at a level equal to the highest level of State spending within the three immediately preceding fiscal years. Any such declaration must be followed by a legislative bill providing for a reduction or transfer. Draws on the BSA are limited to the amount necessary to address the budget emergency, and no draw in any fiscal year may exceed 50% of the funds on deposit in the BSA unless a budget emergency was declared in the preceding fiscal year.

Proposition 2 also requires the creation of the Public School System Stabilization Account (the “PSSSA”) into which transfers will be made in any fiscal year in which a Supplemental BSA Transfer is required (as described above). Such transfer will be equal to the portion of capital gains taxes above the 8% threshold that would otherwise be paid to K-14 school districts as part of the Minimum Funding Guarantee. A transfer to the PSSSA will only be made if certain additional conditions are met, as follows: (i) the Minimum Funding Guarantee was not suspended in the immediately preceding fiscal year, (ii) the operative Proposition 98 formula for the fiscal year in which a PSSSA transfer might be made is “Test 1,” (iii) no maintenance factor obligation is being created in the budgetary legislation for the fiscal year in which a PSSSA transfer might be made, (iv) all prior maintenance factor obligations have been fully repaid, and (v) the Minimum Funding Guarantee for the fiscal year in which a PSSSA transfer might be made is higher than the immediately preceding fiscal year, as adjusted for ADA growth and cost of living. Proposition 2 caps the size of the PSSSA at 10% of the estimated minimum guarantee in any fiscal year, and any excess funds must be paid to K-14 school districts. Reductions to any required transfer to the PSSSA, or draws on the PSSSA, are subject to the same budget emergency requirements described above. However, Proposition 2 also mandates draws on the PSSSA in any fiscal year in which the estimated Minimum Funding Guarantee is less than the prior year’s funding level, as adjusted for ADA growth and cost of living.

### **Kindergarten Through Community College Public Education Facilities Bond Act of 2016**

The Kindergarten Through Community College Public Education Facilities Bond Act of 2016 (“Proposition 51”) is a voter initiative that was approved by voters on November 8, 2016. Proposition 51 authorizes the sale and issuance of \$9 billion in general obligation bonds for the new construction and modernization of K-14 facilities. Encore makes no guarantee that it will either pursue or qualify for Proposition 51 state facilities funding.

**K-12 School Facilities.** Proposition 51 includes \$3 billion for the new construction of K-12 facilities and an additional \$3 billion for the modernization of existing K-12 facilities. K-12 school districts will be required to pay for 50% of the new construction costs and 40% of the modernization costs with local revenues. If a school district lacks sufficient local funding, it may apply for additional state grant funding, up to 100% of the project costs. In addition, a total of \$1 billion will be available for the modernization and new construction of charter school (\$500 million) and technical education (\$500 million) facilities. Generally, 50% of modernization and new construction project costs for charter school and technical education facilities must come from local revenues. However, schools that cannot cover their local share for these two types of projects may apply for State loans. State loans must be repaid over a maximum of 30 years for charter school facilities and 15 years for career technical education facilities. For career technical education facilities, State grants are capped at \$3 million for a new facility and \$1.5 million for a modernized facility. Charter schools must be deemed financially sound before project approval.

**Community College Facilities.** Proposition 51 includes \$2 billion for community college district facility projects, including buying land, constructing new buildings, modernizing existing buildings, and purchasing equipment. In order to receive funding, community college districts must submit project proposals to the Chancellor of the community college system, who then decides which projects to submit to the Legislature and Governor based on a scoring system that factors in the amount of local funds contributed to the project. The Governor and Legislature will select among eligible projects as part of the annual state budget process.

The table below shows the expected use of bond funds under Proposition 51:

**PROPOSITION 51  
Use of Bond Funds  
(In Millions)**

<b><u>K-12 Public School Facilities</u></b>	
New construction	\$3,000
Modernization	3,000
Career technical education facilities	500
Charter school facilities	500
Subtotal	\$7,000
 <b><u>Community College Facilities</u></b>	
Total	\$9,000

**Future Initiatives**

Articles XIII A, Proposition 98, Proposition 30, Proposition 55, and Proposition 51 were each adopted as measures that qualified for the ballot pursuant to the State’s initiative process. From time to time, other initiative measures could be adopted, further affecting State and local revenues for education, and the ability or obligation of these government agencies to expend revenues for charter school purposes.

**APPENDIX E**

**FORM OF BOND INDENTURE**

**APPENDIX F**

**FORM OF LOAN AGREEMENT**

**APPENDIX G**

**MASTER INDENTURE AND FORM OF SUPPLEMENTAL MASTER INDENTURE NO. 2**



**APPENDIX H**  
**FORM OF LEASE**

H-1

## APPENDIX I

### BOOK-ENTRY SYSTEM

The Depository Trust Company (“DTC”), will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Bond certificate will be issued for each maturity of each Series of Bonds, each in the aggregate principal amount of that maturity of Bonds, and will be deposited with DTC. If, however, the aggregate principal amount of any series and maturity exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such series and maturity.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.6 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

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

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

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

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

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

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

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

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

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Corporation believes to be reliable, but neither the Authority nor the Corporation take responsibility for the accuracy thereof.

## APPENDIX J

### FORMS OF OPINION OF BOND COUNSEL

*Upon the delivery of the Bonds, Stradling Yocca Carlson & Rauth, a Professional Corporation, Bond Counsel to the Authority, proposes to deliver its final approving opinion with respect to the Bonds in substantially the following form:*

May \_\_, 2022

California Enterprise Development Authority  
Sacramento, California

§ \_\_\_\_\_  
*CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY  
CHARTER SCHOOL REVENUE BONDS  
(ENCORE EDUCATION CORPORATION)  
SERIES 2022 (TAXABLE)*

Ladies and Gentlemen:

We have examined a certified copy of the record of proceedings relating to the issuance by the California Enterprise Development Authority (the "Authority") of California Enterprise Development Authority Charter School Revenue Bonds (Encore Education Corporation) Series 2022 (Taxable) (the "Bonds"). The Authority is organized pursuant to the provisions of the Joint Exercise of Powers Act, comprising Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the Government Code of the State of California (the "Act") and a joint exercise of powers agreement, as amended (the "Agreement"). The Bonds are issued pursuant to the provisions of the Act, an indenture, dated as of May 1, 2022 (the "Indenture"), by and between the Authority and UMB Trust, N.A., as trustee (the "Trustee"), and a resolution duly adopted by the Authority on April 28, 2022. The Indenture provides that the Bonds are issued for the purpose of making a loan of the proceeds thereof to Western Encore Properties Incorporated, a California nonprofit public benefit corporation (the "Borrower"), pursuant to a Loan Agreement, dated as of May 1, 2022 (the "Loan Agreement"), by and between the Authority and the Borrower, and accepted and acknowledged by 16955 Lemon Street LLC, a California limited liability company (the "Landlord"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Indenture.

In our capacity as Bond Counsel to the Authority, we have examined originals or copies certified or otherwise identified to our satisfaction as being true copies of the (i) Indenture, (ii) the Loan Agreement, (iii) the Master Indenture of Trust (the "Master Indenture"), dated as of November 1, 2016, by and among the Borrower, as representative of the Obligated Group, the Landlord, as the Member of the Obligated Group, and UMB Trust, N.A., as successor master trustee thereunder (the "Master Trustee"), (iv) the Supplemental Master Indenture for Obligation No. 2 (the "Supplemental Master Indenture"), dated as of May 1, 2022, by and between the Borrower, as representative of the Obligated Group, and the Master Trustee, (v) Obligation No. 2, issued pursuant to the Master Indenture and the Supplemental Master Indenture, (vi) the Amended and Restated Lease Agreement, dated as of May 1, 2022 (the "Lease"), by and between the Landlord and Encore Education Corporation, a California nonprofit public benefit corporation (the "Lessee"), (v) the Private Placement Memorandum, dated May \_\_, 2022 (the "Private Placement Memorandum"), (vi) the Bond Placement Agreement concerning the Bonds, dated May \_\_, 2022, (the "Placement Agreement"), by and among the Authority, the Borrower, the Lessee, and Stifel, Nicolaus & Company, Incorporated, as placement agent (the "Placement Agent"), (vii) letters, certificates and opinions of counsel to the Authority, the Borrower,

Lessee, the Landlord, the Trustee and others delivered pursuant to the Placement Agreement, and (viii) such other laws, documents, certifications, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

We have assumed, but have not independently verified, that the signatures on all documents, letters, opinions and certificates that we have examined (whether originals or copies) are genuine, that all documents submitted to us are authentic and were duly and properly executed by the parties thereto and that all representations made in the documents that we have reviewed and all legal conclusions contained in the opinions referred to in the preceding paragraph are true and accurate. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture, the Loan Agreement, the Master Indenture, the Supplemental Master Indenture, the Lease and the Placement Agreement.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof we are of the opinion that:

1. The Bonds have been duly authorized, executed and issued.
2. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Authority. The Indenture creates a valid pledge to secure the payment of the principal of, premium, if any, and interest on the Bonds, of the Payments and any other amounts held by the Trustee in the funds and accounts established pursuant to the Indenture, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture. The Indenture also creates a valid assignment to the Trustee, for the benefit of the holders from time to time of the Bonds, of the right, title and interest of the Authority in the Loan Agreement (to the extent more particularly described in the Indenture).
3. The Bonds are valid and binding limited obligations of the Authority, payable solely from the Payments and other assets pledged and assigned therefor under the Indenture and are not a lien or charge upon the funds or property of the Authority except to the extent of the aforementioned pledge and assignment. The Bonds shall never constitute the debt or indebtedness of the Authority within the meaning of any provision or limitation of the Constitution of the State of California, and shall not constitute nor give rise to a pecuniary liability of the Authority or a charge against its general credit or taxing powers.
4. The Loan Agreement has been duly authorized, executed and delivered by, and constitutes the valid and binding agreement of, the Authority.
5. Under existing statutes, regulations, rulings and judicial decisions, interest (and original discount) on the Bonds is not excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code").
6. Interest on the Bonds is exempt from State of California personal income tax.
7. Except for certain exceptions, the difference between the issue price of a Bond (the first price at which a substantial amount of the Bonds of a maturity is to be sold to the public) and the stated redemption price at maturity with respect to such Bonds constitutes original issue discount. Original issue discount accrues under a constant yield method. The amount of original issue discount deemed received by a Bondowner will increase the Bondowner's basis in the applicable Bond.
8. The amount by which a Bondowner's original basis for determining loss on sale or exchange in the applicable Bond (generally, the purchase price) exceeds the amount payable on maturity (or on an earlier call date) constitutes amortizable Bond premium, which must be amortized under Section 171 of the Code; such amortizable Bond premium reduces the Bondowner's basis in the applicable Bond, and is not deductible for federal income tax purposes. The basis reduction as a result of the amortization of Bond premium may

result in a Bondowner realizing a taxable gain when a Bond is sold by the Bondowner for an amount equal to or less (under certain circumstances) than the original cost of the Bond to the Bondowner. Purchasers of the Bonds should consult their own tax advisors as to the treatment, computation and collateral consequences of amortizable Bond premium.

Any federal tax advice contained herein with respect to the Bonds is not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Code. The federal tax advice contained herein with respect to the Bonds was written to support the promoting and marketing of the Bonds. Before purchasing any of the Bonds, all potential purchasers should consult their independent tax advisors with respect to the tax consequences relating to the Bonds and the taxpayer's particular circumstances.

The foregoing opinions relate to the matters described herein only as of the date hereof. Certain requirements and procedures contained or referred to in the Indenture or other relevant documents relating to the Bonds may be changed, and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with an approving opinion of counsel nationally recognized in the area of tax-exempt obligations. Other than expressly stated herein, we express no opinion regarding other federal or state income tax consequences caused by ownership of, or the receipt of interest on, the Bonds.

The opinions expressed herein are based upon our analysis and interpretation of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We call attention to the fact that the rights and obligations under the Indenture, the Loan Agreement, the Master Indenture, the Supplemental Master Indenture, the Lease and the Bonds and their enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the foregoing documents nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or subject to the lien of the Indenture or the Loan Agreement or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property. Finally, we undertake no responsibility herein for the accuracy, completeness or fairness of the Private Placement Memorandum or other offering material relating to the Bonds and express no opinion with respect thereto.

Respectfully submitted,

**EXHIBIT K**  
**FORM OF INVESTOR LETTER**

[TO COME]

K-1

# Coversheet

## March 2022 Financials

**Section:** II. Finance  
**Item:** B. March 2022 Financials  
**Purpose:** Vote  
**Submitted by:** Paul Khoury  
**Related Material:** Encore Financials March 2022\_Financial Update.pdf

RECOMMENDATION:

Encore staff recommends approval of this item.





# Encore High School for the Arts

**DMS Monthly Update**  
Actuals through: **March 31, 2022**





## SUMMARY NARRATIVE

Following is the financial update thru March 31, 2022. With nine months of the fiscal year completed, expenditures are tracking in alignment with the 2nd interim budget projections. Given the drop in enrollment and corresponding reduction in revenues, Encore's cash flow is still very tight and requires the additional financing of \$1.425 mil which is expected on May 5th. Even with this inflow of cash, the cash position will still need to be monitored on a daily basis and careful consideration given with the overall cash projection to ensure priority outflows including payroll, taxes, insurance, and facility lease are made on a timely basis. Please note that the cash flow reflects 4th quarter EPA payment to be accrued but this \$500k+ should hit either end of June or first few days of July so the year ending cash position will be managed with this in mind. If any AP payments need to be held back at end of June it would only be until EPA is received.

Work on the 2022-23 budget has begun in conjunction with development of the 22-23 LCAP. This budget will be presented to the board for formal approval in June for submission to authorizer before July 1st. Aside from the standard recurring operating revenues any remaining Cares Act funds will be carried over to next year. These additional one-time funds, allocated to assist schools during the pandemic, have provided significant amounts of funding. The new budget is being developed to reflect a viable plan that will be successful in a normal operating environment.

**Encore High School  
Statement of Revenues & Expenditures  
As of March 31, 2022**

Encore Budget vs Actuals	2nd Interim Budget	Actuals 3/31/2022	% of Budget
<b>ADA</b>			
<b>Revenues</b>			
LCFF State Revenue	6,826,986	5,919,650	87%
Federal Revenues	2,648,025	1,094,389	41%
Other State Revenues	1,454,462	985,103	68%
Local Revenue	2,148,658	2,291,383	107%
<b>TTL Revenues</b>	<b>13,078,131</b>	<b>10,290,526</b>	<b>79%</b>
<b>Expenditures</b>			
Certificated Salaries	2,980,706	1,988,334	67%
Classified Salaries	2,208,254	1,510,247	68%
Benefits	2,012,132	1,344,409	67%
Books & Supplies	772,825	816,231	106%
Services & Operations	4,377,403	3,312,801	76%
Capital Outlay	204,240	-	0%
Other Outgo	-	1,105	0%
<b>Total Expenditures</b>	<b>12,555,560</b>	<b>8,973,128</b>	<b>71%</b>
<b>Operating Income/(Loss)</b>	<b>522,571</b>	<b>1,317,397</b>	

**Encore High School  
Balance Sheet  
As of March 31, 2022**

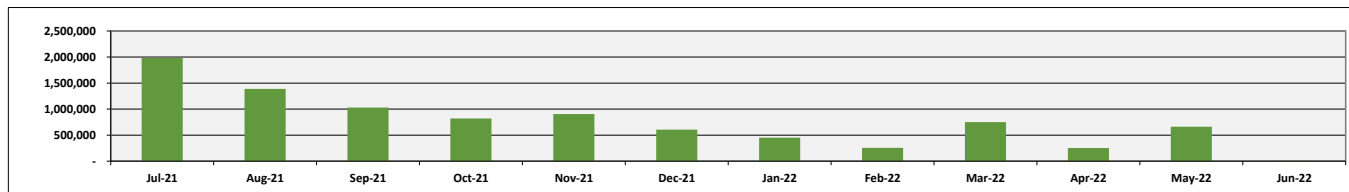
Balance Sheet	Description	Actuals 3/31/2022
<b>ASSETS</b>		
Cash & Equivalents		
	Cash in Bank	747,969
Total Cash & Equivalents		747,969
Current Assets		
	A/R	183,785
	Ppd Exp	25,000
Total Current Assets		208,785
Fixed Assets		
	Buildings	137,324
	Accum Depr-Buildings	(7,444)
	Equipment	2,309,825
	Accum Depr-Equipment	(1,371,846)
	WIP	22,315
	Lease Adj	1,253,863
Total Fixed Assets		2,344,037
<b>Total ASSETS</b>		<b>\$3,300,790</b>
<b>LIABILITIES</b>		
Current Liabilities		
	AP System	631,429
	Payroll Liabilities	35,431
	Use Tax Pybl	632
	Due to Grantor Gov't	522,292
	Other Current Liabilities	200,000
Total Current Liabilities		1,389,785
Long Term Liabilities		
	CAM Funding	0
	LaFear Settle	-
Total Long Term Liabilities		0
<b>TOTAL LIABILITIES</b>		<b>\$1,389,785</b>
<b>Calculated Fund Balance/Net Assets</b>		
	Beginning Fund Balance	593,608
	Operating Income/Loss	1,317,397
<b>Net Assets</b>		<b>1,911,005</b>
<b>Liabilities + Net Assets</b>		<b>\$3,300,790</b>

Proof=Zero

**Encore Jr./Sr. High School for the Performing & Visual Arts  
2021-22 1st Interim Budget Budget  
2021-22 Projected Monthly Cash Flow Statement**

Description	2021-22 1st Interim Budget Budget	July Actuals	August Actuals	September Actuals	October Actuals	November Actuals	December Actuals	January Actuals	February Actuals	March Actuals	April Forecast	May Forecast	June Forecast	Accruals	Total For Year	Notes
<b>BEGINNING CASH</b>		1,426,659	1,982,804	1,388,073	1,030,302	817,971	904,063	604,831	449,150	256,951	747,969	251,056	659,584	4,966	1,426,659	
<b>CASH INFLOWS</b>																
<b>REVENUES</b>																
LCFF State Aid	4,141,940	-	343,371	343,371	618,068	618,068	618,068	618,068	618,068	-	72,412	72,412	72,412	147,623	4,141,940	
Education Protection Account	2,446,898	-	-	-	609,490	-	-	609,489	-	690,753	-	-	-	514,248	2,423,980	
Prior Year Adjustments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
In-Lieu-Of Property Taxes	238,148	-	-	-	-	13,822	172,580	-	27,613	18,821	9,410	9,410	9,410	-	261,066	
Federal Revenues	2,648,025	23,417	127,144	-	98,755	32,436	47,321	626,138	124,376	14,802	488,176	21,275	146,275	897,910	2,648,025	
Other State Revenues	1,454,462	-	-	-	(10,595)	86,464	33,991	425,282	1,703	448,259	95,690	1,468	146,521	225,680	1,454,462	
Other Local Revenues	2,148,658	-	3,405	8,601	188	2,033,551	86,126	5,898	50,690	102,925	-	-	-	-	2,291,383	
<b>TTL CASH INFLOWS</b>	<b>13,078,131</b>	<b>23,417</b>	<b>473,920</b>	<b>351,972</b>	<b>1,315,906</b>	<b>2,784,341</b>	<b>958,085</b>	<b>2,284,875</b>	<b>822,450</b>	<b>1,275,560</b>	<b>665,687</b>	<b>104,565</b>	<b>374,617</b>	<b>1,785,461</b>	<b>13,220,856</b>	
<b>EXPENDITURES</b>																
All Certificated Salaries	2,980,706	42,528	80,334	190,035	296,034	296,338	275,648	267,510	289,238	250,670	283,535	283,535	283,535	141,767	2,980,706	
All Classified Salaries	2,208,254	70,635	153,832	177,097	188,478	189,614	182,857	165,323	207,565	174,845	188,651	188,651	188,651	132,055	2,208,254	
All Benefits	2,012,132	54,239	111,024	141,330	175,383	173,140	170,969	168,127	186,467	163,730	180,466	180,466	180,466	126,326	2,012,132	
All Materials & Supplies	772,825	465,241	96,032	94,376	39,023	36,149	20,289	14,708	7,581	42,833	-	-	-	-	816,231	
All Services and Operations	4,377,403	199,173	409,823	362,423	492,428	288,475	418,034	325,380	195,363	621,703	304,172	304,172	304,172	152,086	4,377,403	
All Capital Outlay/Depreciation	204,240	-	-	-	-	-	-	-	-	-	-	-	-	204,240	204,240	
All Other Outgo	-	1,105	-	-	-	-	-	-	-	-	-	-	-	-	1,105	
<b>TTL CASH OUTFLOWS</b>	<b>12,555,560</b>	<b>832,921</b>	<b>851,044</b>	<b>965,261</b>	<b>1,191,347</b>	<b>983,716</b>	<b>1,067,796</b>	<b>941,048</b>	<b>886,215</b>	<b>1,253,781</b>	<b>956,823</b>	<b>956,823</b>	<b>956,823</b>	<b>756,475</b>	<b>12,600,072</b>	
<b>NET REVENUES</b>	<b>522,571</b>														<b>620,784</b>	
Accounts Receivable (net change)	4,757,489	2,222,835	849,576	919,939	430,947	16,784	-	140,165	-	-	121,720	55,523	-	-	-	
Accounts Payable (net change)	(671,554)	(122,186)	(309,423)	119,272	(225,126)	186,639	(22,564)	64,784	(14,767)	331,738	(55,085)	(147,325)	-	-	(477,511)	
Due to Grantor Gov't	(1,160,641)	-	(58,032)	(58,032)	(104,457)	(104,457)	(104,457)	(104,457)	(104,457)	-	(72,412)	(72,412)	(72,412)	(72,412)	(305,056)	
Fixed Asset Acquisitions	-	(55,500)	(67,774)	(84,583)	(24,890)	(213,500)	-	-	(5,000)	-	-	-	-	-	451,246	
Fixed Asset Sale (Vans)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
CAM Financing	-	-	400,000	400,000	400,000	800,000	400,000	-	-	-	-	-	-	-	(2,400,000)	
CAM Repayments	(3,362,582)	(679,499)	(1,031,955)	(978,577)	(672,550)	(400,000)	(400,000)	(1,600,000)	-	-	-	-	-	-	2,400,000	
Financing	-	-	-	-	-	-	-	-	-	200,000	(200,000)	1,425,000	-	-	-	
Repair and Maint. Fund Reimb.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
PPP Loan	(2,000,000)	-	-	-	-	(2,000,000)	-	-	-	-	-	-	-	-	-	
LaFear Settlement	(187,500)	-	-	(62,500)	-	-	(62,500)	-	-	(62,500)	-	-	-	-	-	
Deferred Revenue	(140,814)	-	-	-	(140,814)	-	-	-	-	-	-	-	-	-	-	
Capital Leases	(4,209)	-	-	-	-	-	-	-	(4,209)	-	-	-	-	-	-	
<b>NET INFLOWS/OUTFLOWS</b>	<b>1,365,649</b>	<b>(217,608)</b>	<b>255,519</b>	<b>(336,889)</b>	<b>(1,714,534)</b>	<b>(189,521)</b>	<b>(1,499,508)</b>	<b>(128,434)</b>	<b>469,238</b>	<b>(205,777)</b>	<b>1,260,786</b>	<b>(72,412)</b>	<b>(72,412)</b>	<b>(331,321)</b>		
<b>ENDING CASH BALANCE</b>	<b>1,982,804</b>	<b>1,388,073</b>	<b>1,030,302</b>	<b>817,971</b>	<b>904,063</b>	<b>604,831</b>	<b>449,150</b>	<b>256,951</b>	<b>747,969</b>	<b>251,056</b>	<b>659,584</b>	<b>4,966</b>				

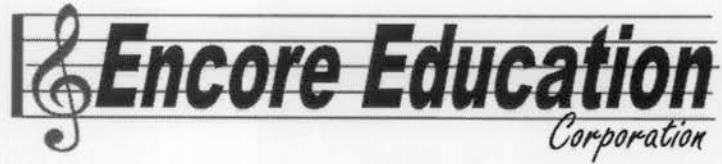
Days Cash On Hand	59	41	30	24	27	18	13	8	22	7	19	0
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# Coversheet

## Executive Director expense reimbursement

**Section:** III. Employee Reimbursement  
**Item:** A. Executive Director expense reimbursement  
**Purpose:**  
**Submitted by:**  
**Related Material:** Bow Sabrina April Reimbursements 1.pdf



## Employee Reimbursement

Employee Requesting Reimbursement: Sabrina Bow Date: 4/22/22

Date	Description	Total Amount
3/18/22	Curo Managed Print Production	190.38
12/13/21	Postal Annex	45.51
3/14/22	Ace Parking	15.00
3/15/22	Ace Parking	15.00
3/18/22	G & M Oil	89.00
3/28/22	Shell	20.00
<b>Grand Total</b>		<b>\$ 374.89</b>

Name (make check payable to): Sabrina Bow

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

(Check will be mailed to this address if the total amount is over \$100)

I hereby certify that the above is an accurate accounting of my expenses incurred on behalf of Encore Education Corporation, and I have attached copies of receipts on the receipt form and/or proof of payment.

Employee's Signature: 

### OFFICE USE ONLY

Rev. 3/21

Approval:    Yes / No

Administrator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Administrator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Invoice 5453



2160 Huntington Drive  
 Duarte, CA 91010 US  
 (626) 531-7525  
 info@curoprint.com  
 www.curoprint.com

**BILL TO**  
 Sabrina Bow  
 Encore Junior and Senior High  
 School for the Arts

DATE  
 03/18/2022

PLEASE PAY  
 \$0.00

DUE DATE  
 03/18/2022

ACTIVITY	QTY	RATE	AMOUNT
<b>Banner</b> 33x81 Deluxe retractable banner	1	150.00	150.00T
<b>Services:Design Services</b> design of retractable banner	1	25.00	25.00

PAID

SUBTOTAL	175.00
TAX	15.38
TOTAL	190.38
PAYMENT	190.38

**TOTAL DUE \$0.00**

THANK YOU.



Ace Parking Management

Date 03/14/2022 Time 15:46  
Name: Jonathan Sandoval Ramos  
Employee #: 082045

Lot: Long Beach Convention  
Lot #: 2637  
Gate: ---  
Device: ACE IPHONE 303

PUBLIC RATE

Paid: \$15.00  
Cash Sale

NO REFUNDS.  
NO IN/OUT PRIVILEGES.

The management hereby declares itself not responsible for fire, theft, damage, or loss of car or any article left in same, all of such risk being assumed by licensee. Only a rental space license is granted hereby and no bailment is intended or granted.

NO OVERNIGHT PARKING.  
Permit expires at 2:00 am. Any vehicles left after 2:00 am. will be subject to tow at owner's expense.

REFUNDS & general questions:  
\* space@aceparking.com \*

If you suspect fraud, contact:  
\* ethics@aceparking.com \*  
\* (619) 800-6855 \*



Ace Transaction ID:  
0820451647297992

Ace Parking Management

Date 03/15/2022 Time 10:01  
Name: Manuel Reyes  
Employee #: 081292

Lot: Long Beach Convention  
Lot #: 2637  
Gate: ---  
Device: ACE IPHONE 314

PUBLIC RATE

Paid: \$15.00  
Cash Sale

NO REFUNDS.  
NO IN/OUT PRIVILEGES.

The management hereby declares itself not responsible for fire, theft, damage, or loss of car or any article left in same, all of such risk being assumed by licensee. Only a rental space license is granted hereby and no bailment is intended or granted.

NO OVERNIGHT PARKING.  
Permit expires at 2:00 am. Any vehicles left after 2:00 am. will be subject to tow at owner's expense.

REFUNDS & general questions:  
\* space@aceparking.com \*

If you suspect fraud, contact:  
\* ethics@aceparking.com \*  
\* (619) 800-6855 \*



Ace Transaction ID:  
0812921647363674

# POSTAL ANNEX

YOUR HOME OFFICE.

PostalAnnex+  
1171 E. Alostia Ave.  
Azusa, CA 91702  
Ph: (626) 771-2340  
Fax: (626) 771-2350

\*\*\*\*\*

Track your package(s) and/or shop online  
<https://postalannexofazusa.com>

\*\*VOID\*\*Live Scan - Rolling 0.00  
Print-B/W 8.5"x11"-High Spee 0.46 TX  
Live Scan - Rolling Fee 45.00  
  
SUBTOTAL 45.46  
TAX  
State Tax on 0.46 0.05  
TOTAL 45.51  
TEND American Express 45.51

Total Payments: 0  
Sabrina Bow  
Disha 12/13/2021 04:13 PM  
#72120  
Workstation: 8 - Aux1 Near Mailboxes  
CCTran# 96c8157b-2847-4b7d-a92e-d5e12243d4fa

Signature \_\_\_\_\_

By making a payment and/or signing above I agree that I was made aware that all sales are final. I further agree that I have received product(s) and/or service(s) I paid for and none of them are refundable.

\*\*\*\*\*

We Print, Copy and Ship.  
Email your files to:  
[postalannex15009@gmail.com](mailto:postalannex15009@gmail.com)  
Thank you for your business

\*\*\*\*\*

Live Scan fees

CCSA Conference parking 2 days



Requisition #

PLACE RECEIPTS HERE  
TAPE RECEIPT(S) FLAT – DO NOT FOLD RECEIPT(S) AND NO STAPLES

G&M Oil, 26  
15933 MAIN  
HESPERIA, CA 92345

03/18/2022 11:17:31 AM  
Register: 2 Trans #: 640 Op ID: 11  
Your cashier: ROSALIE

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

E-85 (Grade 05) CA PUMP# 3  
26.184 GAL @ \$3.399/GAL \$89.00 99

Subtotal = \$89.00

Tax = \$0.00

Total = \$89.00

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

Change Due = \$0.00

Cash \$89.00

DOWNLOAD OUR FREE MOBILE APP FOR  
VISIT [WWW.GMOC.COM](http://WWW.GMOC.COM)  
RESTROOM 7769#  
NO REFUNDS NO RETURNS NO EXCHANGES

Customer Copy

VENDOR:

G&M OIL

DATE OF PURCHASE:

3-18-22

AMOUNT:

\$89.00

REIMBURSE TO / ACCOUNT:

ADMIN APPROVAL ONLY

PURPOSE:

GAS

FIRST APPROVAL

J. W.

SECOND APPROVAL



Requisition #

PLACE RECEIPTS HERE  
TAPE RECEIPT(S) FLAT – DO NOT FOLD RECEIPT(S) AND NO STAPLES

Welcome to Shell  
 SHELLFUELS #6352  
 FONTANA, CA  
 909-356-8762  
 10006144009

SHELL  
 3864 SIERRA AVE  
 FONTANA CA  
 92336

DATE 03/29/22 06:14  
 TRAN# 9039114  
 PUMP# 03  
 SERVICE LEVEL: SELF  
 PRODUCT: REGULAR  
 GALLONS: 3.334  
 PRICE/G: \$ 5.999  
 FUEL SALE \$ 20.00  
 DEBIT \$20.00  
 XXXXXXXXXXXXXXX4948  
 Debit  
 Swiped  
 APPROVED  
 AUTH # 587428  
 INV # 333807  
 Verified by PIN

-----  
Please come again  
THANK YOU FOR  
CHOOSING SHELL

VENDOR:

Shell fuel

DATE OF PURCHASE:

3-28-22

AMOUNT:

20.00

REIMBURSE TO / ACCOUNT:

-----  
ADMIN APPROVAL ONLY  
-----

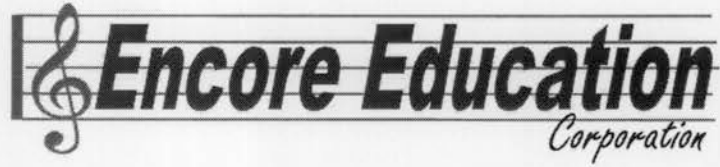
PURPOSE:

GAS

FIRST APPROVAL

Ja Wh

SECOND APPROVAL



## Employee Reimbursement

Employee Requesting Reimbursement: Sabrina Bow Date: 4/22/22

Date	Description	Total Amount
3/19/22	G & M oil	30.00
3/28/22	G & M oil	90.00
3/30/22	Chevron	20.00
3/18/22	G & M oil	40.00
3/12/22	G & M oil	52.00
3/17/22	G & M oil	58.23
<b>Grand Total</b>		<b>\$ 290.23</b>

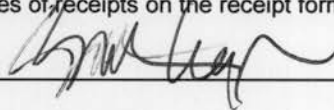
Name (make check payable to): Sabrina Bow

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

(Check will be mailed to this address if the total amount is over \$100)

I hereby certify that the above is an accurate accounting of my expenses incurred on behalf of Encore Education Corporation, and I have attached copies of receipts on the receipt form and/or proof of payment.

Employee's Signature: 

### OFFICE USE ONLY

Rev. 3/21

Approval:    Yes / No

Administrator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Administrator Signature: \_\_\_\_\_ Date: \_\_\_\_\_



Requisition #

PLACE RECEIPTS HERE  
TAPE RECEIPT(S) FLAT – DO NOT FOLD RECEIPT(S) AND NO STAPLES

G&M Oil, 26  
15933 MAIN  
HESPERIA, CA 92345

03/18/2022 6:51:17 PM  
Register: 2 Trans #: 1082 Op ID: 15  
Your cashier: SUZANNE

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

E-85 (Grade 05) CA PUMP# 4  
8.826 GAL @ \$3.399/GAL \$30.00 99

Subtotal = \$30.00  
Tax = \$0.00

Total = \$30.00

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

Change Due = \$-30.00

Cash \$60.00

DOWNLOAD OUR FREE MOBILE APP FOR  
VISIT [WWW.GMOC.COM](http://WWW.GMOC.COM)  
RESTROOM 7769#  
NO REFUNDS NO RETURNS NO EXCHANGES

Customer Copy

VENDOR:

G&M OIL

DATE OF PURCHASE:

3-18-22

AMOUNT:

30.00

REIMBURSE TO / ACCOUNT:

ADMIN APPROVAL ONLY

PURPOSE:

GAS

FIRST APPROVAL

J. White

SECOND APPROVAL



Requisition #

PLACE RECEIPTS HERE  
TAPE RECEIPT(S) FLAT - DO NOT FOLD RECEIPT(S) AND NO STAPLES

G&M Oil, 26  
15933 MAIN  
HESPERIA, CA 92345

03/28/2022 2:32:44 PM  
Register: 2 Trans #: 7986 Op ID: 15  
Your cashier: SUZANNE

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

E-85 (Grade 05) CA PUMP# 4  
24.331 GAL @ \$3.699/GAL \$90.00 99

Subtotal = \$90.00

Tax = \$0.00

Total = \$90.00

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

Change Due = \$0.00

Cash \$90.00

DOWNLOAD OUR FREE MOBILE APP FOR  
VISIT [WWW.GMOC.COM](http://WWW.GMOC.COM)  
RESTROOM 4272#  
NO REFUNDS NO RETURNS NO EXCHANGES

Customer Copy

VENDOR:

G&M OIL

DATE OF PURCHASE:

3-28-22

AMOUNT:

90.00

REIMBURSE TO / ACCOUNT:

ADMIN APPROVAL ONLY

PURPOSE:

GAS

FIRST APPROVAL

J. White

SECOND APPROVAL



Requisition #

PLACE RECEIPTS HERE  
TAPE RECEIPT(S) FLAT – DO NOT FOLD RECEIPT(S) AND NO STAPLES

Chevron 210408  
210408  
12464 Limonite Ave  
Eastvale, CA  
91752

PREPAID RECEIPT  
03/30/2022  
07:24:42 AM  
PUMP# 3  
UNLEAD REG 3.226G  
PRICE/GAL \$6.199  
FUEL TOTAL \$ 20.00

FINAL PURCHASE  
AMOUNT RECEIPT WITH  
FULL TRANSACTION  
DETAIL AVAILABLE  
INSIDE

Customer Copy

VENDOR:

Chevron GAS

DATE OF PURCHASE:

3-30-22

AMOUNT:

20.00

REIMBURSE TO / ACCOUNT:

ADMIN APPROVAL ONLY

PURPOSE:

GAS

FIRST APPROVAL

Ju Wh

SECOND APPROVAL



Requisition #

PLACE RECEIPTS HERE  
TAPE RECEIPT(S) FLAT – DO NOT FOLD RECEIPT(S) AND NO STAPLES

G&M Oil, 26  
15933 MAIN  
HESPERIA, CA  
92345  
03/18/2022  
08:47:20 PM

PREPAID RECEIPT

PUMP# 4  
E-85            11.768G  
PRICE/GAL     \$3.399

FUEL TOTAL \$ 40.00

FINAL PURCHASE  
AMOUNT RECEIPT WITH  
FULL TRANSACTION  
DETAIL AVAILABLE  
INSIDE

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EXCLUSIVE DEALS AND COUPONS  
VISIT WWW.GMOC.COM  
Customer Copy

VENDOR:

G&M OIL

DATE OF PURCHASE:

3-18-22

AMOUNT:

40.00

REIMBURSE TO / ACCOUNT:

ADMIN APPROVAL ONLY

PURPOSE:

GAS

FIRST APPROVAL

Jan LA

SECOND APPROVAL



G&M Oil, 26  
15933 MAIN  
HESPERIA, CA 92345

03/17/2022 2:02:35 PM  
Register: 2 Trans #: 9982 Op ID: 15  
Your cashier: SUZANNE

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

E-85 (Grade 05) CA	PUMP# 3		
15.298 GAL @ \$3.399/GAL		\$52.00	99
		-----	
	Subtotal =	\$52.00	
	Tax =	\$0.00	
		-----	
	Total =	\$52.00	

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

Change Due = \$-48.00

Cash \$100.00

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VISIT [WWW.GMOC.COM](http://WWW.GMOC.COM)  
RESTROOM 7769#  
NO REFUNDS NO RETURNS NO EXCHANGES

Customer Copy

G&M Oil, 26  
15933 MAIN  
HESPERIA, CA 92345

03/17/2022 2:02:15 PM  
Register: 2 Trans #: 9981 Op ID: 15  
Your cashier: SUZANNE

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

E-85 (Grade 05) CA	PUMP# 4		
17.132 GAL @ \$3.399/GAL		\$58.23	99
		-----	
	Subtotal =	\$58.23	
	Tax =	\$0.00	
		-----	
	Total =	\$58.23	

\*\*\* REPRINT \*\*\* REPRINT \*\*\* REPRINT \*\*\*

Change Due = \$-41.77

Cash \$100.00

DOWNLOAD OUR FREE MOBILE APP FOR  
VISIT [WWW.GMOC.COM](http://WWW.GMOC.COM)  
RESTROOM 7769#  
NO REFUNDS NO RETURNS NO EXCHANGES

Customer Copy

# Coversheet

## Executive Director Report

**Section:** IV. Staff Reports  
**Item:** A. Executive Director Report  
**Purpose:** FYI  
**Submitted by:** Sabrina Bow

### BACKGROUND:

The Executive Director will provide a written report summarizing school operations for each regular board meeting.

### RECOMMENDATION:

There is no action required for this report.

# Coversheet

## Director of Academics Report

**Section:** IV. Staff Reports  
**Item:** B. Director of Academics Report  
**Purpose:** FYI  
**Submitted by:** Julia Dolf  
**Related Material:** Director of Academics Report (1) April.pdf

### BACKGROUND:

Encore's Director of Academics provides regular reports on curriculum, instruction, and assessment to the Encore Board of Directors. This is for information purposes only.

### RECOMMENDATION:

There is no action required for this report.



## Director of Academics Report

April 2022

### State Summative Assessments

The 2022 state summative assessment is well underway. Staff is following our state testing schedule for the dates of April 11, 2022 – May 5, 2022. Four days a week, students are assessed during a testing block of one hundred seventeen minutes to eliminate testing. Attached are the current completion rates based on TOMS as of April 22, 2022. All grade levels and assessments are required to have a 95% completion rate.

Test Name	Total Student	Total Student Completed	Percent Completed
Grade 11 ELA CAT Test	93	51	54.84%
Grade 11 ELA Performance Task	93	40	43.01%
Grade 11 Math CAT Test	93	60	64.52%
Grade 11 Math Performance Task	93	57	61.29%
Grade 7 ELA CAT Test	98	35	35.71%
Grade 7 ELA Performance Task	98	29	29.59%
Grade 7 Math CAT Test	98	68	69.39%
Grade 7 Math Performance Task	98	63	64.29%
Grade 8 ELA CAT Test	138	71	51.45%
Grade 8 ELA Performance Task	138	69	50.00%
Grade 8 Math CAT Test	138	59	42.75%
Grade 8 Math Performance Task	138	53	38.41%

CALPADS had an update that made changes and adjusted our testing accommodations and requirements for students. The update affected most of our science assessments, SPED accommodations, parent exemption requests, and teacher approvals through April 22, 2022. Adjustments were made and will continue to be made if needed.

### Advanced Placement Exams

For Encores upcoming AP exams in May, we currently have twenty-three out of the twenty six

students registered to take the exam. Mrs. Haskins will oversee the administration of the exams with our AP teachers, Mr. Parker, Ms. Roach, and Mr. Hodges. Below are the current students and AP Exam for the 2021/2022 school year:

<b>AP Exam</b>	<b>Teacher</b>	<b>Total Students</b>
<b>AP Biology</b>	Mr. Hodges	3
<b>AP English Literature and Composition</b>	Mr. Parker	16
<b>AP Government and Politics</b>	Ms. Roach	4

### **Dual Enrollment**

Encores Dual Enrollment with Victor Valley College will continue for the 2022/2023 school year. Mrs. Haskins oversees the VVC program for Encore. For the fall semester, Encores VVC Dual Enrollment courses will take place online and on property at Encore for the spring semester. The following is a list of courses partnered with VVC:

<b>Semester</b>	<b>Course Title</b>	<b>Program</b>
Fall	Psychology 101	Online
Fall	Psychology 110	Online
Fall	Astronomy 101	Online
Fall	Guided Series (Life Skills and Critical Thinking)	Course provided by one of Encores counselors
Spring	Child Development 106	In person
Spring	Communication 106	In person
Spring	Math 120	In person

Spring	Guided Series (Life Skills and Critical Thinking)	Course provided by one of Encores counselors
--------	---	---

# Coversheet

## Staff Liaison Report

**Section:** IV. Staff Reports  
**Item:** C. Staff Liaison Report  
**Purpose:** FYI  
**Submitted by:** Jamie Waggoner  
**Related Material:** Board Report April 2022.pdf

### BACKGROUND:

Encore High School has a staff elected liaison that makes themselves available to the staff for questions, comments, and concerns throughout the school year. The liaison also meets each semester with the staff and reports monthly to the Encore Board of Directors.

### RECOMMENDATION:

There is no action required for this report.



Staff Liaison Report

4/20/2022

It has been very quiet as of late. I have not had any staff member come to me with any specific items that need to be taken to administration.

I do hear from some of the staff on a "unofficial" basis on occasion. The point of conversation that I hear about the most is still the period subbing issue. Not having a prep period continues to weigh heavy with the staff.

Jamie Waggoner  
Encore Staff Liaison



# Coversheet

## ESG President Report

**Section:** IV. Staff Reports  
**Item:** D. ESG President Report  
**Purpose:** FYI  
**Submitted by:** Anabel Estrada  
**Related Material:** ESG Board Report 04\_25\_22.pdf

### BACKGROUND:

Each month, Encore's ESG President routinely reports on the academic operations on campus to the Encore Board of Directors. This is for information purposes only.

### RECOMMENDATION:

There is no action required for this report.



## **ESG PRESIDENT REPORT**

**April 25th, 2022**

**ESG General President - Anabel Estrada**

### **Student Council**

We began our student council in December and here I have the following as a summary from each meeting and the councils findings.

#### **Student Council Meeting**

**December 17th, 2022**

At the start of the meeting positions were discussed between officers and what that entails in student council. Majority of the meeting was a discussion about parliamentary procedures throughout future student council meetings. Open floor was a brief consultation on the important roles of the student council elected individuals. The meeting was then adjourned.

#### **Student Council Meeting**

**February 11, 2022**

The beginning of the meeting was a brief analysis of the supplies needed to be brought to each meeting and the procedures to be followed by the individual after the meeting is adjourned. Open floor discussion then took place and we discussed concerns within the lunch and vending machines, as well as general school rules such as dress code. Questions about ESG elections were asked as well as student concerns over restrooms. Administration is taking all concerns, questions and comments into consideration and action. The meeting was adjourned.

#### **Student Council Meeting**

**March 18, 2022**

We initiated our meeting by delivering the news of discussed issues since previous student council meetings. A discussion was made with fresh start about lunch concerns and concerns over the bathrooms were still in discussion for next school year. New business discussion included updates on show dates, canceled school events and general student forms being sent out

# ENCORE



## Junior & Senior High School for the Arts

regarding “Rock My Campus” and Jr. High shirt polls. Confirmed dates were established for master certification and cords as well as teacher conferences. The meeting was adjourned.

### **Prom**

We held our 2022 Prom at Coco Palms Restuarant on March 4th. The class of 2023 planned the entire night from location, decoration, dinner menu! At the prom there was dancing, photo booth both from Encore and professional photographers.

### **Spelling Bee**

Encore’s Annual Spelling Bee took place in March. This was an event ran by administrative director of academics Ms. Dolf. It was organized well and was recorded by Encore’s Media Team.

### **SpongeBob**

Our final high school production went out with a bang! We sold out every single night. This was a great opportunity for exposure for the school. ESG also opened up the student store for sales.

### **Campus Cleanup**

ESG in the past few weeks have been working on cleaning up our designated rooms and Store. ESG has been working to find proper food and drink items to sell in the store and vending machines adhering to the State guidelines for schools. We are also working on decorating the inner quad windows for not only our campus tours but for our students and staff as well.

### **ESG Future Events and COVID Precautions**

As the school year is coming to a close in almost 50 days we want to make sure all school events are safe and properly funded for. We have reworked our event calendar and have removed events and rescheduled for later dates. This will help ensure we are properly prepared and funded for each event.

# Coversheet

## Board Meeting Minutes

**Section:** V. Consent Items  
**Item:** A. Board Meeting Minutes  
**Purpose:** Approve Minutes  
**Submitted by:**  
**Related Material:** 2022\_02\_19\_board\_meeting\_minutes\_REVISED (1) DRAFT.pdf  
2022\_02\_28\_board\_meeting\_minutes DRAFT.pdf  
2022\_03\_07\_board\_meeting\_minutes DRAFT.pdf  
2022\_03\_11\_board\_meeting\_minutes DRAFT.pdf  
2022\_03\_14\_board\_meeting\_minutes DRAFT.pdf  
2022\_03\_27\_board\_meeting\_minutes DRAFT.pdf

DRAFT



## Encore JR/SR High School

# Minutes

### Special Board Meeting- February 19, 2021

**Date and Time**

Saturday February 19, 2022 at 2:30 PM

**Location**

This meeting is being held virtually pursuant to Government Code Section 54953 (e). The public can access this meeting via Zoom as follows:

**Join Zoom Meeting**

<https://zoom.us/j/5871494303?pwd=Mit3eIRMOVhzYjM4K1d2SSStPeEZiQT09>

Meeting ID: 587 149 4303

Passcode: 936591

One tap mobile

+16699006833,,5871494303#,,,,,0#,,936591# US (San Jose)

+13462487799,,5871494303#,,,,,0#,,936591# US (Houston)

**Dial by your location**

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington D.C)

Meeting ID: 587 149 4303

Passcode: 936591

Find your local number: <https://zoom.us/u/aFccAHayh>

Members of the public who wish to comment during the Board meeting may use the “raise hand” tool on the Zoom platform. Members of the public calling in will be given the opportunity to address the Board during the meeting. Individual comments will be limited to three (3) minutes. If an interpreter is needed for comments, they will be translated to English and the time limit shall be six (6) minutes. The Board may limit the total time for public comment to a reasonable time. The Board reserves the right to mute or remove a participant from the meeting if the participant unreasonably disrupts the Board meeting.

**Directors Present**

C. Sutton (remote), G. Thackeray (remote), K. Ahmed (remote), K. Staley (remote), R. Gabler (remote)

**Directors Absent**

*None*

**Guests Present**

J. Barkdull (remote), J. Simmons (remote), J. Thibodeaux (remote), S. Bow (remote), Sarah Cassady (remote)

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**I. Opening Items**

**A. Call the Meeting to Order**

R. Gabler called a meeting of the board of directors of Encore JR/SR High School to order on Saturday Feb 19, 2022 at 2:35 PM.

**B. Record Attendance**

**C. Invitation for public to address the Board**

**II. Human Resources**

**A. Approval of a reduction in force for balance of 2021-2022 academic year.**

G. Thackeray made a motion to approve reduction in force for balance of 2021-2022 academic year.

C. Sutton seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

C. Sutton      Aye

K. Staley      Aye

R. Gabler      Aye

K. Ahmed      Aye

G. Thackeray   Aye

**III. Adjourn to Closed Session**

**A. Reconvene from Closed Session**

The Board reconvened from Closed Session at 7:00 p.m.

The motions approved by the board are as follows:

1. A motion was made by Glen Thackeray and seconded by Kathy Staley to invite Mr. John Griffin and Mrs. Denise Griffin into closed session. There was a roll call vote of 2-3: Glen Thackeray - Aye, Rob Gabler - No, Kathy Staley - Aye, Kelly Ahmed – No, and Chandale Sutton – No. The motion fails.
2. A motion was made by Rob Gabler and seconded by Chandale Sutton to terminate an employee without cause effective Wednesday, February 23,

2022. The termination notice will provide that he may resign in lieu of termination before that date. There was a role call vote of 5 to 0 : Glen Thackeray - Aye, Rob Gabler - Aye, Kathy Staley - Aye, Kelly Ahmed - Aye, and Chandale Sutton - Aye. The motion passes.

3. A motion was made by Rob Gabler and seconded by Chandale Sutton to terminate an employee without cause effective Wednesday, February 23, 2022. The termination notice will provide that she may resign in lieu of termination before that date. There was a role call vote of 4 to 0 : Rob Gabler - Aye, Kathy Staley - Aye, Kelly Ahmed - Aye, and Chandale Sutton - Aye, Glen Thackeray - abstained. The motion passes.
4. A motion was made by Rob Gabler and seconded by Chandale Sutton to direct counsel to release the investigation report to the Hesperia Unified School District. There was a role call vote of 5 to 0 : Glen Thackeray - Aye, Rob Gabler - Aye, Kathy Staley - Aye, Kelly Ahmed - Aye, and Chandale Sutton - Aye. The motion passes.
5. A motion was made by Glen Thackeray and seconded by Kathy Staley to release the investigation report to Mr. and Mrs. Griffin. There was a role call vote of 5 to 0 : Glen Thackeray - Aye, Rob Gabler - Aye, Kathy Staley - Aye, Kelly Ahmed - Aye, and Chandale Sutton - Aye. The motion passes.

#### IV. Closing Items

##### A. Adjourn Meeting

G. Thackeray made a motion to Adjourn meeting.  
K. Ahmed seconded the motion.  
The board **VOTED** to approve the motion.

##### Roll Call

C. Sutton     Aye  
K. Ahmed     Aye  
G. Thackeray Aye  
R. Gabler     Aye  
K. Staley     Aye

There being no further business to be transacted, and upon motion duly made, seconded and approved, the meeting was adjourned at 7:04 PM.

Respectfully Submitted,  
J. Thibodeaux

---

#### Documents used during the meeting

- Encore Board Resolution 2022-003 (Reduction in Force).pdf

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A copy of the agenda will be posted at least 24 hours before such meeting. A copy of the written materials which will be submitted to the Board of Encore Junior and Senior High School for the Arts is available along with this agenda following the posting of the agenda by emailing Sabrina Bow at sbow@encorehighschool.com.

Requests for disability-related modifications or accommodations to participate in this public meeting shall be made 24 hours prior to the meeting by calling (760) 956-2632 or emailing Joseph Thibodeaux at jthibodeaux@encorehighschool.com. All efforts will be made for reasonable accommodations. The agenda and public documents can be modified upon request as required by Section 202 of the Americans with Disabilities Act.

DRAFT



## Encore JR/SR High School

### Minutes

#### Regular Encore Board of Directors Meeting - February 2022

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**Date and Time**

Monday February 28, 2022 at 6:30 PM

**Location**

This meeting is being held virtually pursuant to Government Code Section 54953 (e). The public can access this meeting via Zoom as follows:

Join Zoom Meeting

<https://zoom.us/j/5871494303?pwd=Mit3eIRMOVhzYjM4K1d2SSStPeEZiQT09>

Meeting ID: 587 149 4303

Passcode: 936591

One tap mobile

+16699006833,,5871494303#,,,,,0#,,936591# US (San Jose)

+13462487799,,5871494303#,,,,,0#,,936591# US (Houston)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington D.C)

Meeting ID: 587 149 4303

Passcode: 936591

Find your local number: <https://zoom.us/u/aFccAHayh>

Members of the public who wish to comment during the Board meeting may use the “raise hand” tool on the Zoom platform. Members of the public calling in will be given the opportunity to address the Board during the meeting. Individual comments will be limited to three (3) minutes. If an interpreter is needed for comments, they will be translated to English and the time limit shall be six (6) minutes. The Board may limit the total time for public comment to a reasonable time. The Board reserves the right to mute or remove a participant from the meeting if the participant unreasonably disrupts the Board meeting.

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**Directors Present**

---



C. Sutton (remote), G. Thackeray (remote), K. Staley (remote), R. Gabler (remote)

**Directors Absent**

K. Ahmed

**Guests Present**

A. Barkdull (remote), C. Walker (remote), J. Barkdull (remote), J. Simmons (remote), J. Thibodeaux (remote), Paul Khoury (remote), S. Bow (remote), jamie waggoner (remote)

**I. Opening Items**

**A. Call the Meeting to Order**

R. Gabler called a meeting of the board of directors of Encore JR/SR High School to order on Monday Feb 28, 2022 at 6:32 PM.

**B. Record Attendance**

**C. Approval of Board Findings Relating to Teleconference Meetings During State of Emergency**

G. Thackeray made a motion to Approve Board Findings Relating to Teleconference Meetings During State of Emergency.

C. Sutton seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

K. Staley	Aye
K. Ahmed	Absent
G. Thackeray	Aye
R. Gabler	Aye
C. Sutton	Aye

**D. Public Comment**

**II. Approval of Board Meeting Minutes**

**A. Approve Minutes**

C. Sutton made a motion to approve the minutes from Regular Encore Board of Directors Meeting - January 2022 on 01-24-22.

K. Staley seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

K. Ahmed	Absent
G. Thackeray	Aye
R. Gabler	Aye
C. Sutton	Aye
K. Staley	Aye

C. Sutton made a motion to approve the minutes from Special Board Meeting- January 30, 2022 on 01-30-22.

K. Staley seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

K. Ahmed Absent  
R. Gabler Aye  
G. Thackeray Aye  
K. Staley Aye  
C. Sutton Aye

C. Sutton made a motion to approve the minutes from Special Board Meeting- February 10, 2022 on 02-10-22.

K. Staley seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

K. Ahmed Absent  
R. Gabler Aye  
K. Staley Aye  
C. Sutton Aye  
G. Thackeray Aye

**III. Consent Items**

**A. DOJ Report**

Report presented by Joseph Thibodeaux. Nothing to report.

**B. Finance Reports**

K. Staley made a motion to Approve Finance Report.

C. Sutton seconded the motion.

Report presented by Carol Walker.

Releasing temp and placing Kelsey White into that position.

The board **VOTED** to approve the motion.

**Roll Call**

K. Ahmed Absent  
R. Gabler Aye  
G. Thackeray Aye  
C. Sutton Aye  
K. Staley Aye

**IV. Staff Reports**

**A. Executive Director Report**

Report presented by Dr. Sabrina Bow.

**B. Audit Findings Progress Report**

Audit findings progress report presented by Dr. Sabrina Bow.

**C. Director of Academics Report**

Directors of Academics Report was not given, but asked to be moved to next board meeting with and updated report.

**D. Staff Liaison Report**

Staff Liaison Report presenting by Jamie Waggoner.

## V. Governance

### A. Revised 2021-22 Board Meeting Calendar

G. Thackeray made a motion to Approve the Revised 2021-22 Board Meeting Calendar.

K. Staley seconded the motion.

The board **VOTED** to approve the motion.

#### Roll Call

K. Staley	Aye
K. Ahmed	Absent
G. Thackeray	Aye
R. Gabler	Aye
C. Sutton	Aye

### B. Removal and Appointment of Directors for Western Encore Properties, Inc.

K. Staley made a motion to The Removal and Appointment of Directors for Western Encore Properties, Inc.

C. Sutton seconded the motion.

The board **VOTED** to approve the motion.

#### Roll Call

C. Sutton	Aye
G. Thackeray	Aye
K. Staley	Aye
K. Ahmed	Absent
R. Gabler	Aye

## VI. Finance

### A. Ratification of Engagement Letter with Stifel

C. Sutton made a motion to Approve Ratification of Engagement Letter with Stifel.

G. Thackeray seconded the motion.

The board **VOTED** to approve the motion.

#### Roll Call

C. Sutton	Aye
K. Staley	Aye
G. Thackeray	Aye
K. Ahmed	Absent
R. Gabler	Aye

### B. January 2022 Financial Statements

G. Thackeray made a motion to Approve the January 2022 Financial Statements.

C. Sutton seconded the motion.

The board **VOTED** to approve the motion.

#### Roll Call

C. Sutton	Aye
K. Staley	Aye
G. Thackeray	Aye
K. Ahmed	Absent
R. Gabler	Aye

### C.

### **LCAP Supplemental Report**

K. Staley made a motion to Approve the LCAP Supplemental Report.  
C. Sutton seconded the motion.  
The board **VOTED** to approve the motion.

#### **Roll Call**

G. Thackeray Aye  
K. Ahmed Absent  
K. Staley Aye  
R. Gabler Aye  
C. Sutton Aye

## **VII. Adjourn to Closed Session**

### **A. Reconvene from closed session**

Reconvene from closed session at 9:52 pm. No action reportable.

## **VIII. Compensation Study**

### **A. Review and Adoption of Comparable Compensation Data for Charter School Executives**

The compensation Study will be moved to the March 7, 2022 board meeting's agenda

## **IX. Employment Agreement for Executive Director**

### **A. Review and Approval of Employment Agreement for Executive Director**

The compensation Study will be moved to the March 7, 2022 board meeting's agenda.

### **B. Oral Report of Executive Compensation Paid to the Executive Director**

The compensation Study will be moved to the March 7, 2022 board meeting's agenda.

## **X. Closing Items**

### **A. Adjourn Meeting**

G. Thackeray made a motion to Adjourn meeting.  
C. Sutton seconded the motion.  
The board **VOTED** to approve the motion.

#### **Roll Call**

C. Sutton Aye  
K. Staley Aye  
K. Ahmed Absent  
G. Thackeray Aye  
R. Gabler Aye

There being no further business to be transacted, and upon motion duly made, seconded and approved, the meeting was adjourned at 8:53 PM.

Respectfully Submitted,

J. Thibodeaux

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### **Documents used during the meeting**

- 2022\_01\_24\_board\_meeting\_minutes draft.pdf
- 2022\_01\_30\_board\_meeting\_minutes draft.pdf
- 2022\_02\_10\_board\_meeting\_minutes DRAFT.pdf
- 2022\_02\_19\_board\_meeting\_minutes DRAFT.pdf
- DOJ Report Feb 2022.pdf
- ENC 21-22 -Monthly Payroll Retirement Contributions FEB 2022.pdf
- ENCORE January 2022 Warrant Report Details.pdf
- ENCORE January 2022 Warrant Report Summary.pdf
- Director of Academics February 2022.pdf
- Fall 2021 - Winter 2022 Data Analysis Report.pdf
- Staff Liaison Report February 2022.pdf
- Revised Board Meeting Calendar 21-22.pdf
- Encore Stifel Engagement Letter (2-25-22) - signed.pdf
- Encore Financials Jan 2022\_Dist.pdf
- ENCORE LCAP Supplement February 2022.pdf
- LCAP SUPPLEMENT FEBRUARY 28, 2022 SLIDE DECK.pptx

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## Encore JR/SR High School

### Minutes

#### Regular Encore Board of Directors Meeting - March 2022

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**Date and Time**

Monday March 7, 2022 at 6:30 PM

**Location**

This meeting is being held virtually pursuant to Government Code Section 54953 (e). The public can access this meeting via Zoom as follows:

Join Zoom Meeting

<https://zoom.us/j/5871494303?pwd=Mit3eIRMOVhzYjM4K1d2SSStPeEZiQT09>

Meeting ID: 587 149 4303

Passcode: 936591

One tap mobile

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Dial by your location

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Meeting ID: 587 149 4303

Passcode: 936591

Find your local number: <https://zoom.us/u/aFccAHayh>

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**Directors Present**

---

C. Sutton (remote), G. Thackeray (remote), K. Staley (remote), R. Gabler (remote)

**Directors Absent**

K. Ahmed

**Guests Present**

C. Walker (remote), J. Barkdull (remote), J. Dolf (remote), J. Simmons (remote), J. Thibodeaux (remote), Jamie Waggoner (remote), Paul Khoury (remote), S. Bow (remote)

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**I. Opening Items**

**A. Call the Meeting to Order**

R. Gabler called a meeting of the board of directors of Encore JR/SR High School to order on Monday Mar 7, 2022 at 6:34 PM.

**B. Record Attendance**

**C. Approval of Board Findings Relating to Teleconference Meetings During State of Emergency**

G. Thackeray made a motion to Approve of Board Findings Relating to Teleconference Meetings During State of Emergency.

C. Sutton seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

G. Thackeray	Aye
C. Sutton	Aye
R. Gabler	Aye
K. Ahmed	Absent
K. Staley	Aye

**D. Public Comment**

no one for the public to address the board.

**II. Approval of Board Meeting Minutes**

**A. Approve Minutes**

Board meeting minutes for February 19 & February 28 will be moved to the next board meeting with revisions.

**III. Consent Items**

**A. DOJ Report**

Report presented by Joseph Thibodeaux

**B. Finance Reports**

G. Thackeray made a motion to Approve Finance Report.

C. Sutton seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

G. Thackeray Aye  
R. Gabler Aye  
C. Sutton Aye  
K. Staley Aye  
K. Ahmed Absent

**IV. Staff Reports**

**A. Executive Director Report**

Report presented by Dr. Sabrina Bow.

**B. Director of Academics Report**

Report presented by Julia Dolf.

**C. IT Management Report**

Report presented by Jim Barkdull.

**V. Finance**

**A. Second Interim Budget**

C. Sutton made a motion to Approve Second Interim Budget.

K. Staley seconded the motion.

Report presented by Paul Khoury.

The board **VOTED** to approve the motion.

**Roll Call**

G. Thackeray Aye  
K. Staley Aye  
R. Gabler Aye  
C. Sutton Aye  
K. Ahmed Absent

**B. Encore's Phone System**

G. Thackeray made a motion to Approve to putting Encore's old Phone system on public auction.

K. Staley seconded the motion.

Report presented by Jim Barkdull.

The board **VOTED** to approve the motion.

**Roll Call**

G. Thackeray Aye  
R. Gabler Aye  
K. Staley Aye  
K. Ahmed Absent  
C. Sutton Aye

**VI. Governance**

**A. Election of Officers for Encore Education Corporation**

G. Thackeray made a motion to Approve Election of Officers for Encore Education Corporation.



K. Staley seconded the motion.  
The board **VOTED** to approve the motion.

**Roll Call**

G. Thackeray	Aye
K. Ahmed	Absent
R. Gabler	Aye
C. Sutton	Aye
K. Staley	Aye

**B. Appointment of Directors to Western Encore Properties, Inc.**

Counsel's recommend that we move this to the next meeting when there are names to vote on.

Look to find documentation on the previous Directors to Western Encore Properties, Inc.

Dr. Bow will provide Mr. Thackeray with memo detailing the relationship of the different entities.

**VII. Adjourn to Closed Session**

**A. Reconvene from closed session**

G. Thackeray made a motion to Authorize an offer of employment for Executive Director.

C. Sutton seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

R. Gabler	Aye
C. Sutton	Aye
K. Staley	Aye
K. Ahmed	Absent
G. Thackeray	Aye

**VIII. Compensation Study**

**A. Review and Adoption of Comparable Compensation Data for Charter School Executives**

Section VIII has been moved to a future board meeting.

**IX. Employment Agreement for Executive Director**

**A. Review and Approval of Employment Agreement for Executive Director**

Section IX part A has been moved to a future board meeting.

**B. Oral Report of Executive Compensation Paid to the Executive Director**

Section IX part B has been moved to a future board meeting.

**X. Closing Items**

**A. Adjourn Meeting**

C. Sutton made a motion to Adjourn meeting.

K. Staley seconded the motion.  
The board **VOTED** to approve the motion.

**Roll Call**

R. Gabler Aye  
K. Staley Aye  
C. Sutton Aye  
K. Ahmed Absent  
G. Thackeray Aye

There being no further business to be transacted, and upon motion duly made, seconded and approved, the meeting was adjourned at 9:32 PM.

Respectfully Submitted,  
J. Thibodeaux

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**Documents used during the meeting**

- 2022\_02\_19\_board\_meeting\_minutes REVISED.pdf
- DOJ Report Joseph Thibodeaux February 2022.pdf
- ENCORE February 2022 Warrant Report Details.pdf
- ENCORE February 2022 Warrant Report Summary.pdf
- Feb STRS,PERS,403b.pdf
- Executive Director Board Report 2022-03-07.pdf
- Director\_of\_Academics\_March\_2022.pdf
- Fall\_2021\_-\_Winter\_2022\_Data\_Analysis\_Report March 2022.pdf
- Mar 2022 IT Board Report.pdf
- Encore 2nd Interim budget presentation.pptx
- Encore HS 2021-22 SIB (FINAL 3-4-22).pdf

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## Encore JR/SR High School

### Minutes

#### Special Board Meeting- March 11, 2022

**Date and Time**

Friday March 11, 2022 at 3:30 PM

**Location**

This meeting is being held virtually pursuant to Government Code Section 54953 (e). The public can access this meeting via Zoom as follows:

Join Zoom Meeting

<https://zoom.us/j/5871494303?pwd=Mit3eIRMOVhzYjM4K1d2SSStPeEZiQT09>

Meeting ID: 587 149 4303

Passcode: 936591

One tap mobile

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Dial by your location

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+1 301 715 8592 US (Washington D.C)

Meeting ID: 587 149 4303

Passcode: 936591

Find your local number: <https://zoom.us/u/aFccAHayh>

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**Directors Present**

C. Sutton (remote), K. Staley (remote), R. Gabler (remote)

**Directors Absent**

K. Ahmed

**Guests Present**

J. Barkdull (remote), J. Simmons (remote), S. Bow (remote)

---

**I. Opening Items**

**A. Call the Meeting to Order**

R. Gabler called a meeting of the board of directors of Encore JR/SR High School to order on Friday Mar 11, 2022 at 3:30 PM.

**B. Record Attendance**

**C. Invitation for public to address the Board**

No members of the public requested to make comment.

**II. Finance**

**A. Revised Second Interim Budget**

Paul Khoury of DMS presented the revised Second Interim Budget for 2021-22. Mr. Khoury described the revisions in the areas of:

1. Beginning fund balance
2. Cash flow infusion of \$1.4M in May 2022 and anticipated repayment during the 2022-23 year
3. EPA and LCFF funding amounts for 2021-22 year

Additionally, Mr. Khoury highlighted the overall staffing cuts to be made in the 2022-23 and 2023-24 year as part of the Second Interim Multi-Year View.

C. Sutton made a motion to accept the revised Second Interim Budget as presented.

K. Staley seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

R. Gabler Aye

K. Staley Aye

K. Ahmed Absent

C. Sutton Aye

**III. Governance**

**A. Revised Board Meeting Calendar for 2021-22**

C. Sutton made a motion to approve the approve the revised board meeting calendar for 2021-22 as presented.

K. Staley seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

C. Sutton Aye  
K. Ahmed Absent  
K. Staley Aye  
R. Gabler Aye

**IV. Adjourn to Closed Session**

**A. Reconvene from Closed Session**

Mr. Gabler reported out the action taken in closed session as described below.  
C. Sutton made a motion to direct to legal counsel on a matter of anticipated litigation.  
K. Staley seconded the motion.  
The board **VOTED** to approve the motion.

**Roll Call**

C. Sutton Aye  
K. Staley Aye  
K. Ahmed Absent  
R. Gabler Aye

**V. Closing Items**

**A. Adjourn Meeting**

K. Staley made a motion to adjourn the meeting.  
C. Sutton seconded the motion.  
The board **VOTED** to approve the motion.

**Roll Call**

C. Sutton Aye  
K. Ahmed Absent  
K. Staley Aye  
R. Gabler Aye

There being no further business to be transacted, and upon motion duly made, seconded and approved, the meeting was adjourned at 4:25 PM.

Respectfully Submitted,  
S. Bow

---

**Documents used during the meeting**

- 2021-22 Second Interim Budget Alt form - Encore High School (REVISED 2022-03-10).xlsx
- Encore 2nd Interim Budget Revision slide deck 2022-03-11.pdf
- Revised Board Meeting Calendar 21-22 (2022-03-01).pdf

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## Encore JR/SR High School

### Minutes

#### Regular Meeting: Encore Board of Directors

---

##### **Date and Time**

Monday March 14, 2022 at 6:30 PM

##### **Location**

This meeting is being held virtually pursuant to Government Code Section 54953 (e). The public can access this meeting via Zoom as follows:

Join Zoom Meeting

<https://zoom.us/j/5871494303?pwd=Mit3eIRMOVhzYjM4K1d2SSStPeEZiQT09>

Meeting ID: [587 149 4303](#)

Passcode: 936591

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Dial by your location

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[+1 253 215 8782](tel:+12532158782) US (Tacoma)

[+1 312 626 6799](tel:+13126266799) US (Chicago)

[+1 929 205 6099](tel:+19292056099) US (New York)

[+1 301 715 8592](tel:+13017158592) US (Washington D.C)

Meeting ID: [587 149 4303](#)

Passcode: 936591

Find your local number: <https://zoom.us/u/aFccAHayh>

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##### **Directors Present**

---

C. Sutton (remote), K. Ahmed (remote), K. Staley (remote), R. Gabler (remote)

**Directors Absent**

*None*

**Guests Present**

J. Barkdull (remote), J. Simmons (remote), J. Thibodeaux (remote), S. Bow (remote)

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**I. Opening Items**

**A. Call the Meeting to Order**

R. Gabler called a meeting of the board of directors of Encore JR/SR High School to order on Monday Mar 14, 2022 at 6:35 PM.

**B. Record Attendance**

**C. Public Comment**

**II. Compensation Study**

**A. Review and Adoption of Comparable Compensation Data for Charter School Executives**

C. Sutton made a motion to Review and Adoption of Comparable Compensation Data for Charter School Executives.

K. Ahmed seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

C. Sutton Aye

K. Ahmed Aye

K. Staley Aye

R. Gabler Aye

**III. Employment Agreement for Executive Director**

**A. Review and Approval of Employment Agreement for Executive Director**

K. Ahmed made a motion to Approve Employment Agreement for Executive Director.

C. Sutton seconded the motion.

As to the next item regarding approval of the Executive Director employment agreement, I am required by law to indicate, prior to any vote on the employment contract, that the contract is for a **fixed term agreement** beginning **March 15, 2022 and ending June 30, 2024**, and provides the following terms:

1. A full-time work schedule consisting of a Monday through Friday workweek;
2. A base salary of \$15,200 per month **through June 30, 2022. On July 1, 2022, the base salary shall increase to \$15,600 per month**
3. Five days of paid sick leave per year.



I would also note that the annual salary is in keeping with the compensation comparability study the Board has reviewed and approved.”  
The board **VOTED** to approve the motion.

**Roll Call**

K. Staley Aye  
C. Sutton Aye  
K. Ahmed Aye  
R. Gabler Aye

**B. Oral Report of Executive Compensation Paid to the Executive Director**

C. Sutton made a motion to Approve Oral Report of Executive Compensation Paid to the Executive Director.

K. Staley seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

R. Gabler Aye  
C. Sutton Aye  
K. Ahmed Aye  
K. Staley Aye

**IV. Closing Items**

**A. Adjourn Meeting**

K. Ahmed made a motion to Adjourn Meeting.

K. Staley seconded the motion.

The board **VOTED** to approve the motion.

**Roll Call**

K. Staley Aye  
R. Gabler Aye  
C. Sutton Aye  
K. Ahmed Aye

There being no further business to be transacted, and upon motion duly made, seconded and approved, the meeting was adjourned at 6:43 PM.

Respectfully Submitted,  
J. Thibodeaux

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**Documents used during the meeting**

- Compensation Survey Encore Education Corp CEO February 2022.pdf
- Fixed Term Admin Agreement EEC and S. Bow 3.9.22 (4891-5699-3300.v1).pdf

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## Encore JR/SR High School

### Minutes

#### Special Meeting: Encore Board of Directors

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##### Date and Time

Sunday March 27, 2022 at 6:30 PM

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The Order of Business may be changed without notice: Notice is hereby given that the order of consideration of matters on this agenda may be changed without prior notice. Reasonable Limitations May be placed on public testimony: The Governing Board's presiding officer reserves the right to impose reasonable time limits on public testimony to ensure that the agenda is completed. For any person requiring a translator, this time will be doubled to account for translation time. Reasonable Accommodation for any individual with a Disability: Pursuant to the Rehabilitation Act of 1973, any individual with a disability who requires reasonable accommodation to attend or to participate in this meeting of the Governing board may request assistance by contacting Sabrina Bow at [\(760\) 956-3800](tel:7609563800). Public Documents relating to Open Session Agenda items are available for review by the public at the Reception Desk at Encore Education Corporation's Executive office or on the internet at [www.encorehighschool.com](http://www.encorehighschool.com). For more information concerning this agenda, please contact Sabrina Bow at [\(760\) 956-3800](tel:7609563800).

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Passcode: 936591

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[+1 312 626 6799](tel:+13126266799) US (Chicago)

[+1 929 205 6099](tel:+19292056099) US (New York)

[+1 301 715 8592](tel:+13017158592) US (Washington D.C)

Meeting ID: [587 149 4303](https://zoom.us/j/5871494303)

Passcode: 936591

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### **Directors Present**

C. Sutton (remote), K. Staley (remote), R. Gabler (remote)

### **Directors Absent**

K. Ahmed

### **Guests Present**

J. Barkdull (remote), S. Bow (remote)

---

## **I. Opening Items**

### **A. Call the Meeting to Order**

Meeting called to order at 6:36 p.m.

R. Gabler called a meeting of the board of directors of Encore JR/SR High School to order on Sunday Mar 27, 2022 at 6:36 PM.

### **B. Record Attendance**

### **C. Invitation for public to address the Board**

No members of the public requested to make comment.

## **II. Finance**

### **A. Promissory Note with Delta Managed Solutions (DMS)**

C. Sutton made a motion to approve the \$200,000 promissory note with Delta Managed Solutions.

K. Staley seconded the motion.

Dr. Bow presented the Debt Management policy as cited in the Fiscal Procedures manual, the current cash flow projections through June 2022 which show loan proceeds and repayment, and the promissory note. DMS CEO Joanne Fountain provided comment regarding the strong communication and planning between DMS staff and Encore staff.

The board **VOTED** to approve the motion.

**Roll Call**

C. Sutton Aye  
K. Staley Aye  
R. Gabler Aye  
K. Ahmed Absent

**III. Closing Items**

**A. Adjourn Meeting**

There being no further business to be transacted, and upon motion duly made, seconded and approved, the meeting was adjourned at 6:50 PM.

Respectfully Submitted,  
S. Bow

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**Documents used during the meeting**

- DMS Promissory Note 2022-03-28.pdf
- ENCORE Fiscal Procedures Manual (last updated April 2018).pdf
- Encore Cash Flow March-June 2022.pdf

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# Coversheet

## DOJ Report

**Section:** V. Consent Items  
**Item:** B. DOJ Report  
**Purpose:** FYI  
**Submitted by:** Joseph Thibodeaux  
**Related Material:** DOJ Report Joseph Thibodeaux March 2022.pdf

### BACKGROUND:

Report outlining background checks from the Department of Justice.

### RECOMMENDATION:

There is no action required for this report.



## **Human Resources:**

### **D.O.J. Reporting – March 2022**

#### **Completed and Cleared Live Scans**

35877 - 03/29/2022 - Cleared

35878 - 03/31/2022 - Cleared

**Subsequent Arrest/Disposition Notices: None**

# Coversheet

## Finance Reports

**Section:** V. Consent Items  
**Item:** C. Finance Reports  
**Purpose:** Vote  
**Submitted by:** Carol Walker  
**Related Material:** ENCORE March 2022 Warrant Report Details.pdf  
ENCORE March 2022 Warrant Report Summary.pdf  
STRS,PERS, 403B Payments April 2022.pdf

### BACKGROUND:

1. STRS payment report, PERS payment report, 403B payment report
2. March 2022 Warrant Report Detail
3. March 2022 Warrant Report Summary
4. Employee Reimbursements

### RECOMMENDATION:

Encore staff recommends approval of these items.



**ENCORE HIGH SCHOOLS**  
**WARRANT REGISTER: March 2022**

Check Number	Check Date	Payee	Reason	Sum of Amount
70333	3/2/2022	Cintas	Janitorial Supplies	\$1,257.87
<b>70333 Total</b>				<b>\$1,257.87</b>
70334	3/2/2022	True Liberty Protection	Late Fee for Invoice #5	\$100.00
			Late Fee for Invoice #5 and #6	\$100.00
			Late Fee for Invoice #5, #6 and #7	\$100.00
			Late Fee for Invoice #6, #7 and #8	\$200.00
<b>70334 Total</b>				<b>\$500.00</b>
70338	3/3/2022	PresenceLearning, Inc.	November 2021 Sped Services	\$6,928.50
<b>70338 Total</b>				<b>\$6,928.50</b>
70415	3/7/2022	Ebmeyer Charter	20-21 Bus Services - 4	\$15,000.00
<b>70415 Total</b>				<b>\$15,000.00</b>
70419	3/10/2022	Ebmeyer Charter	20-21 Bus Services - 4	\$15,000.00
<b>70419 Total</b>				<b>\$15,000.00</b>
70420	3/10/2022	Gaines & Gaines, APLC, Client's Trust Account	March 2022 H&K	\$0.00
<b>70420 Total</b>				<b>\$0.00</b>
70421	3/15/2022	Gaines & Gaines, APLC, Client's Trust Account	March 2022 H&K	\$62,500.00
<b>70421 Total</b>				<b>\$62,500.00</b>
70422	3/18/2022	PresenceLearning, Inc.	December 2021 Sped Services	\$5,000.00
<b>70422 Total</b>				<b>\$5,000.00</b>
70426	3/25/2022	Ebmeyer Charter	20-21 Bus Services - 4	\$15,000.00
<b>70426 Total</b>				<b>\$15,000.00</b>
70427	3/25/2022	Ebmeyer Charter	20-21 Bus Services - 4	\$5,610.00
			21-22 Bus Services - 5	\$9,390.00
<b>70427 Total</b>				<b>\$15,000.00</b>
70436	3/29/2022	Ebmeyer Charter	4-2-2022 Magic Mountain Field Trip	\$1,916.20
<b>70436 Total</b>				<b>\$1,916.20</b>
70437	3/30/2022	Lancaster Museum & Public Art Foundation	Student tour at the Lancaster Museum of Art and History	\$42.00
<b>70437 Total</b>				<b>\$42.00</b>
70438	3/31/2022	Alejandra Gomar	Lunch per diem for the art field trip on 4-2-22	\$11.00
<b>70438 Total</b>				<b>\$11.00</b>
70439	3/31/2022	Alexandria Legumina	Lunch & Dinner per diem for field trip on 4-2-22	\$34.00
<b>70439 Total</b>				<b>\$34.00</b>
70440	3/31/2022	Erin Newman	Lunch & Dinner per diem for field trip on 4-2-22	\$34.00
<b>70440 Total</b>				<b>\$34.00</b>
70441	3/31/2022	Haley Sanderson	Lunch & Dinner per diem for field trip on 4-2-22	\$34.00
<b>70441 Total</b>				<b>\$34.00</b>
70442	3/31/2022	James Quigg	Lunch per diem for the art field trip on 4-2-22	\$11.00
<b>70442 Total</b>				<b>\$11.00</b>
70443	3/31/2022	Jayleen Hill Gibson	Lunch & Dinner per diem for field trip on 4-2-22	\$34.00
<b>70443 Total</b>				<b>\$34.00</b>
70444	3/31/2022	Kaitlyn Pedersen	Lunch & Dinner per diem for field trip on 4-2-22	\$34.00
<b>70444 Total</b>				<b>\$34.00</b>
70445	3/31/2022	Taylor Miles	Lunch & Dinner per diem for field trip on 4-2-22	\$34.00
<b>70445 Total</b>				<b>\$34.00</b>

**ENCORE HIGH SCHOOLS  
WARRANT REGISTER: March 2022**

Check Number	Check Date	Payee	Reason	Sum of Amount
0322-001	3/10/2022	US Premium Finance	Insurance installment #6	\$12,706.85
<b>0322-001 Total</b>				<b>\$12,706.85</b>
0322-002	3/10/2022	US Premium Finance	Insurance instalment #7	\$5,451.23
<b>0322-002 Total</b>				<b>\$5,451.23</b>
0322-003	3/25/2022	Frontier	January 2022 Internet Service	\$7,013.81
<b>0322-003 Total</b>				<b>\$7,013.81</b>
0322-004	3/25/2022	IPFS CORPORATION OF CALIFORNIA	1st Installment	\$7,103.16
<b>0322-004 Total</b>				<b>\$7,103.16</b>
0322-005	3/25/2022	US Premium Finance	Insurance installment #6	\$3,206.78
<b>0322-005 Total</b>				<b>\$3,206.78</b>
0322-006	3/25/2022	US Premium Finance	Insurance installment #7	\$12,087.71
<b>0322-006 Total</b>				<b>\$12,087.71</b>
0322-007	3/25/2022	US Premium Finance	Insurance instalment #8	\$5,191.89
<b>0322-007 Total</b>				<b>\$5,191.89</b>
0322-008	3/25/2022	US Premium Finance	Insurance installment #4	\$8,365.67
<b>0322-008 Total</b>				<b>\$8,365.67</b>
0322-009	3/30/2022	WELLS FARGO BUSINESS CARD	January 2022 CC Statement	\$3,000.00
<b>0322-009 Total</b>				<b>\$3,000.00</b>
0322-203	3/11/2022	Wells Fargo Bank Service Fee	Feb 2022 Client Analysis Service Charge	\$426.29
<b>0322-203 Total</b>				<b>\$426.29</b>
0322-204	3/22/2022	Fonality - NetFortis	Fonality monthly payment for phone service	\$1,296.82
<b>0322-204 Total</b>				<b>\$1,296.82</b>
0322-205	3/28/2022	UMB Bank	Hesperia Rent	\$82,342.81
<b>0322-205 Total</b>				<b>\$82,342.81</b>
0322-206	3/16/2022	Wells Fargo Bank Service Fee	BANKCRD CCDISCOUNT	\$170.52
<b>0322-206 Total</b>				<b>\$170.52</b>
<b>Grand Total</b>				<b>\$286,734.11</b>

**ENCORE JUNIOR/SENIOR HIGH SCHOOL  
WARRANT REGISTER: March 2022**

Check Number	Check Date	Payee	Sum of Amount
0322-001	3/10/2022	US Premium Finance	\$12,706.85
0322-002	3/10/2022	US Premium Finance	\$5,451.23
0322-003	3/25/2022	Frontier	\$7,013.81
0322-004	3/25/2022	IPFS CORPORATION OF CALIFORNIA	\$7,103.16
0322-005	3/25/2022	US Premium Finance	\$3,206.78
0322-006	3/25/2022	US Premium Finance	\$12,087.71
0322-007	3/25/2022	US Premium Finance	\$5,191.89
0322-008	3/25/2022	US Premium Finance	\$8,365.67
0322-009	3/30/2022	WELLS FARGO BUSINESS CARD	\$3,000.00
0322-203	3/11/2022	Wells Fargo Bank Service Fee	\$426.29
0322-204	3/22/2022	Fonality - NetFortis	\$1,296.82
0322-205	3/28/2022	UMB Bank	\$82,342.81
0322-206	3/16/2022	Wells Fargo Bank Service Fee	\$170.52
70333	3/2/2022	Cintas	\$1,257.87
70334	3/2/2022	True Liberty Protection	\$500.00
70338	3/3/2022	PresenceLearning, Inc.	\$6,928.50
70415	3/7/2022	Ebmeyer Charter	\$15,000.00
70419	3/10/2022	Ebmeyer Charter	\$15,000.00
70420	3/10/2022	Gaines & Gaines, APLC, Client's Trust Account	\$0.00
70421	3/15/2022	Gaines & Gaines, APLC, Client's Trust Account	\$62,500.00
70422	3/18/2022	PresenceLearning, Inc.	\$5,000.00
70426	3/25/2022	Ebmeyer Charter	\$15,000.00
70427	3/25/2022	Ebmeyer Charter	\$15,000.00
70436	3/29/2022	Ebmeyer Charter	\$1,916.20
70437	3/30/2022	Lancaster Museum & Public Art Foundation	\$42.00
70438	3/31/2022	Alejandra Gomar	\$11.00
70439	3/31/2022	Alexandria Legumina	\$34.00
70440	3/31/2022	Erin Newman	\$34.00
70441	3/31/2022	Haley Sanderson	\$34.00
70442	3/31/2022	James Quigg	\$11.00
70443	3/31/2022	Jayleen Hill Gibson	\$34.00
70444	3/31/2022	Kaitlyn Pedersen	\$34.00
70445	3/31/2022	Taylor Miles	\$34.00
<b>Grand Total</b>			<b>\$286,734.11</b>

Hesperia Payroll Month	STRS/PERS Payment Due Date	PERS Ck Payment Date	PERS Ck Number	PERS Ck Date Cleared	STRS CK Number	STRS CK Date Cleared	403B Check number	Due Date based on regular rules, not safe harbor	Payment Date	Date Cleared	
July	15th of the month	7/23/2021	69736	7/26/2021	69736	7/26/2021	69714	7/13/2021	7/8/2021	7/14/2021	-5
July	31th of the month	8/6/2021	69753	8/10/2021	69753	8/10/2021	69735	7/28/2021	7/23/2021	7/28/2021	-5
Aug-21	15th of the month	8/24/2021	69851	8/27/2021	69851	8/27/2021	69752	8/13/2021	8/6/2021	8/11/2021	-7
Aug-21	31th of the month	9/9/2021	69877	9/10/2021	69877	9/10/2021	69850	8/28/2021	8/24/2021	8/27/2021	-4
Sep-21	15th of the month	9/24/2021	69943	9/30/2021	69943	9/30/2021	69876	9/13/2021	9/9/2021	9/15/2021	-4
Sep-21	31th of the month	10/7/2021	69993	10/8/2021	69993	10/8/2021	69942	9/28/2021	9/24/2021	9/29/2021	-4
Oct-21	15th of the month	10/22/2021	70005	10/25/2021	70005	10/25/2021	69992	10/13/2021	10/7/2021	10/14/2021	-6
Oct-21	31th of the month	11/8/2021	70084	11/10/2021	70084	11/10/2021	70004	10/28/2021	10/22/2021	11/10/2021	-6
Nov-21	15th of the month	11/23/2021	70120	12/1/2021	70120	12/1/2021	70086	11/13/2021	11/9/2021	11/29/2021	-4
Nov-21	31th of the month	12/8/2021	70164	12/10/2021	70164	12/10/2021	70119	11/28/2021	11/23/2021	12/16/2021	-5
Dec-21	15th of the month	12/22/2021	70202	1/4/2022	70202	1/4/2022	70163	12/13/2021	12/8/2021	12/20/2021	-5
Dec-21	31th of the month	1/10/2022	70259	1/11/2022	70259	1/11/2022	70201	12/28/2021	12/22/2021	1/10/2021	-6
Jan-22	15th of the month	1/24/2022	70265	1/27/2022	70265	1/27/2022	70258	1/13/2022	1/10/2022	1/21/2022	-3
Jan-22	31th of the month	2/7/2022	70300	2/8/2022	70300	2/8/2022	70264	1/28/2022	1/24/2022	1/31/2022	-4
Feb-22	15th of the month	2/28/2022	70331	3/1/2022	70331	3/1/2022	70299	2/13/2022	2/7/2022	2/16/2022	-6
Feb-22	31th of the month	3/9/2022	70417	3/10/2022	70417	3/10/2022	70330	2/28/2022	2/28/2022	3/7/2022	0
Mar-22	15th of the month	3/25/2022	70429	4/4/2022	70429	4/4/2022	70416	3/13/2022	3/9/2022	3/15/2022	-4
Mar-22	31th of the month	4/7/2022	70502	4/8/2022	70502	4/8/2022	70428	3/28/2022	3/25/2022	3/29/2022	-3
Apr-22	15th of the month						70501	4/13/2022	4/7/2022	4/12/2022	-6

Hesperia Contributions to PERS & STRS: Due date is the 5th business date of the month

To note, the payroll for 7/24 and 8/10 paid July payroll; 8/25 and 9/10 paid August payroll; 9/25 and 10/9 will pay Sept payroll

Contributions to 403b

The DOL rule is somewhat gray. It states that:

An employer is required to deposit your money into your retirement account as soon as the employee assets can be reasonably segregated from employer assets, but no later than 15 business days of the month following the month in which the payroll deduction occurred.

Based on fact patterns in DOL plan audits and other published commentary, some considerations are as follows:

- For plans with fewer than 100 participants, the DOL finalized regulations on January 14, 2010 which establishes a "safe harbor" of 7 business days following the payroll deduction date. Depositing employee 401K and 403b payroll deduction funds will be considered timely if this 7 day "safe harbor" test is met; and
- No safe harbor time period exists for plans with 100 or more employee-participants. Commentary does exist that suggests funding the retirement plan by due date of an employer's Form 941 tax deposit will be considered timely (which for large employers is the next day after payroll).

STRS 95% by 5th business day; remainder by 15th

100% of payroll makes up 95% for charter and districts

PERS - 15 days 95%; remainder by end of month