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**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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**TABLE OF CONTENTS**

**Page**

ARTICLE I DEFINITIONS 2

SECTION 1.01. Definitions 2

SECTION 1.02. Content of Certificates and Opinions 13

SECTION 1.03. Article and Section Headings and References 14

SECTION 1.04. Construction 14

ARTICLE II THE BONDS 14

SECTION 2.01. Authorization of Bonds 14

SECTION 2.02. Terms of Bonds 14

SECTION 2.03. Restrictions on Registration and Transfer of the Bonds 15

SECTION 2.04. Execution of Bonds 16

SECTION 2.05. Transfer of Bonds 16

SECTION 2.06. Exchange of Bonds 16

SECTION 2.07. Bond Register 16

SECTION 2.08. Temporary Bonds 17

SECTION 2.09. Bonds Mutilated, Lost, Destroyed or Stolen 17

SECTION 2.10. Use of Depository 17

SECTION 2.11. Validity of Bonds 18

ARTICLE III ISSUANCE OF BONDS; ESTABLISHMENT OF CERTAIN FUNDS AND
APPLICATION OF PROCEEDS 19

SECTION 3.01. Authentication and Delivery of Bonds 19

SECTION 3.02. Application of Proceeds of Bonds and Certain Other Moneys 19

ARTICLE IV REDEMPTION OF THE BONDS 20

SECTION 4.01. Special Redemption 20

SECTION 4.02. Optional Redemption 20

SECTION 4.03. Mandatory Sinking Account Redemption 20

SECTION 4.04. Notice of Redemption 20

SECTION 4.05. Effect of Notice 22

SECTION 4.06. Right to Rescind Notice 22

SECTION 4.07. Funds for Redemption 22

SECTION 4.08. Selection of Bonds for Redemption 23

ARTICLE V PLEDGE AND ASSIGNMENT; ESTABLISHMENT AND APPLICATION OF FUNDS
AND ACCOUNTS 23

SECTION 5.01. Pledge and Assignment 23

SECTION 5.02. Allocation of Revenues 24

SECTION 5.03. Application of Interest Account 25

SECTION 5.04. Application of Principal Account 25

SECTION 5.05. Application of Reserve Account 26

SECTION 5.06. Establishment and Application of Redemption Fund 27

SECTION 5.07. [Reserved.] 27

SECTION 5.08. Establishment and Application of Working Capital Fund 27

SECTION 5.09. Establishment and Application of Costs of Issuance Fund; Insurance and Condemnation Proceeds Fund 27

SECTION 5.10. Establishment and Application of the Administration Fund 28

SECTION 5.11. Investment of Moneys in Funds and Accounts 28

SECTION 5.12. Amounts Remaining in Funds and Accounts 29

ARTICLE VI COVENANTS 29

SECTION 6.01. Punctual Payment 29

SECTION 6.02. Extension of Payment of Bonds 29

SECTION 6.03. Encumbrance Upon Payments 29

SECTION 6.04. Power to Issue Bonds and Make Pledge and Assignment 29

SECTION 6.05. Accounting Records and Financial Statements 30

SECTION 6.06. Other Covenants; Amendment of the Loan Agreement and the Lease 30

SECTION 6.07. Further Assurances 31

SECTION 6.08. Continuing Disclosure 31

ARTICLE VII EVENTS OF DEFAULT; REMEDIES ON DEFAULT 31

SECTION 7.01. Events of Default; Waiver of Default 31

SECTION 7.02. Institution of Legal Proceedings by Bond Trustee 31

SECTION 7.03. Application of Moneys Collected by Trustee 32

SECTION 7.04. Effect of Delay or Omission to Pursue Remedy 33

SECTION 7.05. Remedies Cumulative 33

SECTION 7.06. Covenant to Pay Bonds in Event of Default 33

SECTION 7.07. Trustee Appointed Agent for Bondholders 33

SECTION 7.08. Power of Bond Trustee to Control Proceedings 34

SECTION 7.09. Limitation on Bondholders’ Right to Sue 34

SECTION 7.10. Retained Authority Rights 34

ARTICLE VIII THE BOND TRUSTEE 35

SECTION 8.01. Duties, Immunities and Liabilities of Trustee 35

SECTION 8.02. Merger or Consolidation 36

SECTION 8.03. Rights of Bond Trustee 36

SECTION 8.04. Right of Bond Trustee to Rely on Documents 39

SECTION 8.05. Preservation and Inspection of Documents 39

SECTION 8.06. Compensation and Indemnification of Bond Trustee 39

ARTICLE IX MODIFICATION OF INDENTURE 40

SECTION 9.01. Modification without Consent of Bondholders 40

SECTION 9.02. Modification with Consent of Bondholders 41

SECTION 9.03. Effect of Supplemental Indenture 41

SECTION 9.04. Opinion of Counsel as to Supplemental Indenture 42

SECTION 9.05. Notation of Modification on Bonds; Preparation of New Bonds 42

ARTICLE X DEFEASANCE 42

SECTION 10.01. Discharge of Indenture 42

SECTION 10.02. Discharge of Liability on Bonds 43

SECTION 10.03. Deposit of Money or Securities with Bond Trustee 43

SECTION 10.04. Payment of Bonds after Discharge of Indenture 43

ARTICLE XI MISCELLANEOUS 44

SECTION 11.01. Liability of Authority Limited to Payments 44

SECTION 11.02. Successor Is Deemed Included in All References to Predecessor 45

SECTION 11.03. Limitation of Rights to Parties, Borrower and Bondholders 45

SECTION 11.04. Waiver of Notice 45

SECTION 11.05. Destruction of Bonds 45

SECTION 11.06. Severability of Invalid Provisions 46

SECTION 11.07. Notices 46

SECTION 11.08. Evidence of Rights of Bondholders 46

SECTION 11.09. Disqualified Bonds 47

SECTION 11.10. Money Held for Particular Bonds 47

SECTION 11.11. Funds and Accounts 47

SECTION 11.12. Waiver of Personal Liability 48

SECTION 11.13. Execution in Several Counterparts and Electronic Execution 48

SECTION 11.14. Governing Law; Venue 48

SECTION 11.15. Complete Agreement 48

SECTION 11.16. Action to be Taken on Days Other Than Business Days 48

SECTION 11.17. Third Party Beneficiaries 48

EXHIBIT A FORM OF BONDS A-1

EXHIBIT B FORM OF REQUISITION FROM THE WORKING CAPITAL FUND B-1

EXHIBIT C FORM OF INVESTOR LETTER C-1

**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”).

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

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

**WHEREAS**, the Authority 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:

# DEFINITIONS

## **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:

##### 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;

##### 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;

##### 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;

##### 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;

##### 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;

##### 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;

##### 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;

##### 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;

##### 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;

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

##### 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;

##### 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;

##### 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;

##### the State of California’s Pooled Money Investment Account; and

##### 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.

## **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.

## **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.

## **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.

# THE BONDS

## **Authorization of Bonds**.  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.

### 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.

## **Terms of Bonds**.

### *Terms of the Bonds*.

#### 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.

#### 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:

|  |  | ***Interest Rate*** |
| --- | --- | --- |
| ***Year(June 1)*** | ***PrincipalAmount*** | ***Date of Issuance to June 30, 2026*** | ***July 1, 2026 to June 30, 2028*** | ***July 1, 2028 and thereafter*** |
|  |  | 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.

### *General Terms of the Bonds*.

#### 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.

#### 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.

## **Restrictions on Registration and Transfer of the Bonds**.  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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **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.

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

### 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:

#### 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;

#### 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

#### 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.

### 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.

### 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.

### 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.

### 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.

## **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.

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

## **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.

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

### 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 $\_\_\_\_\_\_\_\_\_\_\_\_\_).

### 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.

### 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 |  |  |

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

# REDEMPTION OF THE BONDS

## **Special Redemption**.

### **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.

### **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.

## **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.

## **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.

## **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:

### the date of such notice;

### the name of the Bonds and the date of issue of the Bonds;

### the redemption date;

### the redemption price;

### the dates of maturity of the Bonds to be redeemed;

### 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;

### 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;

### the CUSIP number, if any, of each maturity of Bonds to be redeemed;

### 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;

### 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;

### a statement that any such redemption notice can be rescinded as provided in the Indenture; and

### 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.

## **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.

## **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.

## **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.

## **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.

# PLEDGE AND ASSIGNMENT; ESTABLISHMENT AND APPLICATION OF FUNDSAND ACCOUNTS

## **Pledge and Assignment**.  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.

### 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.

### 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.

### 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.

## **Allocation of Revenues**. Promptly upon receipt, the Bond Trustee shall deposit the Payments to the Revenue Fund. On or before the 25th 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:

##### 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;

##### 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;

##### 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

##### 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.

## **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.

## **Application of Principal Account**.  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.

### 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.

### 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:

#### Term Bonds maturing on June 1, 20\_\_ that are issued in an initial principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_:

| ***Mandatory Redemption Date(June 1)*** | ***PrincipalAmount*** |
| --- | --- |
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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.

## **Application of Reserve Account**.  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.

### 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).

### 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.

## **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.

## **[Reserved.]**

## **Establishment and Application of Working Capital Fund**.  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.

## **Establishment and Application of Costs of Issuance Fund; Insurance and Condemnation Proceeds Fund**.  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.

### 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.

## **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.

## **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.

## **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.

# COVENANTS

## **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.

## **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.

## **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.

## **Power to Issue Bonds and Make Pledge and Assignment**.

### 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.

### 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.

### 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.

## **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.

## **Other Covenants; Amendment of the Loan Agreement and the Lease**.  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.

### 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.

### 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.

## **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.

## **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.

# EVENTS OF DEFAULT; REMEDIES ON DEFAULT

## **Events of Default; Waiver of Default**. If one or more of the following events (“Events of Default”) shall happen, that is to say-

### 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);

### 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;

### 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

### 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;

## **Institution of Legal Proceedings by Bond Trustee**.  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.

### 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.

### 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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **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.

# THE BOND TRUSTEE

## **Duties, Immunities and Liabilities of Trustee**.  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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### The Bond Trustee shall transfer the Authority Annual Fee, promptly upon receipt thereof from the Borrower, to the Authority at the Remittance Address.

## **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.

## **Rights of Bond Trustee**.  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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

## **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.

## **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.

## **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.

# MODIFICATION OF INDENTURE

## **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:

### 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;

### 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;

### 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;

### 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

### 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.

## **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.

## **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.

## **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.

## **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.

# DEFEASANCE

## **Discharge of Indenture**.  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:

#### 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;

#### 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

#### by delivering to the Bond Trustee, for cancellation by it, all Bonds Outstanding.

### 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.

## **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.

## **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:

### lawful money of the United States of America; or

### 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.

## **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.

# MISCELLANEOUS

## **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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **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

## **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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **Complete Agreement**. This Indenture represents the complete agreement between the parties with respect to the Bonds and related matters.

## **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.

## **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.

[REMAINDER OF PAGE LEFT BLANK]

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)**

| **Initial Rate of Interest:** | **Maturity Date:** | **Dated Date:** | **CUSIP:** |
| --- | --- | --- | --- |
| **[\_\_\_]%** | 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)

| ***Item #*** | ***PayeeName/Address*** | ***Amount*** | ***Purpose*** |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**EXHIBIT C

FORM OF INVESTOR LETTER**

|  |  |
| --- | --- |
| California Enterprise Development Authority2150 River Plaza Drive, Suite 275Sacramento, California 95833 |  |
| UMB Bank, N.A.120 South Sixth Street, Suite 1400Minneapolis, Minnesota 55402 | Stifel, Nicolaus & Company, Incorporated2121 Avenue of the Stars, Suite 2050Los 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: