

**WESTERN PLACER UNIFIED SCHOOL DISTRICT  
SPECIAL MEETING  
BOARD OF TRUSTEES/BOARD OF DIRECTORS  
OF THE FINANCING CORPORATION**

**June 24, 2003, 5:00 – 7:00 P.M.  
District Office Staff Development Room  
810 J Street, Lincoln**

## **AGENDA**

- 1. WELCOME/CALL TO ORDER**  
**Karen Roberts, President, Board of Trustees**
- 2. APPROVE THE TERMS AND CONDITIONS REGARDING PART 2 OF THE DESIGN/BUILD AGREEMENT WITH NTD/EDGE SUBJECT TO FINAL MODIFICATIONS BY THE WESTERN PLACER UNIFIED SCHOOL DISTRICT'S LEGAL COUNSEL**
  - It is recommended the Board of Trustees approve the terms and conditions regarding Part 2 of the Design/Build Agreement with NTD/EDGE subject to final modifications by the District's legal counsel.
- 3. APPROVE THE GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION OF THE TWELVE BRIDGES ELEMENTARY SCHOOL AND ADJACENT JOINT-USE PARK**
  - The Guaranteed Maximum Price (GMP) reflects the cost of construction and the supporting soft costs associated with the development of the Twelve Bridges Elementary School and the adjacent joint-use park.
- 4. APPROVE RESOLUTION 02/03.43 AUTHORIZING THE FORMATION OF A JOINT POWERS AUTHORITY AND CERTAIN RELATED MATTERS.**
  - This resolution authorizes the Western Placer Unified School District to enter into a joint powers authority for the purposes of capital facility financing.

**5. APPROVAL OF RESOLUTION 02/03.44 APPROVING THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF CERTIFICATES OF PARTICIPATION ON BEHALF OF THE DISTRICT AND OTHER MATTERS RELATED THERETO.**

- This resolution supports documentation authorizing the Western Placer Unified School District to issue Certificates of Participation to finance the construction and improvements of school facilities.

**6. CITY/DISTRICT FACILITY EXPLORATION – Mentze/Tahti**

- The two Board representatives to this committee will discuss and report the current status.

**7. COMMENTS/NEXT STEPS**

**8. ADJOURNMENT**

**WESTERN PLACER UNIFIED SCHOOL DISTRICT  
BOARD OF TRUSTEE MEETING FACT SHEET**

<b>MISSION STATEMENT:</b> Empower Students with the Skills, Knowledge, and Attitudes for Success in an Ever Changing World.
<b>BOARD OF TRUSTEES/GLOBAL DISTRICT GOALS</b>
1. Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students.
2. Foster a safe, caring environment where individual differences are valued and respected.
3. Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.
4. Promote the involvement of the community, parents, local government, business, service organizations etc. as partners in the education of the students.

**AGENDA ITEM:**

Approve the Terms and Conditions Regarding  
Part 2 of the Design/Build Agreement with NTD/EDGE  
Subject to Final Modifications by the Western Placer  
Unified School District's Legal Counsel.

**SUBJECT AREA:**

Discussion/Action

**REQUESTED BY:**

Jay M. Stewart   
Assistant Superintendent, Business Services

**ENCLOSURES:**

Yes

**BOARD MEETING DATE:**

June 24, 2003

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**BACKGROUND:**

**SUPERINTENDENT'S RECOMMENDATION:**

Administration recommends the Board of Trustees approve the terms and conditions regarding Part 2 of the Design/Build Agreement with NTD/EDGE subject to final modifications by the Western Placer Unified School District's Legal Counsel.

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## TERMS AND CONDITIONS - PART 2 OF AGREEMENT

### 1. ARTICLE 1 - GENERAL PROVISIONS

#### 1.1. BASIC DEFINITIONS

- 1.1.1 The Contract Documents consist of the Part 1 Agreement to the extent not modified by this Part 2 Agreement, this Part 2 Agreement, NTD/EDGE Proposal and written addenda to the Proposal identified in Article 15, the Construction Documents approved by the District and applicable agencies in accordance with Part 1 and Modifications issued after execution of this Part 2 Agreement. A Modification is a Change Order or a written amendment to this Part 2 Agreement signed by both parties, or a Construction Change Directive issued by the District in accordance with Article 8.
- 1.1.2 The term "Work" means the construction and services provided by provided by NTD/EDGE to fulfill NTD/EDGE's obligations for the construction of the Project known as "Twelve Bridges Elementary".

#### 1.2. EXECUTION, CORRELATION AND INTENT

- 1.2.1 It is the intent of the District and NTD/EDGE that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by NTD/EDGE shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.2.2 If NTD/EDGE believes or is advised by the Architect, Contractor, Inspector or by another professional retained to provide services on the Project that implementation of any instruction received from the District would cause a violation of any applicable law, NTD/EDGE shall notify the District in writing. Neither NTD/EDGE nor the Architect nor Contractor shall be obligated to perform any act, which either believes will violate any applicable law.
- 1.2.3 Except where required by the provisions of this agreement, nothing contained in this Part 2 Agreement shall create a contractual relationship between the District and any person or entity other than NTD/EDGE.

#### 1.3. OWNERSHIP AND USE OF DOCUMENTS

- 1.3.1 Pursuant to Education Code section 17316, all Documents, including drawings, specifications, and estimates, prepared pursuant to this Agreement shall be and remain the property of the District for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the Project for which NTD/EDGE was retained. Nothing in this Section shall preclude the District from using the plans, record drawings, specifications, or estimates related to the Project for the purposes of additions, alignments, or other development on the Project site. This Section shall not be construed to transfer or waive the Architect's copyrights over these documents, including but not limited to, all common law, statutory, and other reserved rights.

### 2. ARTICLE 2 - DISTRICT

- 2.1. The District shall designate a representative authorized to act on the District's behalf with respect to the Project. The District or such authorized representative shall examine documents submitted by NTD/EDGE and shall render decisions in a timely manner and in accordance with the schedule accepted by the District. The District may obtain independent review of the Contract Documents by a separate plan review consultant under contract to or employed by the District. Such independent review shall be undertaken at the District's expense in a timely manner and shall not delay the orderly progress of the Work.

- 2.2. The District may appoint an on-site project representative to observe the Work and to have such other responsibilities as the District and NTD/EDGE agree in writing.
- 2.3. The District shall assist with NTD/EDGE in securing building and other permits, licenses and inspections, including permits and inspections made necessary by modifications during construction. The District shall pay the costs for such permits, licenses and inspections.
- 2.4. The District shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Part 1 Agreement, when such services are deemed necessary by NTD/EDGE to properly carry out the services required by this Part 2 Agreement.  
(District has requested non-reliance on geo-tech report which is not approvable)
- 2.5. The District shall disclose, to the extent known to the District, the results and reports of prior tests, inspections or investigations conducted for the Project including but not limited to: all existing building systems, on-site, off-site utility and service systems; chemical, air and water pollution; hazardous and toxic materials; or other environmental and subsurface conditions. The District shall disclose all information known to the District regarding the presence of pollutants and/or hazardous materials at the Project's site.
  - 2.5.1 Following NTD/EDGE notification to the District that NTD/EDGE has encountered material that NTD/EDGE believes is hazardous, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law, District shall promptly investigate the conditions. If the District finds that such materials exist, and cause a decrease or increase in NTD/EDGE's cost of, or the time required for, performance of any part of the work, the District shall issue a change order.
  - 2.5.2 If asbestos, lead or hazardous substance removal is required, such work shall be performed under separate contract as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.
- 2.6. The District shall furnish all legal, accounting and insurance counseling services as may be necessary at any time on the District's behalf for the Project, including such auditing services as the District may require to verify NTD/EDGE's Applications for Payment.
- 2.7. The District shall appoint and pay a full-time on-site Inspector as required by State Law. Said Inspector shall be qualified and approved by the Division of State Architect and shall be under direction of the Architect of Record in general responsible charge of the project. The Inspector shall be responsible to, and act in accordance with the policies of the District. The administration by Architect of Record and his or her engineers shall be in addition to the continuous personal inspection of the District's Inspector.
- 2.8. The District shall furnish services of Testing Laboratories, Special Inspectors and other quality control services as required by DSA.
- 2.9. The District shall pay for all fees and assessments for utility and service systems assessed by agencies as a part of the approval process.
- 2.10. District shall file and pay for the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (the "Permit"), including the Notice of Intent. District shall provide a copy of such permit to NTD/EDGE.
- 2.11. Those services, information, surveys and reports required of the District by this Section shall be furnished at the District's expense, and NTD/EDGE shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the District advises NTD/EDGE to the contrary in writing.
- 2.12. If the District requires NTD/EDGE to maintain any special insurance coverage, policy, amendment, or rider, the District shall pay the additional cost thereof, except as otherwise stipulated in this Part 2 Agreement.

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- 2.13. If the District observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with NTD/EDGE's Proposal or the Construction Documents, the District shall give prompt written notice thereof to NTD/EDGE.
- 2.14. The District shall, at the request of NTD/EDGE, prior to execution of this Part 2 Agreement and promptly upon request thereafter, furnish to NTD/EDGE reasonable evidence that financial arrangements have been made to fulfill the District's obligations under the Contract.
- 2.15. The District shall, at the request of NTD/EDGE, and prior to execution of the Part 2 Agreement and promptly upon request thereafter, certify to NTD/EDGE that the District is the legal owner of the Project site and has full title and control.
- 2.16. The District shall communicate with persons or entities employed or retained by NTD/EDGE through NTD/EDGE, unless otherwise directed by NTD/EDGE.

### 3. ARTICLE 3 - NTD/EDGE

#### 3.1. SERVICES AND RESPONSIBILITIES

- 3.1.1 Design services required by this Part 2 Agreement shall be performed by qualified Architects and other design professionals retained by NTD/EDGE. The District shall have the right to approve any change in the lead Architect herein identified as Jordan S. Knighton, Principal, NTD/EDGE.
- 3.1.2 Construction services required by this Part 2 Agreement shall be performed by qualified Contractors and other construction professionals retained by NTD/EDGE.
- 3.1.3 NTD/EDGE shall be responsible to the District for acts and omissions of NTD/EDGE employees, subcontractors and their agents and employees, and other persons, including the Architect, Contractor, and other design professionals, performing any portion of NTD/EDGE's obligations under this Part 2 Agreement.

#### 3.2. BASIC SERVICES

- 3.2.1 NTD/EDGE Basic Services are described below and in Article 15.
- 3.2.2 NTD/EDGE shall designate a representative authorized to act on NTD/EDGE behalf with respect to the Project.
- 3.2.3 NTD/EDGE shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Part 2 Agreement.
- 3.2.4 NTD/EDGE shall keep the District informed of the progress and quality of the Work in the following manner:
- (a) **CPM Master Schedule.** NTD/EDGE shall submit to District a reasonably detailed CPM (Critical Path Method) Master Schedule for the construction.
  - (b) **Pre-Construction Orientation/Construction Meetings.** NTD/EDGE shall conduct pre-construction orientation conferences to orient the Contractors, Sub-Contractors, Inspectors, Design Professionals, and District Representatives to the various reporting procedures and site rules prior to the commencement of actual construction. NTD/EDGE shall also conduct construction and progress meetings as requested by the District with District Representatives and other interested parties, to discuss such matters as procedures, construction progress, problems and scheduling. NTD/EDGE shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Architect, Contractor, District and Inspector.

- (c) **Budget/Cash Flow Reports.** NTD/EDGE shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. NTD/EDGE shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. NTD/EDGE shall identify variances between actual and budgeted or estimated costs, and advise the District whenever Project costs exceed budgets or estimates. NTD/EDGE shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
  - (d) **Scheduling.** NTD/EDGE shall complete the construction pursuant to the CPM and approved Construction Documents, subject to DSA approval and approved modifications in scope.
  - (e) **Progress Reports.** NTD/EDGE shall record the progress of the Project, and shall submit monthly written progress reports to the District including information on the entire Project, showing percentages of completion. Reports shall include the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs and Schedule as of the date of the report. NTD/EDGE shall also keep a daily log containing a record of weather, Contractors and sub-Contractors working on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. NTD/EDGE shall make the log available to the District. The District shall be promptly informed in writing of all anticipated delays. In the event that NTD/EDGE determines that a schedule modification is necessary, NTD/EDGE shall promptly submit a revised Schedule for approval by the District.
- 3.2.5 NTD/EDGE shall be responsible for correcting Work which, does not conform to the District approved Contract Documents.
- 3.2.6 NTD/EDGE warrants to the District that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the construction will be free from faults and defects, and that the construction will conform with the requirements of the Contract Documents. Construction not conforming to these requirements, including substitutions not properly approved by the District, shall be corrected in accordance with Article 9.
- 3.2.7 NTD/EDGE shall pay all sales, consumer, use and similar taxes, which had been legally enacted at the time NTD/EDGE's Proposal was first submitted to the District.
- 3.2.8 NTD/EDGE shall provide all temporary utility hook-ups and connections, and pay for all use of utilities during construction.
- 3.2.9 NTD/EDGE shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.
- (a) NTD/EDGE shall comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity required by the permit issued on behalf of the District (the "Permit").
  - (b) NTD/EDGE shall prepare project specific documents as required to comply with all requirements of the State Water Resources Control Board, including the Storm Water Pollution Prevention Plan
- 3.2.10 NTD/EDGE shall pay royalties and license fees for patented designs, processes or products. NTD/EDGE shall defend suits or claims for infringement of patent rights and shall hold the District harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the District. However, if NTD/EDGE has reason to believe the use of a required design, process or product is an infringement of a patent, NTD/EDGE shall be responsible for such loss unless such information is promptly furnished to the District.

- 3.2.11 NTD/EDGE shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Part 2 Agreement. At the completion of the Work, NTD/EDGE shall remove from the site waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.
- 3.2.12 NTD/EDGE shall notify the District when NTD/EDGE believes that the Work or an agreed upon portion thereof is substantially completed. NTD/EDGE shall inspect the work with the District to confirm work is substantially complete. If the District concurs, NTD/EDGE shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected, (referred to as the Punch-List) and shall fix the time within which NTD/EDGE shall complete items listed therein. Disputes between the District and NTD/EDGE regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 10.
- 3.2.13 NTD/EDGE shall maintain at the site for the District one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction, (referred to as the Record Drawings). These shall be delivered to the District upon completion of construction and prior to final payment.
- 3.2.14 NTD/EDGE shall be responsible for providing District with a set of reproducible record documents showing significant changes in the Work made during construction.
- 3.2.15 NTD/EDGE shall provide assistance in obtaining final agency approvals, including filing of final reports and certifications required as the Architect of Record.
- 3.2.16 NTD/EDGE shall be responsible for orientation of District regarding the utilization of equipment or systems, including preparation of operation and maintenance manuals and in training personnel for operation and maintenance.

### 3.3. ADDITIONAL SERVICES

- 3.3.1 The services described in this Paragraph 3.3 are not included in Basic Services unless so identified in Article 15, and they shall be paid for by the District as provided in this Part 2 Agreement, in addition to the compensation for Basic Services. The services described in this Paragraph 3.3 shall be provided only if authorized or confirmed in writing by the District.
- 3.3.2 Making revisions in drawings, specifications, and other documents or electronic data when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or electronic data.
- 3.3.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction beyond NTD/EDGE control, and furnishing services required in connection with the replacement of such Work.
- 3.3.4 Providing services in connection with a public hearing, mediation proceeding or legal proceeding, except where NTD/EDGE is a party thereto.
- 3.3.5 Providing coordination of construction performed by the District's own forces or separate contractors employed by the District, and coordination of services required in connection with construction performed and equipment supplied by the District.
- 3.3.6 Providing District with electronic copies of NTD/EDGE CAD files, cost estimates or other project specific documentation.



#### 4. ARTICLE 4 - TIME

- 4.1. Unless otherwise indicated, the District and NTD/EDGE shall perform their respective obligations as expeditiously, as is consistent with reasonable skill and care and the orderly progress of the Project in accordance with the standards of its professions.
- 4.2. Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Part 2 Agreement shall commence upon receipt of a written Notice to Proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in Article 15 as modified by District approved changes.
- 4.3. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the District can occupy or utilize the Work for its intended use.
- 4.4. If NTD/EDGE is delayed at any time in the progress of the Work by an act or neglect of the District, District's Representatives, or separate contractors employed by the District, or by changes ordered in the Work, or by labor disputes, fire, unusual unavoidable delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or other causes beyond NTD/EDGE's control, or by delay authorized by the District pending mediation, or by other causes which the District and NTD/EDGE agree may justify delay, then the Contract Time shall be reasonably extended by Change Order.

#### 5. ARTICLE 5 - PAYMENTS

##### 5.1. PROGRESS PAYMENTS

- 5.1.1 District shall pay NTD/EDGE Sublease Prepayments pursuant to the terms and conditions set forth in the Sublease and this Section. NTD/EDGE shall provide for the cost of construction of the Project which costs shall not exceed the GMP, except as otherwise provided in this Agreement. The District shall retain and release such retention pursuant to Public Contract Code sections 7107 and 9203, as those sections may be amended from time to time.
- 5.1.2 Substitution of Security
- (a) Upon the Contractor's request, the District will make payment of funds withheld from progress payments to ensure performance under the contract pursuant to the requirements of Public Contract Code section 22300 if the Contractor deposits in escrow with the District or with a bank acceptable to the District, securities eligible for investment under Government Code section 16430, bank or savings and loan certificates of deposit, or other security mutually agreed to by the Contractor and the District, subject to the following conditions:
- The Contractor shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made.
  - Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to the Contractor pursuant to this section.
  - The Contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:
    - (a) The amount of securities to be deposited,
    - (b) The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,
    - (c) Conversion of cash to provide funds to meet defaults by the Contractor, including, but not limited to, termination of the Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract.
    - (d) Decrease in value of securities on deposit.
    - (e) The termination of the escrow upon completion of the contract.
  - The Contractor shall obtain the written consent of the surety to such agreement.

- As an alternative to Contractor depositing into escrow securities of a value equivalent to the amounts of retention to be paid to the Contractor, upon Contractor's request, District will make payment of retentions earned directly to the escrow agent at the expense of Contractor pursuant to and in accordance with Public Contract Code section 22300.

## 5.2. FINAL PAYMENT

- 5.2.1 Neither final payment nor amounts retained, if any, shall become due until NTD/EDGE submits to the District:
- (a) An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the District or District's property might be responsible or encumbered (less amounts withheld by the District) have been paid or otherwise satisfied;
  - (b) A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the District;
  - (c) Consent of surety, if any, to final payment;
  - (d) If required by the District, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the District. If a NTD/EDGE or other person or entity entitled to assert a lien against the District's property refuses to furnish a release or waiver required by the District, NTD/EDGE may furnish a bond satisfactory to the District to indemnify the District against such lien. If such lien remains unsatisfied after payments are made, NTD/EDGE shall indemnify the District for all loss and cost, including reasonable attorneys' fees incurred as a result of such lien.
- 5.2.2 Upon District's determination that the work is complete as defined by Public Contract code 7107, District shall file and have properly recorded a Notice of Completion within 10 days in accordance with Government Code.
- 5.2.3 When the Work has been completed, the Notice of Completion filed, and the contract fully performed, NTD/EDGE shall submit a final application for payment to the District, who shall make final payment within 35 days of the date of completion.
- 5.2.4 The making of final payment shall constitute a waiver of claims by the District except those arising from:
- (a) liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
  - (b) failure of the Work to comply with the requirements of the Contract Documents; or
  - (c) terms of special warranties required by the Contract Documents.
- 5.2.5 Acceptance of final payment shall constitute a waiver of all claims by NTD/EDGE except those previously made in writing and identified by NTD/EDGE as unsettled at the time of final Application for Payment.

## 5.3. INTEREST PAYMENTS

- 5.3.1 Payments due NTD/EDGE under this Part 2 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Article 13, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

#### 5.4. LIQUIDATED DAMAGES

- 5.4.1 If the work is not completed within the approved time schedule, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that NTD/EDGE shall pay to District as fixed and liquidated damages, and not as a penalty, the sum of \_\_\_\_\_ Dollars (\_\_\_\_\_) for each calendar day of delay until work is completed and accepted. NTD/EDGE and his surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, District shall have the right to recover the balance from the Contractor or his sureties, who will pay said balance forthwith.

#### 6. ARTICLE 6 - PROTECTION OF PERSONS AND PROPERTY

- 6.1. NTD/EDGE shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Part 2 Agreement.
- 6.2. NTD/EDGE shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of NTD/EDGE or NTD/EDGE contractors; and (3) other existing property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 6.2.1 By execution of this Part 2, Agreement, NTD/EDGE acknowledges that NTD/EDGE, its employees and contractors are required to comply with the fingerprinting requirements set forth in Education Code Section 45125.1.
- 6.2.2 In lieu of complying with Section 45125.1, NTD/EDGE may comply with the provisions of Education Code Section 45125.2 which requires that NTD/EDGE, at its own expense (1) install a physical barrier to limit contact with students by NTD/EDGE, NTD/EDGE employees and subcontractors, or (2) provide for the continuous supervision and monitoring of NTD/EDGE, NTD/EDGE employees and subcontractors by an employee of NTD/EDGE who has received fingerprint clearance from the California Department of Justice, or (3) provide for the surveillance of NTD/EDGE, NTD/EDGE employees and subcontractors by a District employee. Prior to, and as a condition to commencement of NTD/EDGE's performance under this Construction Services Agreement, NTD/EDGE shall complete the Fingerprint Certification attached to hereto as *Exhibit "E,"* and by this reference incorporated herein.
- 6.3. NTD/EDGE shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.
- 6.4. NTD/EDGE shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by NTD/EDGE, a contractor of NTD/EDGE or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

#### 7. ARTICLE 7 - INSURANCE AND BONDS

##### 7.1. NTD/EDGE LIABILITY INSURANCE

- 7.1.1 NTD/EDGE shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect NTD/EDGE from claims set forth below which may arise out of or result from operations under this Part 2 Agreement by NTD/EDGE or by a contractor of NTD/EDGE, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) claims under workers' compensation, disability benefit and other similar employee benefit laws that are applicable to the Work to be performed;
- (b) claims for damages because of bodily injury, occupational sickness or disease, or death of NTD/EDGE employees;
- (c) claims for damages because of bodily injury sick ness or disease, or death of persons other than NTD/EDGE employees;
- (d) claims for damages covered by usual personal in jury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by NTD/EDGE or (2) by another person;
- (e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- (g) claims involving contractual liability insurance applicable to NTD/EDGE obligations under Paragraph 11.5.

7.1.2 The insurance required by Subparagraph 7.1.1 shall be written for not less than limits of liability specified in this Part 2 Agreement under Article 15 or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Insurance obtained pursuant to this article shall remain in effect for a minimum of 3 years. (Still verifying)

7.1.3 Certificates of insurance acceptable to the District shall be delivered to the District immediately after execution of this Part 2 Agreement. These certificates and the insurance policies required by this Paragraph 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the District. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment. Information concerning reduction of coverage shall be furnished by NTD/EDGE with reasonable promptness in accordance with NTD/EDGE information and belief.

## 7.2. DISTRICT'S LIABILITY INSURANCE

**7.2.1** The District shall be responsible for purchasing and maintaining the District's usual liability insurance. Optionally, the District may purchase and maintain other insurance for self-protection against claims, which may arise from operations under this Part 2 Agreement.

### 7.3. PROPERTY INSURANCE

- 7.3.1** NTD/EDGE shall procure and maintain during the life of this contract and for such other period as may be required herein, at its sole expense, such comprehensive general liability insurance or commercial general liability and property damage insurance as shall protect NTD/EDGE and District from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this contract, and other covered loss, however occasioned, occurring during the policy term. Such policy shall comply with all the requirements of this article, and shall be in the form and amounts as set forth in the Special Conditions hereof.
- 7.3.2** NTD/EDGE shall make certain that any and all subcontractors hired by NTD/EDGE are insured in accordance with this contract. If any subcontractor's coverage does not comply with the foregoing provisions, NTD/EDGE shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof.
- 7.3.3** Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California. Insurance shall have a rating of "A" or better.
- 7.3.3** Any general liability policy provided by NTD/EDGE hereunder shall contain an endorsement which applies its coverage to District, members of District's board of trustees, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, as additional insureds using form CG2010 11-85 or equivalent which must include products and completed operations coverage, broad form property damage coverage, coverage for collapse, explosion and underground, and include independent contractor coverage.
- 7.3.4** The coverage afforded by the additional insured endorsement described in paragraph 7.3.4 above, shall apply as primary insurance, and any other insurance maintained by District, the members of District's Board of Trustees, or its officers, agents, employees and volunteers, or any self-funded program of District, shall be in excess only and not contributing with such coverage.
- 7.3.5** NTD/EDGE shall notify District in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of \$25,000. District may approve higher retention amounts, based upon review of documentation submitted by NTD/EDGE. Such review shall take into consideration NTD/EDGE net worth and reserves for payment of claims of liability against NTD/EDGE, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.
- 7.3.6** All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by NTD/EDGE of that part of the indemnification contained in Article 12 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, District may require additional coverage to be purchased by NTD/EDGE to restore the required limits. NTD/EDGE may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement, products and completed operations coverage and broad form property damage described above. To the extent that the umbrella insurer requires notice of changes to the primary policy, notice will be considered to be given and not prejudice the District's rights to recover under the umbrella policy.
- 7.3.7** NTD/EDGE and District release each other, and their respective authorized representatives, from any Claims but only to the extent that the proceeds received from any policy of liability insurance carried by District or NTD/EDGE, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by NTD/EDGE hereunder shall be a standard waiver of rights of subrogation against District by the insurance company issuing said policy or policies.
- 7.3.8** If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

- (a) The policy retroactive date coincides with or precedes NTD/EDGE commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).
- (b) NTD/EDGE will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Agreement, including the requirement of adding all additional insured's.
- (c) If insurance is terminated for any reason, NTD/EDGE shall purchase an extended reporting provision of at least two three years to report claims arising in connection with the Agreement. (Verifying)
- (d) The policy allows for reporting of circumstances or incidents that might give rise to future claims.

**7.3.9** NTD/EDGE's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the contract, and District may, at its option, terminate the Agreement for any such default by NTD/EDGE.

**7.3.10** The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by NTD/EDGE, and any approval of said insurance by the District or its insurance Contractor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by NTD/EDGE pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.

**7.3.11** District shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require NTD/EDGE to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk, which exists at the time a change in insurance is required. The cost of insurance required by this provision shall be paid by NTD/EDGE.

**7.3.12** All deviations from the contractual insurance requirements stated herein must be approved in writing by District's risk manager.

#### **7.4. BUILDER'S RISK/APPLICABLE INSTALLATION/FIRE INSURANCE**

**7.4.1** It is NTD/EDGE's responsibility to maintain or cause to be maintained builder's risk insurance or applicable installation coverage on all work, material, equipment, appliances, tools, and structures which are a part of the contract and subject to loss or damage by fire, extended coverage, and vandalism and malicious mischief. District accepts no responsibility until the Project is formally accepted by the Governing Board. NTD/EDGE is required to file with the District a certificate evidencing builder's risk.

**7.4.2** Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.

- (a) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the contract.
- (b) Coverage shall include all materials stored on site and in transit.
- (c) Coverage shall include NTD/EDGE tools and equipment.
- (d) Insurance shall include boiler, machinery and material hoist coverage.

**7.4.3** Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.

## 7.5. LOSS OF USE INSURANCE

- 7.5.1 The District, at the District's option, may purchase and maintain such insurance as will insure the District against loss of use of the District's property due to fire or other hazards, however caused. ~~The District waives all rights of action against NTD/EDGE for loss of use of the District's property, including consequential losses due to fire or other hazards, however caused.~~ (District requests removal. Under review)

## 7.6. BONDS

- 7.6.1 A "Payment Bond" (material and labor bond) from a California admitted surety and in the form attached hereto, shall be provided by NTD/EDGE for the Project within five (5) business days after entering into Part 2 of this Agreement and prior to the effective date of the District's Notice to Proceed for the Project. The Payment Bond shall be for One Hundred Percent (100%) of the Final GMP of the Project, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The Payment Bond shall be maintained by NTD/EDGE in full force and effect for the Project until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Payment Bond, once obtained, shall be attached to this Agreement as *Exhibit "C."* In the event the Final GMP is increased in accordance with the provisions set forth in Section 8, NTD/EDGE must increase the Payment Bond to equal the revised GMP.

- 7.6.2 A "Performance Bond" from a California admitted surety and in the form attached hereto shall be provided by NTD/EDGE for the Project within five (5) business days after entering into Part 2 of this Agreement and prior to the effective date of the District's Notice to Proceed on the Project. The Performance Bond shall be for One Hundred Percent (100%) of the Final GMP for the Project to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the District, and that all materials and workmanship shall be free from original or developed defects.

The Performance Bond shall be in the form attached hereto and shall be maintained by NTD/EDGE in full force and effect until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Faithful Performance Bond shall name the District as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. In the event the GMP is increased, NTD/EDGE shall increase the Performance Bond to equal the revised GMP.

## 8. ARTICLE 8 - CHANGES IN THE WORK

### 8.1. CHANGES

- 8.1.1 Changes in the Work may be accomplished after execution of this Part 2 Agreement, without invalidating this Part 2 Agreement, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.
- 8.1.2 A Change Order shall be based upon agreement between the District, NTD/EDGE and the Architect of Record; a Construction Change Directive may be issued by the District and the Architect of Record without the agreement of NTD/EDGE; an order for a minor change in the Work may be issued by the Architect of Record through NTD/EDGE.
- 8.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and NTD/EDGE shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

2.12

- 8.1.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the District or NTD/EDGE, the applicable unit prices shall be equitably adjusted.

## 8.2. CHANGE ORDERS

- 8.2.1** A Change Order is a written instrument prepared by NTD/EDGE and signed by the District, NTD/EDGE and the Architect of Record, stating their agreement upon all of the following:

- (a) a change in the Work;
- (b) the amount of the adjustment, if any, in the Contract Sum; and
- (c) the extent of the adjustment, if any, in the Contract Time.

- 8.2.2** If the District requests a proposal for a change in the Work from NTD/EDGE and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse NTD/EDGE for any costs incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents.

- 8.2.3** Change order mark up: In case of ~~an increase~~ a change in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit. In such case, NTD/EDGE shall provide an itemized accounting together with appropriate supporting data.

- (a) Value of any such extra work, change or deduction shall be determined at the discretion of District in one or more of the following ways:
  - By acceptable lump sum proposal from Contractor with itemization as required by District.
  - By unit prices contained in Contractor's original bid and incorporated in contract documents or fixed by subsequent agreement between District and Contractor.
  - By the cost of material and labor and a percentage for overhead and profit. The form shall be followed as applicable for additions and deductions to contract:

### EXTRA/(CREDIT)

- |   |       |
|---|-------|
| 1. Material and equipment costs, including rental equipment (attach itemized quantity and nit cost per sales tax)   | _____ |
| 2. Labor (attach itemized hours and base rates from identified prevailing wage schedules)   | _____ |
| 3. additional costs of supervision and field office personnel directly attributable to the change; and fees paid to the Architect and other professionals               | _____ |
| 4. General Liability and <b>Builder's Risk</b> Insurance, Workers' Compensation Insurance, Social Security, Pension and Unemployment Taxes at actual and verified costs | _____ |
| 5. Subtotal   | _____ |
| 6. Subcontractor's overhead and profit not to exceed 10% of item (5)  | _____ |
| 7. Subtotal   | _____ |
| 8. NTD/EDGE's Overhead and Profit, including extended home office overhead, not to exceed 15% of item (7)   | _____ |
| 9. Subtotal   | _____ |
| 10. Bond Premium, not to exceed 1% of item (9)  | _____ |
| 11. Total   | _____ |



### 8.3. CONSTRUCTION CHANGE DIRECTIVES

- 8.3.1** A Construction Change Directive is a written order prepared and signed by the District and the Architect of Record, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.
- (a) Except as otherwise agreed by the District and NTD/EDGE, the adjustment to the Contract Sum shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Contract Documents. In case of an increase in the Contract Sum, the cost shall include overhead and profit as determined by Paragraph 8.2.3(a). In such case, NTD/EDGE shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order.
- 8.3.2** Pending final determination of cost to the District, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by NTD/EDGE to the District for deletion or change which results in a net decrease in the Contract Sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.
- 8.3.3** Pending final determination of cost to the District, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by NTD/EDGE to the District for deletion or change, which results in a net decrease in the Contract Sum, will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.
- 8.3.4** When the District and NTD/EDGE agree upon the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

### 8.4. MINOR CHANGES IN THE WORK

- 8.4.1** The Architect of Record, acting through NTD/EDGE, shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Sum or extension of the Contract Time. NTD/EDGE shall promptly inform the District, in writing, of minor changes in the Construction Documents and construction.

### 8.5. CONCEALED CONDITIONS

- 8.5.1** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed. The Contract Sum shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either party after the claimant becomes aware of the conditions.

### 8.6. REGULATORY CHANGES

- 8.6.1** NTD/EDGE shall be compensated for changes in the construction necessitated by the enactment or revision of codes, laws or regulations subsequent to the establishment of the Final GMP.

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## **9. ARTICLE 9 - CORRECTION OF WORK**

- 9.1. NTD/EDGE shall promptly correct Work rejected by the District or known by NTD/EDGE to be defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. NTD/EDGE shall bear costs of correcting such rejected Work, including additional testing and inspections necessitated by such correction.
- 9.2. If, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the District and NTD/EDGE, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, NTD/EDGE shall correct it promptly after receipt of a written notice from the District to do so unless the District has previously given NTD/EDGE a written acceptance of such condition.
- 9.3. Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations, which NTD/EDGE might have under the Contract Documents. Establishment of the time period of one (1) year as described above relates only to the specific obligation of NTD/EDGE to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish NTD/EDGE liability with respect to NTD/EDGE obligations other than specifically to correct the Work.
- 9.4. If NTD/EDGE fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the District, by written order signed personally or by an agent specifically so empowered by the District in writing, may order NTD/EDGE to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the District's right to stop the Work shall not give rise to a duty on the part of the District to exercise the right for benefit of NTD/EDGE or other persons or entities.
- 9.5. If NTD/EDGE defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the District to commence and continue correction of such default or neglect with diligence and promptness, the District may give a second written notice to NTD/EDGE and, seven (7) days following receipt by NTD/EDGE of that second written notice and without prejudice to other remedies the District may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter-due NTD/EDGE, the costs of correcting such deficiencies. If the payments then or thereafter-due NTD/EDGE are not sufficient to cover the amount of the deduction, NTD/EDGE shall pay the difference to the District. Such action by the District shall be subject to dispute resolution procedures as provided in Article 10.

## **10. ARTICLE 10 - DISPUTE RESOLUTION-MEDIATION AND ARBITRATION**

- 10.1. Claims, disputes or other matters in question between the parties to this Part 2 Agreement arising out of or relating to this Part 2 Agreement or breach thereof shall be subject to and decided by mediation. Such mediation shall be conducted in accordance with the Construction Industry Mediation.
- 10.2. Demand for mediation shall be filed in writing with the other party to this Part 2 Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

## **11. ARTICLE 11 – WAGE RATES AND HOURS**

- 11.1. Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2 of the Labor Code of California, the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the contract. Copies of said determination are on file at District's principal office and are available to any interested party on request.

- 11.2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the general prevailing rate of per diem wages as determined by the Director of Industrial Relations, unless otherwise specified.
- 11.3. Each construction worker of NTD/EDGE or any of his subcontractors engaged in work on the project shall be paid not less than the general prevailing rate of per diem wages determined by the Director of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between NTD/EDGE or any subcontractor and such workers.
- 11.4. NTD/EDGE shall, as a penalty to the District, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her. Prevailing wage rates shall also be used when determining wages paid for change order items. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of NTD/EDGE mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of NTD/EDGE in meeting his or her prevailing wage obligations, or NTD/EDGE willful failure to pay the correct rates of prevailing wages. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by NTD/EDGE, and NTD/EDGE shall be bound by the provisions of Labor Code section 1775.
- 11.5. Any worker employed to perform work on the project, which work is not covered by any classification listed in the general prevailing rate of per diem wages determined by the Director of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to work to be performed by him. Such minimum wage rate shall be retroactive to the time of initial employment of such person in such classification.
- 11.6. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel, subsistence, apprenticeship or other specified training programs and similar purposes.
- 11.7. NTD/EDGE shall post at appropriate conspicuous points on the site of project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.
- 11.8. NTD/EDGE and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- 11.9. The payroll records required above shall be certified and shall be available for inspection at all reasonable hours at the principal office of NTD/EDGE on the following basis:
- 11.9.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- 11.9.2 A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- 11.9.3 A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of NTD/EDGE.
- 11.10. NTD/EDGE shall file a certified copy of the records required above with the District or entity that requested such records within ten days after receipt of a written request.

**11.11.** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of NTD/EDGE shall not be marked or obliterated.

**11.12.** NTD/EDGE shall inform the District of the location of the records required above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

**11.13.** In the event of noncompliance with the requirements of this article regarding maintenance of records, NTD/EDGE shall have ten days in which to comply subsequent to receipt of written notice specifying in what respects NTD/EDGE must comply with this article. Should noncompliance still be evident after such ten-day period, NTD/EDGE shall, as a penalty by the District, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalty shall be withheld from progress payments then due. NTD/EDGE is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

**11.14. Apprentices**

**11.14.1** Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly indentured to NTD/EDGE in full compliance with provisions of the Labor Code.

**11.15. Hours of Work**

**11.15.1** As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by NTD/EDGE or by any subcontractor on any subcontract under this contract upon the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of NTD/EDGE in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

**11.15.2** NTD/EDGE and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this contract. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

**11.15.3** NTD/EDGE shall pay to the District a penalty of twenty-five dollars (\$25) for each worker employed in the execution of this contract by NTD/EDGE or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code

**11.16. Labor Compliance**

**11.16.1** District to address and provide a Labor Compliance Program in compliance with current state law at their expense.

**12. ARTICLE 12 - MISCELLANEOUS PROVISIONS**

**12.1.** Unless otherwise provided, this Part 2 Agreement shall be governed by the law of the place where the Project is located.

**12.2. SUBCONTRACTS**

- 12.2.1 NTD/EDGE, when requested by District, shall furnish to the District in writing the names of the persons or entities that NTD/EDGE has selected as contractors for the Project for District's information only.

### 12.3. WORK BY DISTRICT OR DISTRICT'S CONTRACTORS

- 12.3.1 The District reserves the right to perform construction or operations related to the Project with the District's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Part 2 Agreement. If NTD/EDGE claims that delay or additional cost is involved because of such action by the District, NTD/EDGE shall assert such claims as provided in this Article.
- 12.3.2 NTD/EDGE shall afford the District's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate NTD/EDGE construction and operations with theirs as required by the Contract Documents.
- 12.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.

### 12.4. CLAIMS FOR DAMAGES

- 12.4.1 If either party to this Part 2 Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing providing sufficient documentation supporting the factual basis of the claim.

### 12.5. INDEMNIFICATION

- ~~12.5.1 To the fullest extent permitted by law, NTD/EDGE shall indemnify and hold harmless the District, District's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of NTD/EDGE, anyone directly or indirectly employed by NTD/EDGE or anyone for whose acts NTD/EDGE may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph.~~

#### DISTRICT Proposal:

- (a) ARCHITECT shall assume the defense of and indemnify, and hold harmless DISTRICT (including its inspectors, project manager, trustees, officers, agents, members, employees, affiliates, volunteers, consultants, subconsultants, and representatives), and each of them, of and from any and all claims, demands, suites, causes of action, damages, costs, expenses, attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of, or in connection with ARCHITECT's negligent acts, errors, or omissions in performing Work under this Contract including, but not limited to:
- (i) Personal injury (including, but not limited to, bodily injury, emotional injury, or distress, sickness, or disease) or death to persons, including, but not limited to, any employees or agents of Contractor, DISTRICT, ARCHITECT, or any subcontractor, or damage to property of anyone including the Work itself (including loss of use thereof), caused in whole or in part by any negligent act of omission of DISTRICT, or ARCHITECT, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;

- (ii) Penalties threatened, sought, or imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of ARCHITECT;
  - (iii) Infringement of any patent rights which may be brought arising out of ARCHITECT's design;
  - (iv) ARCHITECT's failure to fulfill any of the covenants set forth in this Agreement;
  - (v) Failure of ARCHITECT to comply with the provision of this Agreement relating to insurance, provided that such insurance is available at reasonable terms; and
  - (vi) Any violation or infraction by ARCHITECT of any law, order, citation, rule, regulation, standard, ordinance, or statute in any way relating to the occupation, health, or safety of employees of Contractor, DISTRICT, ARCHITECT, or any subcontractor.
- (b) It is understood and agreed that such indemnity shall survive the termination of this Agreement. The indemnities set forth in this section shall not be limited by the insurance requirements set forth in this Agreement.
- (c) ARCHITECT's indemnification of DISTRICT will not include indemnification for claims which arise as the result of the active negligence of DISTRICT, or the sole negligence or willful misconduct of DISTRICT, its agents, servants or independent contractors who are directly responsible to DISTRICT, or for defects in design furnished by such persons, other than ARCHITECT and its agents, consultants and subconsultants.
- 12.5.2** In claims against any person or entity indemnified under this Paragraph by an employee of NTD/EDGE, anyone directly or indirectly employed by NTD/EDGE or anyone for whose acts NTD/EDGE may be liable, the indemnification obligation under this Paragraph shall not be restricted by a limitation on amount or type of damages, compensation or benefits payable by or for NTD/EDGE under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **12.6. SUCCESSORS AND ASSIGNS**

- 12.6.1** The District and NTD/EDGE, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 2 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 2 Agreement. Neither the District nor NTD/EDGE shall assign this Part 2 Agreement without the written consent of the other. The District may assign this Part 2 Agreement to any institutional lender providing construction financing, and NTD/EDGE agrees to execute all consents reasonably required to facilitate such an assignment. If either party makes such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Part 2 Agreement, unless otherwise agreed by the other party.

## **12.7. EXTENT OF AGREEMENT**

- 12.7.1** This Part 2 Agreement represents the entire agreement between the District and NTD/EDGE and supersedes prior negotiations, representations or agreements, either written or oral. This Part 2 Agreement may be amended only by written instrument and signed by both the District and NTD/EDGE.

### 13. ARTICLE 13 - TERMINATION OF THE AGREEMENT

#### 13.1. TERMINATION BY THE DISTRICT

- 13.1.1** This Part 2 Agreement may be terminated by the District upon 14 days' written notice to NTD/EDGE in the event that the Project is abandoned. If such termination occurs, the District shall pay NTD/EDGE for Work completed as of the effective date of said suspension and for proven loss sustained upon labor, materials, equipment, tools, and machinery including reasonable profit, overhead, and applicable damages including costs associated with demobilization and suspension.
- 13.1.2** If NTD/EDGE defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Part 2 Agreement, the District may give written notice that the District intends to terminate this Part 2 Agreement. If NTD/EDGE fails to correct the defaults, failure or neglect within seven (7) days after being given notice, the District may then give a second written notice and, after an additional seven (7) days, the District may without prejudice to any other remedy terminate the employment of NTD/EDGE and take possession of the site and of all materials, equipment, tools and construction equipment and machinery there on owned by NTD/EDGE and finish the Work by whatever method the District may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work and all damages incurred by the District, such excess shall be paid to NTD/EDGE. If the expense of completing the Work and all damages incurred by the District exceeds the unpaid balance, NTD/EDGE shall pay the difference to the District. This obligation for payment shall survive termination of this Part 2 Agreement.
- 13.1.3** Termination for Convenience: notwithstanding anything to the contrary stated in this Agreement, the District may terminate this Agreement for convenience at any time upon ten (10) days' prior written notice to NTD/EDGE. If the District terminates the Agreement as provided herein, the District, in its sole and absolute discretion, may require NTD/EDGE to complete any services required hereunder to facilitate the transfer of NTD/EDGE's responsibilities to another architect or other person. Upon termination, the District's total obligation to NTD/EDGE shall be limited to the payment for all services already provided by NTD/EDGE in accordance with this Agreement prior to the effective date of the "termination", plus any services rendered to facilitate the transfer of responsibilities.

#### 13.2. TERMINATION BY NTD/EDGE

- 13.2.1** If the District fails to make payment of undisputed amounts when due, NTD/EDGE may give written notice of NTD/EDGE intention to terminate this Part 2 Agreement. If NTD/EDGE fails to receive payment within seven (7) (30) days after receipt of such notice by the District, NTD/EDGE may give a second written notice and, seven (7) days after receipt of such second written notice by the District, may terminate this Part 2 Agreement and recover from the District payment for Work executed and for proven losses sustained upon labor, materials, equipment, tools, and machinery, including reasonable profit, overhead, and applicable damages including costs associated with demobilization and suspension.

### 14. ARTICLE 14 - BASIS OF COMPENSATION

The District shall compensate NTD/EDGE in accordance with Article 5, Payments, and the other provisions of this Part 2 Agreement as described below.

#### 14.1. COMPENSATION

- 14.1.1** For NTD/EDGE performance of the Work, as described in Article 3 and including any other services listed in Article 15 as part of Basic Services, the District shall pay NTD/EDGE in current funds the Contract Sum as follows:
- 14.1.2** For Additional Services, as described in Article 3 and including any other services listed in Article 15 as Additional Services, compensation shall be as follows:

#### 14.2. REIMBURSABLE EXPENSES

14.2.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services, and include actual expenditures made by NTD/EDGE and NTD/EDGE employees and contractors in the interest of the Project, as follows:

- Costs incurred for reproduction of documents for Agency review and approval.
- Expense of additional insurance coverage or limits, including professional liability insurance, requested by the District in excess of that stipulated above and normally carried by NTD/EDGE
- Expense of reproduction of District provided Record Drawings and As-Builts of existing facilities if required by NTD/EDGE in the performance of this contract.

14.2.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of 1.20 times the amounts expended.

#### 14.3. INTEREST PAYMENTS

14.3.1 The rate of interest for past due payments shall be as follows:

#### 15. ARTICLE 15 - OTHER CONDITIONS AND SERVICES

15.1. The Basic Services to be performed shall be commenced on \_\_\_\_\_ and, subject to authorized adjustments and to delays not caused by NTD/EDGE, Substantial Completion shall be achieved in the Contract Time of \_\_\_\_\_ (\_\_\_\_\_) calendar days.

15.2. The Basic Services beyond those described in Article 3 are as follows:

15.2.1 \_\_\_\_\_

15.3. Additional Services beyond those described in Article 3 are as follows:

15.3.1 \_\_\_\_\_

15.4. NTD/EDGE shall submit an Application for Payment on the \_\_\_\_\_ (\_\_\_\_\_) day of each month.

15.5. Insurance coverage required by Article 7.1 shall be provided in the following amounts:

15.5.1 \_\_\_\_\_

15.6. Insurance coverage required by Article 7.3 and 7.4 shall be provided in the following amounts:

15.6.1 \_\_\_\_\_



**15.7. Part 2 of this Agreement includes the following documents:**

*(List the documents by specific title and date; include any required performance and payment bonds.)*

Title

Date

This Agreement entered into as of the day and year first written above.

**WESTERN PLACER UNIFIED SCHOOL DISTRICT**

**NTD/EDGE, Design Builders, Inc.**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

**END OF AGREEMENT**

2.27

**WESTERN PLACER UNIFIED SCHOOL DISTRICT  
BOARD OF TRUSTEE MEETING FACT SHEET**

<b>MISSION STATEMENT:</b> Empower Students with the Skills, Knowledge, and Attitudes for Success in an Ever Changing World.
<b>BOARD OF TRUSTEES/GLOBAL DISTRICT GOALS</b>
1. Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students.
2. Foster a safe, caring environment where individual differences are valued and respected.
3. Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.
4. Promote the involvement of the community, parents, local government, business, service organizations etc. as partners in the education of the students.

**AGENDA ITEM:**

Approve the Guaranteed Maximum Price for the Construction of the Twelve Bridges Elementary School and Adjacent Joint-Use Park.

**SUBJECT AREA:**

Discussion/Action

**REQUESTED BY:**

Jay M. Stewart   
Assistant Superintendent, Business Services

**ENCLOSURES:**

Yes

**BOARD MEETING DATE:**

June 24, 2003

---

**BACKGROUND:**

The attached Guaranteed Maximum Price (GMP) reflects the cost of construction and the supporting soft costs associated with the development of the Twelve Bridges Elementary School and the adjacent joint-use park. Representatives from NTD/EDGE will be available to discuss the details of the GMP.

**SUPERINTENDENT'S RECOMMENDATION:**

Administration recommends the Board of Trustees approve the Guaranteed Maximum Price for the construction of the Twelve Bridges Elementary School and adjacent joint-use park.

# NTD | EDGE

DESIGN • BUILDERS

## Western Placer Unified School District Twelve Bridges Elementary School Guaranteed Maximum Price

June 18, 2003

	Direct Costs of Construction	16,366,000.00
	OH & P @ 6.00%	981,960.00
	Builders Risk @ 0.15%	26,021.94
	Subtotal	17,373,981.94
	Payment & Performance Bonds @ 1.00%	173,739.82
	Subtotal	17,547,721.76
	A/E Fees *	1,068,543.00
	<b>GMP</b>	<b>18,616,264.76</b>
<b>OWNER REQUESTED ADD ITEMS</b>		
1	Overland Release	250,000.00
2	Permenant Art (Allowance @ 1/2 of 1% of GMP)	93,081.32
3	V-Ditch	40,000.00
4	Demountable Wall Panel System (M.P. Room)	40,000.00
	Subtotal	423,081.32
	OH&P @ 6.00%	25,384.88
	Builders Risk Insurance @ 0.15%	672.70
	Subtotal	449,138.90
	Payment & Performance Bonds @ 1.00%	4,491.39
	Total Value of Owner requested Add Items (Included in GMP)	453,630.29
	<b>GMP</b>	<b>18,616,264.76</b>
	Owner Requested Added Items	453,630.29
	GMP Less Owner Requested Add Items	18,162,634.47
	PGMP (Includes A/E Fees)	18,168,543.00
	<b>Overage / Underage from PGMP</b>	<b>(5,908.53)</b>
<b>POTENTIAL DEDUCTIVE ALTERNATES</b>		
	Orchard & Heritage Trees	(120,000.00)
	Reduce Landscape & Hardscape Scope	(180,000.00)
	Misc. Architectural Mods. & V.E. Proposals	(153,000.00)
	Total potential deducts from scope to achieve GMP	(453,000.00)
	* Credit for payments made for A/E Services due to Owner - Value To Be Determined	

**WESTERN PLACER UNIFIED SCHOOL DISTRICT  
BOARD OF TRUSTEE MEETING FACT SHEET**

<b>MISSION STATEMENT:</b> Empower Students with the Skills, Knowledge, and Attitudes for Success in an Ever Changing World.
<b>BOARD OF TRUSTEES/GLOBAL DISTRICT GOALS</b>
1. Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students.
2. Foster a safe, caring environment where individual differences are valued and respected.
3. Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.
4. Promote the involvement of the community, parents, local government, business, service organizations etc. as partners in the education of the students.

**AGENDA ITEM:**

Approve Resolution 02/03.43 Authorizing the Formation of a Joint Powers Authority and Certain Related Matters.

**SUBJECT AREA:**

Discussion/Action

**REQUESTED BY:**

Jay M. Stewart   
Assistant Superintendent, Business Services

**ENCLOSURES:**

Yes

**BOARD MEETING DATE:**

June 24, 2003

---

**BACKGROUND:**

The attached resolution authorizes the Western Placer Unified School District to enter into a joint powers authority for the purposes of capital facility financing. Representative from the District's financial advisor, Caldwell Flores Winters, Inc. will be available to provide details and answer questions.

**SUPERINTENDENT'S RECOMMENDATION:**

Administration recommends the Board of Trustees approve Resolution 02/03.43 authorizing the formation of a Joint Powers Authority and certain related matters.

**RESOLUTION OF THE BOARD OF TRUSTEES OF  
WESTERN PLACER UNIFIED SCHOOL DISTRICT AUTHORIZING  
FORMATION OF A JOINT POWERS AUTHORITY  
AND CERTAIN RELATED MATTERS**

**WHEREAS**, the joint exercise of powers found in Article 1, Chapter 5, Division 7, Title 1 of the Government Code of California (commencing with Section 6500), as amended (the “Act”), authorizes two or more public agencies to form a joint powers authority by an agreement in order to, among other things, assist in the financing of working capital and financing or refinancing of public capital improvements for the parties thereto; and

**WHEREAS**, Western Placer Unified School District (the “**District**”), along with a certain other prospective Member (as defined in the Agreement as defined below) to be determined meeting the requirements of the Agreement, is sponsoring the formation of a joint powers authority (the “**JPA**”) to assist the Members in, among other things, financing working capital and financing or refinancing public capital improvements for school related purposes; and

**WHEREAS**, the District and the other prospective Member propose to enter into a joint exercise of powers agreement (the “**Agreement**”) in substantially the form presented to this meeting pursuant to which the District and the other prospective Member agree to form the JPA as Members of such JPA and to establish such powers that may be exercised by the JPA; and

**WHEREAS**, the District is authorized to undertake all of the above pursuant to the Act and other applicable laws of the State of California;

**NOW, THEREFORE, IT IS RESOLVED AND ORDERED** by the Board of Trustees of the District as follows:

**SECTION 1.** The formation of the JPA and the District’s membership in the JPA are hereby approved, ratified and affirmed.

**SECTION 2.** The Agreement in substantially the form considered at this meeting is hereby approved. The Superintendent and the Assistant Superintendent, Business Services of the District are, and each of them acting alone is, hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver the Agreement in substantially the form presented to and considered at this meeting, with such changes therein as the persons executing the same on behalf of the District may approve, in their discretion, as being in the best interests of the District, such approval to be conclusively evidenced by the execution and delivery thereof.

**SECTION 3.** The Superintendent of the District or his or her designee is hereby authorized and directed to serve on the governing board of the JPA as the Representative (as defined in the Agreement) of the District.

**SECTION 4.** The Superintendent and the Assistant Superintendent, Business Services of the District of the District and their authorized representatives are, and each of them acting alone is, hereby authorized to do any and all things, take any and all actions including, without limitation, taking all actions necessary or advisable to form and organize the JPA and to execute and deliver any and all documents which they may deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this Resolution, and all actions heretofore taken by any of them with respect to the subject matter of this Resolution are hereby ratified and confirmed.

This Resolution shall take effect immediately upon its passage.

[Signature Page to Follow]

4.2

The foregoing resolution was duly adopted by the Board of Trustees of Western Placer Unified School District the 24th day of June, 2003.

**BOARD OF TRUSTEES OF WESTERN  
PLACER UNIFIED SCHOOL  
DISTRICT**

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

ATTEST:

By: \_\_\_\_\_  
Clerk of the Board of Trustees

4.3

**JOINT EXERCISE OF POWERS AGREEMENT**

**dated July \_\_, 2003**

**CREATING**

**the**

**[CALIFORNIA SCHOOL DISTRICT FINANCING AUTHORITY]**



## **JOINT EXERCISE OF POWERS AGREEMENT**

This **JOINT EXERCISE OF POWERS AGREEMENT** (this "**Agreement**"), dated as of July 1, 2003, by and among **WESTERN PLACER UNIFIED SCHOOL DISTRICT** and \_\_\_\_\_) (the "**Initial Members**") (the Initial Members, together with all other parties executing this Agreement, except those which have been withdrawn in accordance with Article XII hereof, being herein referred to as the "**Members**." )

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

**WHEREAS**, the Members desire to create the [California School District Financing Authority] (the "**Authority**") pursuant to Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (commencing with Section 6500) (the "**Act**"), for the purpose of financing working capital and financing or refinancing certain public capital improvements for the Members under the Act, including under, but not limited to, Article 4, Chapter 5, Division 7, Title 1 of the California Government Code (commencing with Section 6584) (the "**Bond Pooling Act**");

**WHEREAS**, each of the Members is a "public agency" as that term is defined in Section 6500 of the Government Code of the State of California.

**NOW, THEREFORE**, in consideration of the above premises and of the mutual promises herein contained, each of Members does hereby agree as follows:

### **ARTICLE I**

#### **CREATION OF CALIFORNIA PUBLIC SCHOOL DISTRICT FINANCING AUTHORITY**

Pursuant to the Act, the parties hereto hereby create a public entity separate and apart from the parties to this Agreement, to be known as the "[California School District Financing Authority]", hereinafter referred to as the "**Authority**." Pursuant to California Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of any party to this Agreement. A Member may separately contract for or assume responsibility for specific debts, liabilities, or obligations of the Authority. Pursuant to and to the extent required by California Government Code Section 6509, the Authority shall be restricted in the exercise of its powers in the same manner as Western Placer is restricted in its exercise of similar powers. All capitalized terms used in this Agreement (unless otherwise defined herein) shall have the meanings assigned to such terms in Article III hereof.

### **ARTICLE II**

#### **PURPOSE AND POWERS**

A. The purpose of creating this Authority is to exercise the powers of the Members to jointly accomplish the financing or refinancing of the acquisition and/or construction of school facilities for its Members (the "**Program**"). The Authority shall adopt

4.5

guidelines for the implementation of the Program, including guidelines for application for financing and selection of Projects. The Authority shall also select counsel to serve as bond or special counsel and a financial advisor to assist in the implementation and development of the Program. The initial bond or special counsel shall be O'Melveny & Myers LLP and the initial financial advisor shall be Caldwell Flores Winters, Inc.

B. The Authority shall have all powers common to its Members and all powers granted by applicable law, including without limitation, the Act and the Bond Pooling Act, and is authorized, in its own name, to do all acts necessary to exercise such powers to fulfill the purposes of this Agreement. Without limiting the foregoing, the Authority shall have the power to do each of the following:

- (i) Finance and refinance through the issuance of bonds or other instruments of indebtedness, Program Projects.
- (ii) Enter into Leases and purchase Local Obligations pursuant to the Program.
- (iii) Incur debts, liabilities, and obligations.
- (iv) Acquire, hold, or dispose of real and personal property.
- (v) Receive contributions and donations of property, funds, services, and other forms of assistance from any source.
- (vi) Sue and be sued in its own name.
- (vii) Employ agents and employees.
- (viii) Acquire, construct, rehabilitate, remodel, install, manage, maintain, or operate buildings, works, or improvements.
- (ix) Lease real and personal property (including that of a Member or Local Agency) as lessor and as lessee.
- (x) Receive, collect, and disburse moneys.
- (xi) Invest money in the treasury of the Authority in the same manner and on the same conditions as local agencies pursuant to California Government Code Section 53601.
- (xii) Exercise all other powers necessary and proper to carry out the provisions of this Agreement.

## ARTICLE III

### DEFINITIONS

The following definitions shall apply to the provisions of this Agreement:

A. "Act" shall mean Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (commencing with Section 6500).

B. "Authority" shall mean [AUTHORITY].

C. "Agreement" shall mean this Joint Exercise of Powers Agreement, as it may be amended from time to time, creating the Authority.

D. "Bond Pooling Act" shall mean Article 4, Chapter 5, Division 7, Title 1 of the California Government Code (commencing with Section 6584) and commonly known as the Marks-Roos Local Bond Pooling Act of 1985.

E. "Bonds" shall mean bonds, notes, commercial paper, lease-purchase agreements, certificates of participation, floating rate, and variable maturity securities or other evidences of indebtedness within the meaning of the term "bond" as defined in Section 6585(c) of the California Government Code issued by the Authority to carry out the Program.

F. "Fiscal Year" shall mean the period of time from the date of this Agreement to June 30, 2003, and thereafter every July 1 to June 30 of each following year.

G. "Governing Board" shall mean the governing body of the Authority.

H. "Lease" shall mean any lease, lease/purchase agreement or sublease entered into by and between the Authority, as lessor, and a Member or a Local Agency, as lessee, pursuant to the Program.

I. "Local Agency" shall mean a "local agency" as defined in Section 6585(f) of the California Government Code.

J. "Local Obligation" shall mean any bond, note, commercial paper, lease purchase agreement, certificate of participation, floating rate, and variable maturity securities or other evidences of indebtedness within the meaning of the term "bond" as defined in Section 6585(c) of the California Government Code, which is purchased by the Authority from a Member or a Local Agency which is the issuer thereof at a public or negotiated sale or which is otherwise acquired by the Authority pursuant to the Program or an indenture providing for the issuance of Bonds.

K. "Member" shall mean any public school district organized and existing under the laws of the State of California which is a party to this Agreement.

L. "Program" shall mean the Authority's program of financing and refinancing the acquisition and/or construction of school facilities for its Members.

M. "Program Obligation" means a Lease or Local Obligation.

N. "Program Project" shall mean a Public Capital Improvement, Working Capital or other permitted project financed or refinanced under the Program and includes the purchase by the Authority of Local Obligations thereunder.

O. "Public Capital Improvement" shall have the meaning given to such term in Section 6585(g) of the California Government Code.

P. "Working Capital" shall have the meaning given to such term in Section 6585(i) of the California Government Code.

## **ARTICLE IV**

### **PARTIES TO AGREEMENT**

Each Member represents and warrants that it intends to, and does hereby, contract with all other Members identified on the signature page hereof and any new members admitted to the Authority pursuant to Article XIV hereof. Each Member also represents and warrants that the withdrawal or expulsion of any Member, pursuant to Article XII, shall not relieve any Member of its obligations or duties under this Agreement.

## **ARTICLE V**

### **GOVERNING BOARD**

The Authority shall be governed by a Governing Board comprised of one Representative from each Member (a "Representative"). Each Member shall also designate an alternate Representative. Each Representative of the Governing Board has one vote. The alternate Representative may vote at meetings of the Governing Board in the absence of the Member's Representative. Immediately upon admission of a new Member pursuant to Article XIV, the Member shall be entitled to appoint a Representative and alternate Representative to the Governing Board. Representatives and alternate Representatives serve at the pleasure of the Member which has appointed them.

A Representative and/or alternate Representative shall be removed from the Governing Board upon the occurrence of any one of the following events: (1) the Authority receives written notice from the appointing Member of the removal of the Representative or alternate Representative; (2) the expulsion or withdrawal of the Member from this Agreement; or (3) the death or resignation of the Representative.

Representatives and their alternates are not entitled to compensation. The Governing Board may authorize reimbursement of expenses incurred by Representatives, or their alternates.

## ARTICLE VI

### GOVERNING BOARD MEETINGS AND RECORDS

A. Meetings. Meetings of the Governing Board shall be called in accordance with the provisions of Section 54956 of the California Government Code or any successor provision thereto.

B. Call, Notice and Conduct of Meetings. All meetings of the Governing Board shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code) or any successor provision thereto.

C. Quorum. All of the Representatives of the Governing Board constitute a quorum for the transaction of business. However, less than a quorum may adjourn from time to time. Except as otherwise provided in Articles XIII and XIV hereof, a unanimous vote of all of the Representatives of the Governing Board is required to take action.

## ARTICLE VII

### OFFICERS

The Governing Board shall elect a president and vice-president from among its members at its first meeting. Thereafter, at the first meeting for each succeeding Fiscal Year, the Governing Board shall elect a president and a vice-president from among its Members; provided, however, that no Representative, or successor Representative of any Member, shall be elected to a second term as president or vice-president until the Representatives of all other Members shall have been so elected. Each officer shall assume the duties of his or her office upon election. If either the president or vice-president cease to be a Representative the resulting vacancy shall be filled at the next meeting of the Governing Board held after the vacancy occurs. In the absence or inability of the president to act, the vice-president acts as president. The president shall preside at and conduct all meetings of the Governing Board. The Governing Board shall appoint a secretary and a treasurer/auditor of the Authority who may, but need not be, a Representative of the Governing Board. The treasurer/ auditor shall be so qualified to hold such positions pursuant to Sections 6505.5 and 6505.6 of the California Government Code. The Governing Board may appoint such other officers as it considers necessary.

## ARTICLE VIII

### MEMBER RESPONSIBILITIES

Each Member shall have the following responsibilities:

A. To appoint or remove its Representative of the Governing Board as set forth in Article V.

B. To approve amendments to this Agreement as set forth in Article XVII.

## **ARTICLE IX**

### **BUDGET**

The Governing Board shall adopt an annual budget as soon as possible for the first Fiscal Year and not later than thirty days prior to the beginning of each Fiscal Year thereafter.

## **ARTICLE X**

### **ANNUAL AUDIT AND REVIEW**

The Governing Board shall provide for strict accountability of all fluids and report of all receipts and disbursements and shall cause an annual financial audit of the accounts and records to be made by a certified public accountant in compliance with California Government Code Sections 6505 and 6505.5 or 6505.6 with respect to all receipts, disbursements, other transactions, and entries into the books of the Authority; provided, however, that the Governing Board may by unanimous request thereof replace the annual audit with an audit covering a two-year period. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Government Code Section 26909 and shall conform to generally accepted auditing standards. A report of each audit shall be filed as a public record with each of the Members and also with the county auditor of the county in which each of the Members is located. The report shall be filed within twelve months of the Fiscal Year or Fiscal Years under examination. The Authority shall pay all costs of such financial audits, which costs shall be expenses of the Program.

## **ARTICLE XI**

### **ESTABLISHMENT AND ADMINISTRATION OF FUNDS**

Funds of the Authority may be commingled for investment and administration purposes.

The treasurer/auditor shall draw warrants to pay demands against the Authority when the demands have been approved in writing by the president.

All funds or other property acquired by the Authority as a result of this Agreement shall be paid and disbursed as provided in resolutions of the Governing Board or the indentures pursuant to which Bonds are issued.

## **ARTICLE XII**

### **WITHDRAWAL AND EXPULSION**

The Governing Board may expel any Member at any time for material breaches of this Agreement.

4.10

A Member may withdraw from this Agreement upon written notice to the Governing Board. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Governing Board which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

The withdrawal or expulsion of any Member after the inception of its participation in the Program shall not terminate its responsibility under its Program Obligations, if any, or other obligations with respect to the Authority.

### **ARTICLE XIII**

#### **TERMINATION**

This Agreement shall continue until terminated. However, it cannot be terminated until such time as all principal of and interest on Bonds, and all other amounts payable under the indentures pursuant to which such Bonds have been issued, shall have been paid in full. Thereafter, this Agreement may be terminated by vote or written consent of two-thirds of the Members; provided, however, that this Agreement and the Authority shall continue to exist for the purposes of disposing of all claims, the distribution of assets, and any other functions necessary to conclude the affairs of the Authority.

After completion of the Authority's purposes, any surplus money on deposit in any fund or account of the Authority shall be returned in proportion to the contributions made as required by Section 6512 of the California Government Code. The Governing Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority.

### **ARTICLE XIV**

#### **ADDITION OF MEMBERS**

Qualifying public agencies may be added as parties to this Agreement and become Members upon: (i) the filing by such public agency of an executed counterpart of this Agreement, together with a certified copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (ii) adoption of a resolution of the Governing Board approving the addition of such public agency as a Member. Upon satisfaction of such conditions, the Governing Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

### **ARTICLE XV**

#### **LIABILITY OF THE AUTHORITY**

Funds of the Authority may be used to defend, indemnify, and hold harmless the Authority, any Member, any member of the Governing Board and any employee of the Authority for their actions taken within the scope of their duties while acting on behalf of the Authority.

## ARTICLE XVI

### NOTICES

Notices under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by first class mail, postage prepaid, or sent by telegram, telecopier or telex, addressed to the parties as follows:

If to the Western Placer  
Unified School District

Western Placer Unified School District  
810 J. Street  
Lincoln, CA 95648  
Attention: Superintendent

If to the \_\_\_\_\_

\_\_\_\_\_  
[Address]

Attention: \_\_\_\_\_

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent. Notices of new Members shall be sufficiently given when delivered in the manner described above to the address indicated in the amendment to this Agreement adding such new Member.

## ARTICLE XVII

### AMENDMENTS TO THIS AGREEMENT

Except as provided in Articles XII and XIV, this Agreement may be amended at any time by unanimous vote of the Members acting through their respective governing body.

## ARTICLE XVIII

### SEVERABILITY

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

## ARTICLE XIX

### AGREEMENT COMPLETE

The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

4.12



## **ARTICLE XX**

### **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

## **ARTICLE XXI**

### **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

**INITIAL MEMBERS**

**WESTERN PLACER UNIFIED SCHOOL DISTRICT**

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

\_\_\_\_\_

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

**ADDITIONAL MEMBERS**

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

4.14

**WESTERN PLACER UNIFIED SCHOOL DISTRICT  
BOARD OF TRUSTEE MEETING FACT SHEET**

<b>MISSION STATEMENT:</b> Empower Students with the Skills, Knowledge, and Attitudes for Success in an Ever Changing World.
<b>BOARD OF TRUSTEES/GLOBAL DISTRICT GOALS</b>
1. Develop and continually upgrade a well articulated K-12 academic program that challenges all students to achieve their highest potential, with a special emphasis on students.
2. Foster a safe, caring environment where individual differences are valued and respected.
3. Provide facilities for all district programs and functions that are suitable in terms of function, space, cleanliness and attractiveness.
4. Promote the involvement of the community, parents, local government, business, service organizations etc. as partners in the education of the students.

**AGENDA ITEM:**

Approve Resolution 02/03.44 Approving the Execution and Delivery of Certain Agreements and Documents in Connection with the Execution and Delivery of Certificates of Participation on Behalf of the District and other Matters Related Thereto.

**SUBJECT AREA:**

Discussion/Action

**REQUESTED BY:**

Jay M. Stewart   
Assistant Superintendent, Business Services

**ENCLOSURES:**

Yes

**BOARD MEETING DATE:**

June 24, 2003

---

**BACKGROUND:**

The attached resolution supporting documentation authorizes the Western Placer Unified School District to issue Certificates of Participation to finance the construction and improvements of school facilities. Representative from the District's financial advisor, Caldwell Flores Winters, Inc. will be available to provide details and answer questions.

**SUPERINTENDENT'S RECOMMENDATION:**

Administration recommends the Board of Trustees approve Resolution 02/03.44 approving the execution and delivery of certain agreements and documents in connection with the execution and delivery of Certificates of Participation on behalf of the District and other matters related thereto.

**RESOLUTION NO. 02/03.44**

**RESOLUTION OF THE BOARD OF TRUSTEES OF WESTERN  
PLACER UNIFIED SCHOOL DISTRICT APPROVING THE EXECUTION AND  
DELIVERY OF CERTAIN AGREEMENTS AND DOCUMENTS IN  
CONNECTION WITH THE EXECUTION AND DELIVERY OF CERTIFICATES  
OF PARTICIPATION ON BEHALF OF THE DISTRICT AND OTHER  
MATTERS RELATED THERETO**

**WHEREAS**, the Western Placer Unified School District (the "**District**") is or will become a member of a joint powers authority (the "**Authority**") formed or to be formed pursuant to a Joint Exercise of Powers Agreement (the "**JPA Agreement**") to assist its Members (as defined in the JPA Agreement) in, among other things, financing working capital and financing or refinancing public capital improvements for school facilities;

**WHEREAS**, the Board of Trustees has determined that it is in the best interest of the District to construct and improve certain school facilities within the District;

**WHEREAS**, the JPA Agreement and the Act authorize the Authority to assist in the financing of Program Projects (as defined in the JPA Agreement) and the Authority will assist the District in connection with the execution and delivery of the District's Certificates of Participation (School Facilities Project), Series 2003 (the "**Certificates**") in the maximum aggregate amount of not to exceed \$20,000,000 to finance the construction and improvement of such school facilities within the District;

**WHEREAS**, in order to facilitate the execution and delivery of the Certificates by the Authority, the District and the Authority will enter into the Lease (as hereinafter defined) pursuant to which the District will lease certain real property currently located in the District and all facilities and improvements located thereon to be selected by the Superintendent of the District (the "**Property**") to the Authority;

**WHEREAS**, the District and the Authority will enter into the Sublease (as hereinafter defined) pursuant to which the Authority will sublease the Property to the District;

**WHEREAS**, pursuant to an Assignment Agreement (as hereinafter defined) the Authority will assign and transfer to U.S. Bank National Association (the "**Trustee**") all of its rights, title and interest in and to the Sublease and the Lease, including its right to receive payments of base rental under the Sublease;

**WHEREAS**, the Authority, the District and the Trustee will enter into a First Supplemental Trust Agreement (as hereinafter defined) pursuant to which the Trustee will execute and deliver the Certificates;

**WHEREAS**, the District and Banc of America Securities LLC (the "**Underwriter**") will enter into the Purchase Agreement (as hereinafter defined) relating to the Certificates;

**WHEREAS**, the District and Bank of America, N.A. (the "**Bank**") will enter into a Reimbursement Agreement (as hereinafter defined) pursuant to which the District will agree to reimburse the Bank for certain payments made by the Bank in connection with the Certificates;

**WHEREAS**, the District and Banc of America Securities LLC, as remarketing agent (the "**Remarketing Agent**") will enter into a Remarketing Agreement (as hereinafter defined) to provide for the remarketing of the Certificates; and

**WHEREAS**, there have been presented to this meeting the following:

- (i) A form of Lease Agreement (the "**Lease**") by and between the District and the Authority;
- (ii) A form of Sublease Agreement (the "**Sublease**") by and between the Authority and the District;
- (iii) A form of Assignment Agreement (the "**Assignment Agreement**") by and between the Authority and the Trustee;
- (iv) A form of First Supplemental Trust Agreement (the "**First Supplemental**") by and among the Authority, the District and the Trustee;
- (v) A form of Master Trust Agreement (the "**Master Trust Agreement**") by and between the Authority and the Trustee;
- (vi) A form of Certificate Purchase Agreement (the "**Purchase Agreement**") by and between the District and the Underwriter;
- (vii) A form of Reimbursement Agreement (the "**Reimbursement Agreement**") by and between the District and the Bank;
- (viii) A form of Remarketing Agreement (the "**Remarketing Agreement**") by and between the District and the Remarketing Agent; and
- (ix) A form of preliminary official statement relating to the Certificates (the "**Preliminary Official Statement**").

**NOW, THEREFORE, IT IS RESOLVED, DETERMINED AND ORDERED** by the Board of Trustees of the District as follows:

**SECTION 1.** The District, as a Member of the Authority within whose boundaries the Program Projects are to be located, hereby approves the execution and delivery of the Certificates and hereby determines there will be significant public benefit resulting therefrom.

**SECTION 2.** The form of the Lease on file with the District and considered at this meeting is hereby approved. The officers and agents of the District are, and each of them acting alone is, hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver the Lease in substantially the form on file with the District and considered at this meeting, with such changes therein as the officers and agents of the District may approve, in their discretion, as being in the best interests of the District, including, without limitation, the property and facilities to be subject to such Lease and such changes as may be

necessary to obtain credit enhancement, including bond insurance, with respect to the Certificates, such approval to be conclusively evidenced by the execution and delivery thereof. The officers and agents of the District are hereby authorized and directed to make changes to the Lease to achieve the purposes for which the Certificates are being executed and delivered.

**SECTION 3.** The form of the Sublease on file with the District and considered at this meeting is hereby approved. The officers and agents of the District are, and each of them acting alone is, hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver the Sublease in substantially the form on file with the District and considered at this meeting, with such changes therein as the officers and agents of the District may approve, in their discretion, as being in the best interests of the District, including, without limitation, the property and facilities to be subject to such Sublease and such changes as may be necessary to obtain credit enhancement, including bond insurance, with respect to the Certificates, such approval to be conclusively evidenced by the execution and delivery thereof. The officers and agents of the District are hereby authorized and directed to make changes to the Sublease to achieve the purposes for which the Certificates are being executed and delivered.

**SECTION 4.** The District hereby consents to the assignment by the Authority pursuant to the Assignment Agreement of substantially all of its rights, title and interest under the Sublease and the Lease, including the right to receive payments of base rental under the Lease Agreement, to the Trustee for the benefit of the owners of the Certificates.

**SECTION 5.** The form of the First Supplemental on file with the District and considered at this meeting is hereby approved. The officers and agents of the District are, and each of them acting alone is, hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver the First Supplemental in substantially the form on file with the District and considered at this meeting, with such changes therein as the officers and agents of the District may approve, in their discretion, as being in the best interests of the District, including, without limitation, such changes as may be necessary to obtain credit enhancement, including bond insurance, with respect to the Certificates, such approval to be conclusively evidenced by the execution and delivery of the First Supplemental by such officers and agents. The officers and agents of the District are hereby authorized and directed to make changes to the First Supplemental to achieve the purposes for which the Certificates are being executed and delivered.

**SECTION 6.** The District hereby approves the form of Master Trust Agreement.

**SECTION 7.** The form of the Reimbursement Agreement on file with the District and considered at this meeting are hereby approved. The officers and agents of the District are, and each of them acting alone is, hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver the Reimbursement Agreement in substantially the form on file with the District and considered at this meeting, with such changes therein as the officers and agents of the District may approve, in their discretion, as being in the best interests of the District. The District hereby approves the reimbursement of the Bank for certain payments in connection with the Certificates pursuant to the Reimbursement Agreement.

**SECTION 8.** The form of the Remarketing Agreement on file with the District and considered at this meeting are hereby approved. The officers and agents of the District are, and each of them acting alone is, hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver the Remarketing Agreement in substantially the form on file with the District and considered at this meeting, with such changes therein as the officers and agents of the District may approve, in their discretion, as being in the best interests of the District.

**SECTION 9.** The form of a preliminary official statement containing certain information regarding the District and relating to the Certificates (the "**Preliminary Official Statement**") on file with the District and considered at this meeting is hereby approved with such changes therein as the Superintendent or his or her designee may approve, in their discretion, as being in the best interests of the District. The distribution of the Preliminary Official Statement is hereby approved subject to final approval by the Superintendent or his or her designee. Prior to the distribution of the Preliminary Official Statement, the Superintendent or Deputy Superintendent of the School District is authorized and directed to deem the Preliminary Official Statement final as of its date within the meaning of Rule 15c2-12 of the Securities and Exchange Commission, such action to be conclusively evidenced by distribution of the Preliminary Official Statement.

The distribution of an official statement in conjunction with the sale and delivery of the Certificates, with such revisions from the Preliminary Official Statement as are reasonable and customary and as are approved by the Superintendent or his or her designee (the "**Official Statement**"), is hereby approved. The Superintendent or his or her designee of the District are hereby authorized to execute and deliver the Official Statement.

**SECTION 10.** The form of Purchase Agreement on file with the District and considered at this meeting is hereby approved and the Certificates are hereby authorized to be sold to the Underwriter pursuant to the Purchase Agreement subject to the conditions set forth in this Section 10. The officers and agents of the District are hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver the Purchase Agreement in substantially the form on file with the District and considered at this meeting, with such changes therein as the officers and agents of the District may approve, in their discretion, as being in the best interests of the District, such approval to be conclusively evidenced by the execution and delivery thereof; provided that (i) the aggregate principal amount of the Certificates shall not exceed \$20,000,000, and (ii) the maximum aggregate underwriter's discount (excluding original issue discount, if any) from the principal amount of the Certificates shall not exceed two and one-half percent (2.5%) of the aggregate principal amount of the Certificates, excluding any costs of issuance to be paid by Underwriter, if any. All other terms and conditions shall be consistent with and shall carry out the intention of this Board's approval, as set forth herein.

**SECTION 11.** The officers and agents of the District are hereby authorized and directed to execute all documents and to take such actions as they may deem necessary or convenient in order to effectuate the purposes of this Resolution and to permit the execution and delivery of the Certificates as such officers and agents deem as being in the best interests of the District, in the manner described in the documents hereby approved.

[Signature Page to Follow]



The foregoing resolution was duly adopted by the Board of Trustees of Western Placer Unified School District the \_\_\_\_\_ day of June, 2003.

**BOARD OF TRUSTEES OF WESTERN  
PLACER UNIFIED SCHOOL DISTRICT**

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

ATTEST:

By: \_\_\_\_\_  
Clerk of the Board of Trustees

5.6

TO BE RECORDED AND WHEN RECORDED

RETURN TO:

O'Melveny & Myers LLP

400 S. Hope Street

Los Angeles, California 90071

Attention:

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER  
TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND  
TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES  
PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

LEASE AGREEMENT

Dated as of July 1, 2003

by and between

\_\_\_\_\_ AUTHORITY

and

WESTERN PLACER UNIFIED SCHOOL DISTRICT

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**"), by and between **WESTERN PLACER UNIFIED SCHOOL DISTRICT** (the "**District**"), a school district organized and existing under the Constitution and laws of the State of California (the "**State**"), as lessee, and **[NAME OF AUTHORITY]** (the "**Authority**"), a joint powers agency duly organized and existing under the laws of the State of California, as lessor,

### RECITALS

**WHEREAS**, in order to finance the construction of certain school facilities (the "**Project**"), the District will lease certain real property owned by the District, and the improvements thereto (the "**Property**"), to the Authority pursuant to this Lease, and the District will sublease the Property back from the Authority pursuant to a Sublease Agreement, dated as of the date hereof (the "**Sublease Agreement**");

**WHEREAS**, the Property is more particularly described in Exhibit A hereto;

**WHEREAS**, the District and the Authority have determined that it would be in the best interests of the District and the Authority to provide the funds necessary to finance the Project through the sale and delivery, pursuant to a Master Trust Agreement, dated as of July 1, 2003, by and between the Trustee and the Authority, as supplemented by the Supplemental Trust Agreement, dated the date hereof, among the Authority, the Trustee and the District, of certificates of participation (the "**Certificates**") evidencing direct, fractional undivided interests in the base rental payments to be made under the Sublease Agreement; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease;

### ARTICLE I DEFINITIONS

Except as otherwise defined herein, or unless the context clearly otherwise requires, words and phrases defined in Article I of the Sublease Agreement shall have the same meanings in this Lease.

### ARTICLE II LEASE OF THE PROPERTY; RENTAL

**Section 2.01 Lease of Property.** The District hereby leases to the Authority, and the Authority hereby leases from the District, for the benefit of the Owners of the Certificates, the Property subject only to Permitted Encumbrances, to have and to hold for the term of this Lease.

**Section 2.02 Rental.** The Authority shall pay to the District as and for rental of the Property hereunder, annually the sum of \$1.00 (the "**Lease Payment**").

The Authority and the District hereby find and determine that the amount of the Lease Payment does not exceed the fair market value of the leasehold interest in the Property which is conveyed hereunder by the District to the Authority. No other amounts of rental shall be due and payable by the Authority for the use and occupancy of the Property under this Lease.

### **ARTICLE III QUIET ENJOYMENT**

The parties intend that the Property will be leased back to the District pursuant to the Sublease Agreement for the term thereof. It is further intended that, to the extent provided herein and in the Sublease Agreement, if an event of default occurs under the Sublease Agreement, the Authority, or its assignee, will have the right, for the then remaining term of this Lease to (a) take possession of the Property, (b) if it deems it appropriate, cause an appraisal of the Property and a study of the then reasonable use thereof to be undertaken, and (c) relet the Property. Subject to any rights the District may have under the Sublease Agreement (in the absence of an event of default) to possession and enjoyment of the Property, the District hereby covenants and agrees that it will not take any action to prevent the Authority from having quiet and peaceable possession and enjoyment of the Property during the term hereof and will, at the request of the Authority and at the District's cost, to the extent that it may lawfully do so, join in any legal action in which the Authority asserts its right to such possession and enjoyment.

### **ARTICLE IV SPECIAL COVENANTS AND PROVISIONS**

**Section 4.01 Waste.** The Authority agrees that at all times that it is in possession of the Property, it will not commit, suffer or permit any waste on the Property, and that it will not willfully or knowingly use or permit the use of the Property for any illegal purpose or act.

**Section 4.02 Further Assurances and Corrective Instruments.** The District and the Authority agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease, the Trust Agreement and the Sublease Agreement.

**Section 4.03 Waiver of Personal Liability.** All liabilities under this Lease on the part of the Authority shall be solely liabilities of the Authority as a nonprofit public benefit Authority, and the District hereby releases each and every director, officer and employee of the Authority of and from any personal or individual liability under this Lease. No director, officer or employee of the Authority shall at any time or under any circumstances be individually or personally liable under this Lease to the District or to any other party whomsoever for anything done or omitted to be done by the Authority hereunder.

5.9

All liabilities under this Lease on the part of the District shall be solely liabilities of the District as a school district, and the Authority hereby releases each and every member, officer and employee of the District of and from any personal or individual liability under this Lease. No member, officer or employee of the District shall at any time or under any circumstances be individually or personally liable under this Lease to the Authority or to any other party whomsoever for anything done or omitted to be done by the District hereunder.

**Section 4.04 Taxes.** The District covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Property.

**Section 4.05 Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same.

**Section 4.06 Representations of the District.** The District represents and warrants to the Authority, the Trustee, the Bank and the Insurer as follows:

(a) the District has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Lease;

(b) except for Permitted Encumbrances, the Property is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the use of the Property for school purposes as contemplated by the District;

(c) all taxes, assessments or impositions of any kind with respect to the Property, except current taxes, have been paid in full; and

(d) the Property is necessary to the District in order for the District to perform its governmental function relating to public education.

**Section 4.07 Representations of the Authority.** The Authority represents and warrants to the District, the Trustee, the Bank and the Insurer that the Authority has the full power and authority to enter into, to execute and to deliver this Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Lease.

## ARTICLE V ASSIGNMENT, SELLING AND SUBLEASING

**Section 5.01 Assignment, Selling and Subleasing.** This Lease may be assigned or sold, and the Property may be subleased, as a whole or in part, by the Authority with the written consent of the Insurer and the Bank, or at the direction of the Insurer, without the necessity of obtaining the consent of the District or the Bank, if an event of default occurs under the Sublease Agreement. The Authority shall, within 30 days after such an assignment, sale or

sublease, furnish or cause to be furnished to the District a true and correct copy of such assignment, sublease or sale, as the case may be.

The Authority shall assign all of its rights hereunder to the Trustee appointed pursuant to the Trust Agreement.

**Section 5.02 Restrictions on District.** The District agrees that, except with respect to Permitted Encumbrances, it will not mortgage, sell, encumber, assign, transfer or convey the Property or any portion thereof during the term of this Lease.

## **ARTICLE VI IMPROVEMENTS**

Title to all improvements made on the Property during the term hereof shall vest in the District.

## **ARTICLE VII TERM; TERMINATION**

**Section 7.01 Term.** The term of this Lease shall commence as of the date of commencement of the term of the Sublease Agreement and shall remain in full force and effect from such date to and including \_\_\_\_\_ 1, 20\_\_\_\_, unless such term is extended or sooner terminated as hereinafter provided.

**Section 7.02 Extension; Early Termination.** If, on \_\_\_\_\_ 1, 20\_\_\_\_, the Certificates have not been fully paid, or provision therefor made in accordance with Article XII of the Trust Agreement, or the Trust Agreement has not been discharged by its terms, or if the Rental Payments payable under the Sublease Agreement have been abated at any time, then the term of this Lease shall be automatically extended until the date upon which all Certificates are fully paid, or provision therefor made in accordance with Article XII of the Trust Agreement, and the Trust Agreement is discharged by its terms and, to the extent permitted by applicable law, until all abated Rental Payments payable under the Sublease Agreement have been paid, except that the term of this Lease shall in no event be extended more than ten years. If, prior to \_\_\_\_\_ 1, 20\_\_\_\_, all Certificates have been fully paid, or provisions therefor made in accordance with Article XII of the Trust Agreement, and the Trust Agreement has been discharged by its terms, the term of this Lease shall end simultaneously therewith. The parties hereto agree that in the event of a default by the Authority of its obligations under this Lease, that the District will not have the right to terminate the Ground Lease.

## **ARTICLE VIII MISCELLANEOUS**

**Section 8.01 Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the District, the Authority and their respective successors and assigns.

**Section 8.02 Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 8.03 Amendments, Changes and Modifications.** This Lease may be amended, changed, modified, altered or terminated only in accordance with the provisions of the Sublease Agreement.

**Section 8.04 Third-Party Beneficiaries.** The Authority and District acknowledge that the Authority has assigned its right, title and interest in and to this Lease to the Trustee pursuant to the Assignment Agreement. The District consents to such assignment. The District consents to the Trust Agreement and acknowledges and agrees to the rights of the Trustee, the Insurer and the Bank as set forth therein. As a material inducement to the Trustee, the Insurer and the Bank, the Authority and the District agree that the Trustee, the Insurer and the Bank shall be third party beneficiaries to this Lease.

**Section 8.05 Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 8.06 Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California.

**Section 8.07 Captions.** The captions or headings in this Lease are for convenience only and in no way define or limit the scope or intent of any provisions of this Lease.

[Signatures on next page.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

**WESTERN PLACER UNIFIED SCHOOL DISTRICT**

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

\_\_\_\_\_ **AUTHORITY**

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



STATE OF CALIFORNIA

)

) ss.

COUNTY OF \_\_\_\_\_

)

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, personally known  
to me to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA

)

)

ss.

COUNTY OF \_\_\_\_\_

)

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, personally known  
to me to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

5.15

**Exhibit A**

**Description of the Property**

Certain real property located in the County of Placer, California, as more particularly described below, and any improvements thereon:

## **SUBLEASE AGREEMENT**

**THIS SUBLEASE AGREEMENT**, dated as of July 1, 2003 (this "**Sublease**"), by and between **WESTERN PLACER UNIFIED SCHOOL DISTRICT** (the "**District**"), a school district organized and existing under the Constitution and laws of the State of California (the "**State**"), as lessee, and [NAME OF AUTHORITY] (the "**Authority**"), a joint powers agency duly organized and existing under the laws of the State of California, as lessor;

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

**WHEREAS**, pursuant to a Lease Agreement, dated as of the date hereof (the "**Lease**"), by and between the District (as hereinafter defined) and the Authority (as hereinafter defined), the District has leased to the Authority certain real property, including all buildings and improvements thereon and to be located thereon, as described in Exhibit A thereto and in Exhibit A hereto (as further defined in Section 1, the "**Property**");

**WHEREAS**, the District wishes to provide for the financing of the construction of certain school facilities on property located within the District and the District and the Authority are authorized pursuant to the laws of the State to enter into leases for such purpose;

**WHEREAS**, the District has determined that in order to accomplish such purpose it is necessary and desirable to have the District lease the Property pursuant to this Sublease;

**WHEREAS**, pursuant to this Sublease the Authority will sublease the Property to the District; and

**WHEREAS**, the Authority intends to provide for the transfer of certain of its rights, title and interest in this Sublease to a Trustee for the benefit of owners of certificates of participation in this Sublease;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**Section 1. Definitions.** Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Sublease, have the meanings as set forth below. All other capitalized terms used herein without definition shall have the meanings as set forth in the Trust Agreement (as hereafter defined).

**"Additional Rental"** means the amounts specified as such in Section 3.1(f) hereof.

**"Asbestos Containing Materials"** means material in friable form containing more than one percent (1%) of the asbestiform varieties of (a) chrysotile (serpentine); (b) crocidolite (ricbeckite); (c) amosite (cummington-itegrinerite); (d) anthophyllite; (e) tremolite; and (f) actinolite.

**"Authority"** means the \_\_\_\_\_ Authority, a joint powers agency duly organized and existing under the laws of the State of California, and its successors and assigns.

**"Base Rental"** means the amounts specified as such in Section 3.1 hereof, as such amounts may be adjusted from time to time in accordance with the terms hereof, but does not include Additional Rental.

**"Business Day"** means a day that is not a New York Stock Exchange holiday, a Saturday or Sunday or a day on which banking institutions are authorized or required by law to be closed in the State for commercial banking purposes.

**"Certificates"** means the \$ \_\_\_\_\_ Western Placer Unified School District Certificates of Participation (School Facilities Project), Series 2003 consisting of Certificates initially representing interest at an Adjustable Rate and convertible to a Fixed Rate.

**"District"** means Western Placer Unified School District, its successors and assigns.

**"District Representative"** means the Superintendent of the District or another official designated by such officer and authorized to act on behalf of the District under or with respect to this Sublease and all other agreements related hereto.

**"Environmental Regulations"** means all Laws and Regulations, now or hereafter in effect, with respect to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, et seq.) (together with the regulations promulgated thereunder, "CERCLA"), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) (together with the regulations promulgated thereunder, "RCRA"), the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. Section 11001, et seq.) (together with the regulations promulgated thereunder, "Title III"), the Clean Water Act, as amended (33 U.S.C. Section 1321, et seq.) (together with the regulations promulgated thereunder, "CWA"), the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.) (together with the regulations promulgated thereunder, "CAA") and the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601 et seq.) (together with the regulations promulgated thereunder, "TSCA"), and any state or local similar laws and regulations and any so-called local, state or federal "superfund" or "superlien" law.

**"Fiscal Year"** means the fiscal year of the District, which at the date of this Sublease is the period from July 1 to and including the following June 30.

**"First Supplemental Trust Agreement"** means the First Supplemental Trust Agreement, dated the date hereof, by and among the Authority, the Trustee and the

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District.

**"Lease"** means that certain Lease Agreement, dated as of the date hereof, by and between the District and the Authority, including any amendments thereto.

**"Hazardous Materials"** has the meaning provided in Section 4.5(b)

**"Laws and Regulations"** has the meaning provided in Section 4.5(b).

**"Lease Event of Default"** means the occurrence and continuation of any event specified in Section 12(a) hereof.

**"Lease Term"** means the term of this Sublease, as provided in Section 2 hereof.

**"Lease Year"** means the period from the Closing Date through \_\_\_\_\_ 3 \_\_, 20\_\_ and thereafter the period from each \_\_\_\_\_ 1, to and including the following \_\_\_\_\_ 3 \_\_, 20\_\_ during the Lease Term.

**"Permitted Encumbrances"** means, with respect to the Property, as of any particular time, (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may, pursuant to provisions of Article V hereof, permit to remain unpaid, (b) the Assignment Agreement, (c) the Lease Agreement, (d) the Lease, (e) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law as normally exist with respect to properties similar to the Property for the purposes for which it was acquired or is held by the District, (f) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Delivery Date which the District certifies in writing will not affect the intended use of the Property or impair the security granted to the Trustee for the benefit of the Owners of the Certificates by the Trust Agreement and the Assignment Agreement and to which the Authority and the District consent in writing, and (g) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the Delivery Date which the District certifies in writing do not affect the intended use of the Property or impair the security granted to the Trustee for the benefit of the Owners of the Certificates by the Trust Agreement and the Assignment Agreement and to which the Authority and the District consent in writing.

**"Property"** means the real property, including all buildings and improvements at any time thereon, as described in Exhibit A hereto, including any real property substituted therefor pursuant to Section 16 hereof but excluding real property which has been released or for which new real property has been substituted in accordance with Section 16.

**"Release"** has the meaning provided in Section 4.5(b)

**"Rental Payments"** means all Base Rental and Additional Rental payable hereunder.

**"Sublease"** means this Sublease Agreement, including any amendments

or supplements hereto made or entered into in accordance with the terms hereof and of the Trust Agreement.

**“Trust Agreement”** means that certain Master Trust Agreement, dated as of July 1, 2003, by and the Authority and the Trustee, including any amendments or supplements thereto made or entered into in accordance with its terms, including as supplemented by the First Supplemental Trust Agreement.

**“Trustee”** means U.S. Bank National Association, as trustee acting in its capacity as such under the Trust Agreement or any successor appointed as therein provided.

## **Section 2.      Lease Term; Transfer of Title To District.**

(a)      The Authority hereby leases the Property to the District, and the District hereby leases the Property from the Authority and agrees to pay the Base Rental and the Additional Rental as provided herein for the right to use and occupy the Property, subject to the Permitted Encumbrances, all on the terms and conditions set forth herein.

The term of this Sublease shall begin on the Closing Date and end on the earliest of (a) \_\_\_\_\_ 1, 20\_\_ or (b) at such earlier date as the Certificates and all other amounts due hereunder and under the Trust Agreement shall have been paid or provision for their payment shall have been made in accordance with Section 10.01 of the Trust Agreement, or (c) the date of termination of this Sublease due to casualty or condemnation in accordance with the terms of Section 5 or 6 hereof, or (d) the date on which the District has exercised its right to purchase the Property pursuant to Section 15 hereof; provided, however, that, to the extent permitted by law, (i) so long as the Insurance Policy is in full force and effect, if Base Rental has been abated in any year in accordance with Section 3.5 or if all Base Rental Payments have not been fully paid in accordance with Exhibit B hereto, the term of this Sublease shall be extended until such time as the aggregate amount of abated and unpaid Base Rental payments has been paid as provided in Section 3.5 but in no event beyond ten years after the latest date of maturity of the Certificates, as specified in the Trust Agreement and (ii) this Sublease shall not terminate until all Additional Rental owed by the Lessee pursuant to Section 3.1(d)(v) has been paid. The District shall have no right to terminate this Sublease Agreement for a default by the Authority hereunder.

Upon the termination of this Sublease, all of the Authority's right, title and interest in the Property, and any improvements thereon or additions thereto, shall be transferred directly to the District or, at the option of the District, to any assignee or nominee of the District, in accordance with the provisions of this Sublease, free and clear of any interest of the Authority.

## **Section 3.      Rent.**

**3.1      Rental Payments.** The District hereby agrees, subject to the terms hereof, to pay from any legally available funds to the Authority the Base Rental and to pay to the parties entitled thereto Additional Rental in an aggregate amount no greater than the fair rental value of the Property in each Lease Year. In satisfaction of its obligations hereunder, the District shall pay the Base Rental and Additional Rental in the amounts, at the times and in the manner

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(a) Principal Component. Subject to the provisions of Section 3.6 hereof and the provisions of Sections 6 and 15 hereof, the principal components of the Base Rental evidenced by the Certificates (the "Base Rental") shall be paid by the District in the amounts and at the times specified in the Base Rental Payment Schedule attached as Exhibit B hereto.

(b) Base Rental - Adjustable Rate.

(i) Except with respect to Bank Certificates, the interest component of the Base Rental evidenced by the Certificates while in the Adjustable Rate Period shall be payable at the Adjustable Rate for such Base Rental, as the same shall be determined from time to time, unless and until such time as the Fixed Rate for such Base Rental is established pursuant to Section 3.1(d) hereof. The amount of interest to be paid on any Interest Payment Date for each \$5,000 of principal component of the Base Rental during any period in which the interest component of the Base Rental evidenced by the Certificates shall be payable at an Adjustable Rate and shall be determined by (x) multiplying \$5,000 times each different Adjustable Rate for such Base Rental in effect from and including the last Interest Payment Date times the actual number of days that such Adjustable Rate was in effect, (y) dividing the resulting product by 365 (or 366 if the year in which such computation is being made has 366 days), and (z) totaling the amounts computed for each such Adjustable Rate and rounding the resulting figure to the nearest cent (half cents being rounded upwards). None of the District, the Authority, the Remarketing Agent, the Bank or the Trustee shall have any liability to any Certificate Owner as a result of any error in calculation of an Adjustable Rate.

(ii) The Trustee shall send written notification to the District at least ten (10) days prior to each Interest Payment Date, which notification will indicate the Base Rental due on the next succeeding Interest Payment Date, less any amount then available in the Base Rental Fund for application as a credit against such Base Rental. For the purpose of computing the total Base Rental to be paid by the District, the Trustee shall add to the actual interest accrued to such date of notification an amount estimated for such subsequent 10-day period on the then-outstanding principal component of the Certificates, calculated at the most recent interest rate applicable to the Certificates, plus two percent (2%) per annum; provided, however, that should the Certificates then represent interest at a Fixed Rate, such interest shall be calculated at such Fixed Rate. To the extent such amount proves insufficient to provide moneys to pay the principal and interest with respect to the Certificates due on such Interest Payment Date, the District agrees to make up such deficiency on such Interest Payment Date and to deposit such amount with the Trustee on or prior to such Interest Payment Date. Amounts held in the Base Rental Fund (other than amounts for partial prepayment of the Base Rental or for payment of Certificates not yet surrendered) on any Interest Payment Date are credited towards the Base Rental then due and payable.

(iii) The interest component of the Base Rental evidenced by the Certificates payable from and after the Conversion Date shall be calculated at the Fixed Rate on the basis of a 360-day year comprised of twelve 30-day months.

(c) Determination of Adjustable Rate.

(i) During the Initial Adjustable Period for the Certificates, the



interest with respect to such Certificates (except for any Bank Certificates) will be payable at the Initial Interest Rate as set forth in the First Supplemental Trust Agreement, and with respect to Bank Certificates, the Bank Rate. Following the Initial Adjustable Period and prior to the Conversion Date, interest with respect to such Certificates will be payable at the Adjustable Rate or, with respect to Bank Certificates, the Bank Rate.

(ii) For each Interest Period subsequent to the period referred to in subsection (i) above, the Adjustable Rate for the Certificates (except for any Bank Certificates) shall be the rate determined by the Remarketing Agent on the applicable Interest Rate Calculation Date, having due regard for prevailing financial market conditions, to be the rate (but not higher than the rate) which, in the reasonable judgment of the Remarketing Agent, would be necessary to be payable with respect to such Certificates in order to enable the Remarketing Agent to remarket such Certificates tendered to the Remarketing Agent at a price equal to one hundred percent (100%) of the principal amount thereof. The Remarketing Agreement requires the Remarketing Agent to notify the Trustee, the Tender Agent, the Bank and the District of such Adjustable Rate by telecopier, facsimile or some other method capable of making a written record upon receipt no later than 5:00 p.m., California time, on each Interest Rate Calculation Date.

(iii) Except for Bank Certificates, which shall evidence interest at the Bank Rate, if the Remarketing Agent shall fail to determine the Adjustable Rate for the Certificates on an Interest Rate Calculation Date, then the Adjustable Rate shall be (i) one hundred percent (100%) of the rate for 60-day tax-exempt commercial paper published the afternoon of said Interest Rate Calculation Date by the Munifacts Wire System, Inc., or (ii) if no such rate is then published, it shall remain the same as for the immediately prior Interest Period.

(iv) Except for the Bank Rate payable with respect to Bank Certificates, the Adjustable Rate for the Certificates shall never exceed the then-applicable Maximum Interest Rate, notwithstanding subsection (b) hereof.

(v) The determination of the Adjustable Rate for the Certificates by the Remarketing Agent shall be conclusive and binding upon the District, the Corporation, the Trustee, the Bank, the Remarketing Agent and the Owners of the Certificates.

(d) Establishment of Fixed Rate. The interest rate to be payable with respect to the Adjustable Rate Certificates may be converted to a Fixed Rate as follows:

(i) At any time after the Initial Adjustable Period, the District may, with the prior written consent of the Bank, elect to have all of the Certificates be payable at the Fixed Rate by giving written notice to the Trustee, the Bank and the Remarketing Agent of such election at least thirty-five (35) and not more than forty-five (45) days prior to the proposed Conversion Date, which shall be an Interest Payment Date, so long as all obligations of the District owed to the Bank shall have been satisfied. The Bank may elect to have all of the Certificates in an Adjustable Rate converted to the Fixed Rate on any date after the date on which the Bank has held Bank Certificates for forty-five (45) consecutive days without such Certificates having been remarketed pursuant to Section 4.08 of the Trust Agreement, by giving written notice to the Trustee, the District and the Remarketing Agent of such election at least

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fifteen (15) and not more than twenty (20) days prior to the proposed Conversion Date, which shall be an Interest Payment Date. The notice of election by the Bank or the District shall state the proposed Conversion Date, which shall be an Interest Payment Date, as well as the duration of the new Fixed Rate Period.

The interest payable with respect to the Certificates shall not be converted to the Fixed Rate unless, not later than the last Business Day which is at least thirty-five (35) days prior to the proposed Conversion Date, the District or the Bank, whichever elected pursuant to subsection (a) hereof to convert the interest rate to a Fixed Rate, shall furnish to the Trustee an opinion of Special Counsel, addressed to the Trustee and the Bank (which Special Counsel, if selected by the District, shall be reasonably satisfactory to the Bank) to the effect that conversion to the Fixed Rate is lawful under applicable law, is permitted by this Lease Agreement and the Trust Agreement, and will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest payable with respect to such Certificates.

(ii) An election by the District or the Bank to convert the interest payable with respect to the Certificates to the Fixed Rate may be rescinded by the party making such election at any time prior to the mailing of notice to the Certificate Owners pursuant to subsection (c) hereof upon receipt by the Trustee, the Remarketing Agent, the District and the Bank, as the case may be, of notice in writing of such rescission.

(iii) Upon receipt by the Trustee of the items as provided for in subsection (i) hereof by the date specified by said subsection, the Trustee shall send a notice not less than thirty (30) days prior to the Conversion Date to the Remarketing Agent, the District, the Bank and each Certificate Owner by first class mail, postage prepaid, giving notice of the mandatory tender of Certificates pursuant to Section 4.04 of the Trust Agreement and such other information as is deemed necessary by the Trustee, the Bank or the District, and further stating that each Owner must deliver his or her Certificates to the Tender Agent on the Conversion Date for purchase at one hundred percent (100%) of the principal amount thereof. Any Certificate not so delivered by such date will nonetheless be deemed to have been delivered by and purchased from the Owner at such price on the Conversion Date and, except in the case of Bank Certificates, interest shall cease to accrue with respect to such Certificates from such date.

(iv) At least seven (7) Business Days prior to the Conversion Date, the Remarketing Agent, having due regard to prevailing market conditions, shall (x) determine whether a single, term maturity of such Certificates or serial maturities of such Certificates would provide the lowest net interest cost to the District, (y) if a single, term maturity of such Certificates would provide the lowest net interest cost to the District, determine the interest rate which, if payable with respect to such Certificates during the period from the Conversion Date to the end of the Fixed Rate period would be the interest rate, but would not exceed the interest rate, which would result in the market value (excluding accrued interest) of such Certificates on said date being one hundred percent of the principal amount thereof, and the interest rate so determined shall be the Fixed Rate, which rate shall be the interest rate payable with respect to such Certificates from and after the Conversion Date until the end of the new Fixed Rate Period and (z) if serial maturities of such Certificates would provide the lowest net interest cost to the District, determine the several interest rates which shall apply to the principal amount of Certificates during the period from the Conversion Date to the end of the new Fixed Rate Period,

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which would be the interest rates, but would not exceed the interest rates, which would result in the market value (excluding accrued interest) of such Certificates on said date being one hundred percent (100%) of the principal component thereof, and the interest rates so determined shall be the Fixed Rates for each such maturity, which rates shall be the interest rates payable with respect to such Certificates from and after the Conversion Date until their respective maturities; provided, however, that in no event shall such Fixed Rate or Rates be greater than the Maximum Interest Rate. At least seven (7) Business Days prior to the Conversion Date, the Remarketing Agent shall notify the Trustee the Bank and the District by telecopier of the Fixed Rate.

(v) Certificates delivered or deemed to have been delivered to the Trustee on a Conversion Date pursuant to the provisions of subsection (iii) hereof shall be purchased and paid for in accordance with Article IV of the Trust Agreement; and payment, or provision for payment, having been made, such Certificates shall cease to be payable as to interest and shall not be deemed to be Outstanding for the purposes of the Trust Agreement from and after such Conversion Date; and the Trustee shall cause new Certificates, payable at the Fixed Rate, to be printed at the expense of the District and distributed to the respective purchasers thereof.

(vi) The determination of the Fixed Rate for the Certificates by the Remarketing Agent in accordance with the provisions of this Section 3.1(e) is hereby approved by the District, and such determination shall be conclusive and binding upon the Owners of such Certificates, the District, the Corporation, the Bank and the Trustee.

(vii) A Fixed Rate Period for the Certificates will terminate on the last Interest Payment Date for that Fixed Rate Period. If the District elects to specify the duration of the next Fixed Rate Period, the District shall give written notice to the Trustee, the Bank and the Remarketing Agent of such election at least thirty-five (35) and not more than forty-five (45) days prior to the Conversion Date.

The interest payable with respect to the Certificates shall not be converted to the new Fixed Rate Period unless, not later than the last Business Day which is at least thirty-five (35) days prior to the Conversion Date, the District shall furnish to the Trustee an opinion of Special Counsel, addressed to the Trustee and the Bank to the effect that conversion to the new Fixed Rate Period is lawful under applicable law, is permitted by this Sublease and the Trust Agreement, and will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest payable with respect to such Certificates.

(viii) Upon receipt by the Trustee of the items as provided for in subsection (ii) hereof by the date specified by said subsection, the Trustee shall send a notice not less than thirty (30) days prior to the Conversion Date to the Remarketing Agent, the District, the Bank and each Certificate Owner by first class mail, postage prepaid, giving notice of the mandatory tender of Certificates pursuant to Section 4.04 of the Trust Agreement and such other information as is deemed necessary by the Trustee, the Bank or the District, and further stating that each Owner must deliver his or her Certificates to the Tender Agent on the Conversion Date for purchase at one hundred percent (100%) of the principal amount thereof. Any Certificate not so delivered by such date will nonetheless be deemed to have been delivered by and purchased from the Owner at such price on the Conversion Date and, except in the case of Bank

Certificates, interest shall cease to accrue with respect to such Certificates from such date.

(ix) At least seven (7) Business Days prior to the Conversion Date, the Remarketing Agent, having due regard to prevailing market conditions, shall (x) determine whether a single, term maturity of such Certificates or serial maturities of such Certificates would provide the lowest net interest cost to the District, (y) if a single, term maturity of such Certificates would provide the lowest net interest cost to the District, determine the interest rate which, if payable with respect to such Certificates during the period from the Conversion Date to the end of the Fixed Rate Period would be the interest rate, but would not exceed the interest rate, which would result in the market value (excluding accrued interest) of such Certificates on said date being one hundred percent of the principal amount thereof, and the interest rate so determined shall be the Fixed Rate, which rate shall be the interest rate payable with respect to such Certificates from and after the Conversion Date until the end of the new Fixed Rate Period and (z) if serial maturities of such Certificates would provide the lowest net interest cost to the District, determine the several interest rates which shall apply to the principal amount of Certificates during the period from the Conversion Date to the end of the new Fixed Rate Period, which would be the interest rates, but would not exceed the interest rates, which would result in the market value (excluding accrued interest) of such Certificates on said date being one hundred percent (100%) of the principal component thereof, and the interest rates so determined shall be the Fixed Rates for each such maturity, which rates shall be the interest rates payable with respect to such Certificates from and after the Conversion Date until their respective maturities; provided, however, that in no event shall such Fixed Rate or Rates be greater than the Maximum Interest Rate. At least seven (7) Business Days prior to the Conversion Date, the Remarketing Agent shall notify the Trustee the Bank and the District by telecopier of the Fixed Rate.

(x) Certificates delivered or deemed to have been delivered to the Trustee on a Conversion Date pursuant to the provisions of subsection (b) hereof shall be purchased and paid for in accordance with Article IV of the Trust Agreement; and payment, or provision for payment, having been made, such Certificates shall cease to be payable as to interest and shall not be deemed to be Outstanding for the purposes of the Trust Agreement from and after such Conversion Date; and the Trustee shall cause new Certificates, payable at the new Fixed Rate, to be printed at the expense of the District and distributed to the respective purchasers thereof.

(xi) The determination of the Fixed Rate for the Certificates by the Remarketing Agent in accordance with the provisions of this Section 3.1(d) is hereby approved by the District, and such determination shall be conclusive and binding upon the Owners of such Certificates, the District, the Corporation, the Bank and the Trustee.

(xii) If the District does not give notice to the Trustee specifying the duration of the new Fixed Rate Period or the conditions for the establishment of such new Fixed Rate Period have not been satisfied, the next Fixed Rate Period for Certificates shall be another Fixed Rate Period ending on the Interest Payment Date (or the next day if such date is not a Business Day) first occurring after a period of time equal in duration to the prior Fixed Rate Period, but in no event extending beyond the final maturity for the Certificates.

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(e) In no event shall the amount of Base Rental payable on any date exceed the aggregate amount of Principal and interest required to be paid or prepaid on such date with respect to the Outstanding Certificates, according to their tenor.

(f) Additional Rental. In addition to the Base Rental set forth herein, the District agrees to pay as Additional Rental, to the extent permitted by law, all of the following:

(i) All taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon the Property or upon any interest of the Authority, the Trustee or the Owners therein or in this Sublease;

(ii) Insurance premiums, if any, on all insurance required under the provisions of Section 4.3 hereof;

(iii) All fees, costs and expenses (not otherwise paid or provided for out of the proceeds of the sale of the Certificates) of the Trustee and any paying agent in connection with the Trust Agreement;

(iv) Any other fees, costs or expenses incurred by the Authority or the Trustee in connection with the execution, performance or enforcement of this Sublease or any assignment hereof or of the Trust Agreement or any of the transactions contemplated hereby or thereby or related to the Property;

(v) Amounts required to be paid to the Trustee for deposit in the Reserve Fund;

(vi) All fees, charges and expenses payable to the Bank pursuant to the Reimbursement Agreement, other than amounts payable to the Bank with respect to Bank Certificates;

(vii) Any amounts with respect to this Sublease or the Certificates required to be rebated to the federal government in accordance with section 148(f) of the Code; and

(viii) All other payments required to be paid by the District under the provisions of this Sublease or the Trust Agreement.

Amounts constituting Additional Rental payable hereunder shall be paid by the District directly to the person or persons to whom such amounts shall be payable. The District shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 60 days after notice in writing from the Trustee or the Authority, as applicable, to the District stating the amount of Additional Rental then due and payable and the purpose thereof hereinafter set forth, such amounts constituting in the aggregate rent payable under this Sublease.

The District hereby agrees, subject to the terms hereof, to pay from any

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legally available funds to the Corporation the Base Rental and to pay to the parties entitled thereto Additional Rental in an aggregate amount no greater than the fair rental value of the Property in each Lease Year. In satisfaction of its obligations hereunder, the District shall pay the Base Rental and Additional Rental in the amounts, at the times and in the manner hereinafter set forth, such amounts constituting in the aggregate rent payable under this Lease.

### **3.2 Consideration.**

(a) The payments of Rental Payments under this Sublease for each Fiscal Year or portion thereof during the Lease Term shall constitute the total rental for such Fiscal Year or portion thereof and shall be paid by the District for and in consideration for the right to the use and occupancy, and the continued quiet use and enjoyment, of the Property by the District for and during such Fiscal Year or portion thereof. The parties hereto have agreed and determined that such total rental in any Fiscal Year is not and will not be in excess of the total fair rental value of the Property for such Fiscal Year. In making such determination, consideration has been given to the uses and purposes served by the Property and the benefits therefrom that will accrue to the parties by reason of this Sublease and to the general public by reason of the District's use of the Property.

(b) The District hereby represents and warrants that the Property is an essential facility for the operations of the District.

**3.3 Budget.** The District hereby covenants to take such action as may be necessary to include all Rental Payments due in each fiscal year hereunder in its annual budget and to make the necessary annual appropriations for all such Rental Payments, subject to Section 3.5 hereof. The District further covenants, to the extent permitted by law, to take such action as may be necessary to include in its annual budget and to make appropriations from any legally available funds sufficient funds to make all Rental Payments in excess of any insurance to ensure completion of any reconstruction, repair, restoration, modification or improvements to the Property. Notwithstanding the foregoing, the obligation of the District to make Base Rental or Additional Rental payments does not constitute an obligation of the District for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. Neither the Certificates nor the obligation of the District to make Base Rental or Additional Rental payments constitutes an indebtedness of the District, the State or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.

**3.4 Payment; Credit.** Amounts necessary to pay Base Rental shall be deposited by the District on each Base Rental Payment Date in lawful money of the United States of America, at the Principal Office of the Trustee, or at such other place or places as may be established in accordance with the Trust Agreement. Except as provided in Section 3.5 hereof, any amount necessary to pay any Base Rental or portion thereof that is not so deposited shall remain due and payable until received by the Trustee. Notwithstanding any dispute between the District and the Authority hereunder, the District shall make all Rental Payments when due and shall not withhold any Rental Payments pending the final resolution of such dispute or for any other reason whatsoever. The District's obligation to make Rental Payments in the amount and on the terms and conditions specified hereunder shall be absolute and

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unconditional without any right of set-off or counterclaim, and without abatement, subject only to the provisions of Section 3.5 hereof. Amounts required to be deposited with the Trustee pursuant to this Section 3.4 on any date shall be reduced to the extent of amounts on deposit on such date in the Base Rental Payment Fund (except with respect to amounts on deposit in the Base Rental Payment Fund as a result of a transfer from the Reserve Fund), the Interest Fund and the Principal Fund of the Base Rental Payment Fund held by the Trustee under the Trust Agreement, except for amounts being held therein for the payment of Certificates that have matured or been called but have not been surrendered for payment.

**3.5 Rental Abatement.** Except to the extent of (i) available amounts held by the Trustee in the Base Rental Payment Fund, the Interest Fund or the Principal Fund or in the Reserve Fund, (ii) amounts, if any, received in respect of rental interruption insurance, and (iii) amounts, if any, otherwise legally available to the District for payments in respect of this Sublease or to the Trustee for payments in respect of the Certificates, Rental Payments due hereunder shall be subject to abatement in accordance with this Section 3.5 during any period in which, by reason of material damage, destruction or condemnation of the Property or any portion thereof, or defects in title to the Property or any portion thereof, there is substantial interference with the right to the use and occupancy of the Property or any portion thereof by the District. The amount of annual rental abatement shall be such that the resulting Rental Payments in any Lease Year during which such interference continues, excluding any amounts described in clauses (i), (ii) or (iii) above, do not exceed the annual fair rental value of the portions of the Property with respect to which there has not been substantial interference, as evidenced by a certificate of a District Representative. Such abatement shall continue for the period commencing with the date of such damage, destruction, condemnation or discovery of such title defect and ending with the restoration of the Property or portion thereof to tenantable condition or correction of the title defect. To the extent permitted by law and so long as the Insurance Policy is in full force and effect, upon cessation of the abatement event, the Property shall be appraised to determine its current fair rental value. If such value has increased since the date of delivery of the Certificates, so long as the Insurance Policy is in full force and effect and to the extent permitted by law, Base Rental shall be increased up to the amount of such increase in fair rental value to the earlier of (i) the end of the remaining term or (ii) until such time as all abated and unpaid Base Rental (without interest thereon) have been paid. In the event of any such damage, destruction, condemnation or title defect, this Sublease shall continue in full force and effect, except as set forth in Sections 5 and 6 hereof.

**3.6 Triple Net Lease.** This Sublease is intended to be a triple net lease. The District agrees that the Rental Payments provided for herein shall be an absolute net return to the Authority free and clear of any expenses, charges or set-offs whatsoever.

**Section 4. Affirmative Covenants of the Authority and the District.** The Authority and the District are entering into this Sublease in consideration of, among other things, the following covenants:

**4.1 Replacement, Maintenance and Repairs.** The District shall, at its own expense, during the Lease Term maintain the Property, or cause the same to be maintained, in good order, condition and repair. The District shall replace any portion of the Property that is destroyed or damaged to such an extent that there is substantial interference with the right to the

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use and occupancy of the Property or any portion thereof by the District that would result in an abatement of Rental Payments or any portion thereof pursuant to Section 3.5 hereof, whether or not there are sufficient insurance or condemnation proceeds to pay for such replacement; provided, however, that the District shall not be required to repair or replace any such portion of the Property pursuant to this Section 4.1 if there shall be applied to the prepayment of Outstanding Certificates insurance or condemnation proceeds or other legally available funds sufficient to prepay (i) all of the Certificates Outstanding and all other amounts due hereunder and under the Trust Agreement, or (ii) any portion thereof such that the resulting Rental Payments payable pursuant to Section 3.1 hereof in any Lease Year following such partial prepayment are sufficient to pay in the then current and any future Lease Year the Principal and interest with respect to all Certificates to remain Outstanding and all other amounts due hereunder and under the Trust Agreement, to the extent it is due and payable in such Lease Year, immediately after such partial prepayment.

The District shall provide or cause to be provided all security service, custodial service, janitorial service and other services necessary for the proper upkeep and maintenance of the Property. It is understood and agreed that in consideration of the payment by the District of the Rental Payments herein provided for, the District is entitled to use and occupy the Property and the Authority shall have no obligation to incur any expense of any kind or character in connection with the management, operation or maintenance of the Property during the Lease Term. The Authority shall not be required at any time to make any improvements, alterations, changes, additions, repairs or replacements of any nature whatsoever in or to the Property. The District hereby expressly waives the right to make repairs or to perform maintenance of the Property at the expense of the Authority and (to the extent permitted by law) waives the benefit of Sections 1932, 1941 and 1942 of the California Civil Code relating thereto.

The District shall keep the Property free and clear of all liens, charges, security interests and encumbrances other than (i) those existing on or prior to the Closing Date or on or prior to the date any property is substituted for any of the Property pursuant to Section 16 hereof which are covered by the exceptions and exclusions set forth in the title policies delivered pursuant to Section 4.3 or Section 16, as applicable, and expressly approved by the District and the Authority, and (ii) any liens of mechanics, materialmen, suppliers, vendors or other persons or entities for work or services performed or materials furnished in connection with the Property that are not due and payable or the amount, validity or application of which is being contested in accordance with Section 4.4 hereof.

**4.2 Taxes, Other Governmental Charges and Utility Charges.** The Authority and the District contemplate that the Property will be used for a governmental or proprietary purpose of the District and, therefore, that the Property will be exempt from all taxes presently assessed and levied with respect to the Property. Nevertheless, the District hereby agrees to pay during the Lease Term, as the same respectively become due, all taxes (except for income or franchise taxes of the Authority), utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property; provided, however, that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, the District shall be obligated to pay only such installments as are accrued during such time as this Sublease is in effect; and provided further, that the District may contest in good faith the validity or application of any tax, utility charge or



governmental charge in any reasonable manner that, in the opinion of Independent Counsel does not adversely affect the right, title and interest of the Authority in and to any portion of the Property or its rights or interests under this Sublease or subject any portion of the Property to loss or forfeiture. Any such taxes or charges shall constitute Additional Rental under Section 3.1(d) hereof and shall be payable directly to the entity assessing such taxes or charges.

**4.3 Insurance.** (a) The District shall secure and maintain or cause to be secured and maintained, at all times with insurers of recognized responsibility, and such insurers shall be rated in the two (2) highest rating categories of S&P or Moody's, or through a program of self-insurance to the extent specifically permitted in this Section 4.3, all coverage on the Property required by this Section 4.3.

Such insurance shall consist of:

(1) A policy or policies of insurance against loss or damage to the Property known as "all risk," excluding earthquake insurance. Such insurance shall be maintained at any time in an amount not less than the lesser of the full replacement value of the Property or the aggregate Principal amount of Certificates at such time Outstanding. The term "full replacement value" as used herein shall mean the cost of repair or replacement of the Property, without deduction for depreciation. Such insurance may at any time include a deductible clause providing for a deductible not to exceed \$1,000,000 (or such greater amount approved by the Authority) from all losses in any year; provided, however, that in the event the District is unable to secure and maintain, or cause to be secured and maintained, the insurance required under this clause (1), the District shall self-insure to the extent necessary to enable it to repair or replace the Property in accordance with the provisions of Section 4.1 hereof;

(2) Comprehensive general liability coverage against claims for damages including death, personal injury, bodily injury or property damage arising from operations involving the Property. Such insurance shall afford protection with a combined single limit of not less than \$500,000 per occurrence with respect to bodily injury, death or property damage liability; provided, however, that the District's obligations under this clause (2) may be satisfied by self-insurance;

(3) Machinery coverage against loss or damage by explosion of pressure vessels and similar apparatus now or hereafter installed in an amount not less than \$7,500,000 per accident; provided, however, that the District's obligations under this clause (3) may be satisfied by self-insurance;

(4) Workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure employers against liability for compensation under the California Labor Code, or any act enacted as an amendment or supplement thereto or in lieu thereof, such workers' compensation insurance to cover all persons employed by the District in connection with the Property and to cover full liability for compensation under any such act; provided,

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however, that the District's obligations under this clause (4) may be satisfied by self-insurance; and

(5) Rental interruption insurance to cover loss, total or partial, of the use of any part of the Property as a result of any of the hazards covered by the insurance required pursuant to clause (1) above, in an amount sufficient at all times to pay the total rent payable under this Sublease for a period adequate to cover the period of repair or replacement. Such policy shall provide that the amount payable thereunder shall not be less than an amount equal to two times the maximum Base Rental payable in any Fiscal Year for the term of this Sublease; provided, however, that for purposes of calculating said maximum amount, the interest component of Base Rental evidenced by Certificates in an Adjustable Rate Period shall be deemed to accrue at a rate per annum of 12%; provided, further that the District's obligations under this clause (5) may not be satisfied by self-insurance.

All policies or certificates issued by the respective insurers for insurance, with the exception of workers' compensation insurance, shall provide that such policies or certificates shall not be canceled or materially changed without at least 30 days' prior written notice to the Trustee. At the request of the Trustee no more often than once per calendar year during the Lease Term, the District shall provide for the Trustee a certificate of the District's Risk Manager, or an independent insurance consultant or actuary, stating whether all policies or self-insurance required by this Section 4.3 have been obtained and are in full force and effect.

All policies or certificates of insurance provided for in this Section 4.3(a) shall name the District as a named insured, and the Authority and the Trustee as additional insureds. All policies or certificates of insurance maintained under clauses (1), (3) and (5) above, shall name the Trustee as loss payee, and the proceeds of such insurance shall be deposited with the Trustee for application pursuant to the Trust Agreement. All proceeds of insurance maintained under clauses (2) and (4) shall be deposited with the District.

Notwithstanding the generality of the foregoing (with the exception of the rental interruption insurance required by clause (5) above), the District shall not be required to maintain or cause to be maintained (i) more insurance than is specifically referred to above or (ii) any policies of insurance other than standard policies of insurance with standard deductibles offered by reputable insurers at a reasonable cost in the open market.

(b) Any self-insurance maintained by the District pursuant to this Section 4.3 shall comply with the following terms:

(1) The self-insurance program shall be approved in writing by an independent insurance consultant;

(2) The self-insurance program shall include an actuarially sound claims reserve fund out of which each self-insured claim shall be paid; the adequacy of each such fund shall be evaluated on an annual basis by the independent insurance consultant; and any deficiencies in any self-insured claims

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reserve fund shall be remedied in accordance with the recommendation of aforementioned independent insurance consultant;

(3) The self-insured claims reserve fund shall be held in a separate trust fund by an independent trustee, which may be the Trustee serving as such under the Trust Agreement; and

(4) In the event the self-insurance program shall be discontinued, the actuarial soundness of its claims reserve fund, as determined by the independent insurance consultant, shall be maintained.

(c) The District shall deliver to the Trustee as soon as practicable after the Closing Date, (i) a copy of an CLTA Owner's policy of title insurance with respect to the Property, issued in an amount equal to the aggregate principal amount of Certificates Outstanding by a title insurance company acceptable to the Authority and the Trustee, naming the District as insured and showing fee title to the Property in the name of the District; and (ii) a copy of an CLTA Leasehold Owner's Policy naming the Authority and the District as insureds, and insuring the validity and priority of the Lease (and the interest of the Authority thereunder, as assigned to the Trustee) and this Sublease (and the interest of the Authority thereunder, as assigned to the Trustee). All endorsements and restrictions to the policies delivered hereunder must be acceptable to the Certificate Insurer. The policies delivered hereunder may not permit the title insurer to purchase any Certificates in lieu of providing payment under the policy unless, upon purchase, such Certificates are cancelled, or to settle claims with any person other than the Trustee, acting with the consent of the Certificate Insurer.

**4.4 Liens.** The District promptly shall pay or cause to be paid all sums of money that may become due for any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for, in, upon or about the Property and that may be secured by any mechanic's, materialman's or other lien against the Property, or the interest of the Authority therein, and shall cause each such lien to be fully discharged and released; provided, however, that the District or the Authority (i) may contest in good faith any such claim or lien without payment thereof so long as such non-payment and contest stays execution or enforcement of the lien, but if such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not stayed, or if stayed and the stay thereafter expires, then and in any such event the District shall forthwith pay and discharge such judgment or lien, or (ii) delay payment without contest so long as and to the extent that such delay will not result in the imposition of any penalty or forfeiture.

**4.5 Compliance with Laws, Regulations, Etc.**

(a) The District agrees to observe and comply with all rules, regulations and laws applicable to the District with respect to the Property and the operation thereof. The cost, if any, of such observance and compliance shall be borne by the District, and the Authority shall not be liable therefor. The District agrees further to place, keep, use, maintain and operate the Property in such a manner and condition as will provide for the safety of its agents, employees, invitees, subtenants, licensees and the public.

(b) The District has, after due inquiry, no knowledge and has not given or received any written notice indicating that the Property or the past or present use thereof or any practice, procedure or policy employed by it in the conduct of its business materially violates any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Property (collectively, "Laws and Regulations"). Without limiting the generality of the foregoing, neither the District nor to the best of its knowledge, after due inquiry, any prior or present owner, tenant or subtenant of any of the Property has, other than as set forth in subsections (b) and (c) of this Section or as may have been remediated in accordance with Laws and Regulations, (i) used, treated, stored, transported or disposed of any material amount of flammable explosives, polychlorinated biphenyl compounds, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, asbestos or any Asbestos Containing Materials, methane, radioactive materials, pollutants, hazardous materials, hazardous wastes, hazardous, toxic, or regulated substances or related materials, as defined in CERCLA, RCRA, CWA, CAA, TACA and Title III, and the regulations promulgated pursuant thereto, and in all other Environmental Regulations applicable to the District, any of the Property or the business operations conducted by the District thereon (collectively "Hazardous Materials") on, from or beneath its Property, (ii) pumped, spilled, leaked, disposed of, emptied, discharged or released (hereinafter collectively referred to as "Release") any material amount of Hazardous Materials on, from or beneath the Property, or (iii) stored any material amount of petroleum products at the Property in underground storage tanks.

(c) Excluded from the representations and warranties in subsection (a) hereof with respect to Hazardous Materials are those Hazardous Materials in those amounts ordinarily found in the inventory of or used in the operations of a school facility, the use, treatment, storage, transportation and disposal of which has been and shall be in compliance with all Laws and Regulations.

(d) No Property located in an area of high potential incidence of radon has an unventilated basement or subsurface portion which is occupied or used for any purpose other than the foundation or support of the improvements to such Property.

#### **4.6 Environmental Compliance.**

(a) The District shall not use or permit the Property or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the improvements on the Property and then, only in compliance with all Environmental Regulations, and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the Release or threat of Release of Hazardous Materials on, from or beneath the Property or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of or used in the operation of a school facility, the use, storage, treatment, transportation and disposal of which shall be in compliance with all

Environmental Regulations. Upon the occurrence of any Release or threat of Release of Hazardous Materials, the District shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to the Authority, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so Released, on, from or beneath the Property or other property, in compliance with all Environmental Regulations. Notwithstanding anything to the contrary contained herein, underground storage tanks shall only be permitted subject to compliance with subsection (d) and only to the extent necessary to maintain the improvements on the Property.

(b) The District shall comply with, and shall use its best efforts to assure that its tenant's subtenants, agents, licensees, employees, contractors, and agents comply with, all Environmental Regulations and shall keep the Property free and clear; provided, however, that notwithstanding that a portion of this covenant is limited to the District's use of its best efforts, the District shall remain solely responsible for ensuring such compliance and such limitation shall not diminish or affect in any way the District's obligations contained in subsection (c) hereof as provided in subsection (c) hereof. Upon receipt of any notice from any person with regard to the Release of Hazardous Materials on, from or beneath the Property.

(c) Irrespective of whether any representation or warranty contained in Section 4.5 is not true or correct, the District shall defend, indemnify and hold harmless the Authority, the holders of Certificates and the Trustee, its partners, depositors and each of its and their employees, agents, officers, directors, trustees, successors and assigns, from and against any claims, demands, penalties, fines, attorneys' fees (including, without limitation, attorneys' fees incurred to enforce the indemnification contained in this Section 4.6), consultants' fees, investigation and laboratory fees, liabilities, settlements (five Business Days' prior notice of which the Authority or Trustee, as appropriate, shall have delivered to the District), court costs, damages, losses, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, occurring in whole or in part, arising out of, or in any way related to (i) the presence, disposal, Release, threat of Release, removal, discharge, storage or transportation of any Hazardous Materials on, from or beneath the Property, (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached (five Business Days' prior notice of which the Authority or the Trustee, as appropriate, shall have delivered to the District), or governmental order relating to Hazardous Materials on, from or beneath any of the Property, (iv) any violation of Environmental Regulations or subsection (a) or (b) or (e) hereof by it or any of its agents, tenants, employees, contractors, licensees, guests, subtenants or invitees, and (v) the imposition of any governmental lien for the recovery of environmental cleanup or removal costs. To the extent that the District is strictly liable under any Environmental Regulation, its obligation to the holders of Certificates and other indemnitees under the foregoing indemnification shall likewise be without regard to fault on its part with respect to the violation of any Environmental Regulation which results in liability to any indemnitee. Its obligations and liabilities under this Section 4.6 shall survive any foreclosure of the security interest in the Property or the delivery of any instrument in lieu of foreclosure, and the satisfaction of all Certificates.

(d) The District shall conform to and carry out a reasonable program of maintenance and inspection of all underground storage tanks, and shall maintain, repair, and

replace such tanks only in accordance with Laws and Regulations, including but not limited to Environmental Regulations.

**4.7 Condemnation.** The District hereby covenants and agrees, to the extent it may lawfully do so, that so long as any of the Certificates remain outstanding and unpaid, the District will not exercise the power of condemnation with respect to the Property. The District further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if the District should fail or refuse to abide by such covenant and condemns the Property, the appraised value of the leased property shall not be less than the greater of (i) if such Certificates are then subject to redemption, the principal and interest components of the Certificates outstanding through the date of their redemption, or (ii) if such Certificates are not then subject to redemption, the amount necessary to defease such Certificates to the first available redemption date in accordance with the Trust Agreement.

**Section 5. Application of Insurance Proceeds.**

(a) Proceeds of insurance received in respect of destruction of or damage to any portion of the Property by fire or other casualty or event shall be paid to the Trustee for application in accordance with the provisions of Section 5.09 of the Trust Agreement. If there is an abatement of Rental Payments pursuant to Section 3.6 hereof as a result of such casualty or event, and the District elects pursuant to Section 5.09 of the Trust Agreement to apply such insurance proceeds and such other sums as are deposited by the District pursuant to such section to the prepayment of Certificates rather than to the replacement or repair of the destroyed or damaged portion of the Property, then this Sublease shall terminate with respect to the destroyed or damaged portion of the Property as of the later of the date of such election by the District or the date the amount required by Section 5.09 of the Trust Agreement is received by the Trustee and in either case, after payment of any Additional Rental owed hereunder. If the District elects, pursuant to Section 5.09 of the Trust Agreement to apply such proceeds to the repair or replacement of the portion of the Property that has been damaged or destroyed, in the event there has been an abatement of Rental Payments pursuant to Section 3.5 hereof, then Rental Payments shall again begin to accrue with respect thereto upon repair or replacement of such portion of the Property.

(b) Proceeds of title insurance received with respect to the Property shall be paid to the Trustee for application in accordance with the provisions of Section 5.10 of the Trust Agreement.

**Section 6. Eminent Domain.**

**6.1 Total Condemnation.** If the Property, or so much thereof as to render the remainder of the Property unusable for the District's purposes under this Sublease, shall be taken under the power of eminent domain, then this Sublease shall terminate as of the later of the day possession shall be so taken and the date of entry of the interlocutory judgment and in either case, after payment of any Additional Rental owed hereunder.

**6.2 Partial Condemnation.** If less than a substantial portion of the Property shall be taken under the power of eminent domain, and the remainder is useable for the District's purposes, then this Sublease shall continue in full force and effect as to the remaining portions of the Property, subject only to such rental abatement as is required by Section 3.6 hereof. The District and the Authority hereby waive the benefit of any law to the contrary. Any award made in eminent domain proceedings for the taking shall be paid to the Trustee for application in accordance with the provisions of Section 5.09 of the Trust Agreement. If the District elects, pursuant to Section 5.09 of the Trust Agreement, to apply such proceeds to the replacement of the condemned portion of the Property, in the event there has been an abatement of Rental Payments pursuant to Section 3.6 hereof, then Rental Payments shall again begin to accrue with respect thereto upon replacement of such portion of the Property.

**Section 7. Assignment.**

(a) The District shall not sell, mortgage, pledge, assign or transfer any interest of the District in this Sublease or in the Property by voluntary act or by operation of law, or otherwise; provided, however, that the District may grant concessions to others involving the use of any portion of the Property whether or not such concessions purport to convey a leasehold interest or a license to use a portion of the Property. Any sublease or concession shall specifically state that it is subject and subordinate in all respects to this Sublease. Subject to the limitations set forth herein, the District shall at all times remain liable for the performance of the covenants and conditions on its part to be performed under this Sublease, notwithstanding any subletting or granting of concessions which may be made. Nothing herein contained shall be construed to relieve the District of its primary obligation to pay Rental Payments as provided in this Sublease or to relieve the District of any other obligations contained herein. In no event shall the District sublease to or permit the use of all or any part of the Property by any person so as to cause the interest component with respect to the Certificates to be includable in gross income for federal income tax purposes or to be subject to State personal income tax.

(b) The Authority shall, concurrently with the execution hereof, absolutely and irrevocably assign all of its right, title and interest in and to this Sublease (except for its right to payment of its expenses under Section 3.1(f) hereof, its right to indemnification pursuant to Section 11 hereof and its right to receive certain notices under Section 18 hereof), including without limitation its right to receive Base Rental payable hereunder, to the Trustee pursuant to the Assignment Agreement, and the District hereby approves such assignment. The parties hereto further agree to execute any and all documents necessary and proper in connection therewith.

**Section 8. Additions and Improvements; Removal.** The District shall have the right during the Lease Term to make any additions or improvements to the Property, to attach fixtures, structures or signs, and to affix any personal property to the Property, so long as the fair rental value of the Property is not thereby reduced. Title to all fixtures, equipment or personal property placed by the District on the Property shall remain in the District to the extent that such items may be removed from the property without damage. Title to any personal property, improvements or fixtures placed on any portion of the Property by any sublessee or licensee of the District shall be controlled by the sublease or license agreement between such sublessee or

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licensee and the District, which sublease or license agreement shall not be inconsistent with this Sublease.

**Section 9. Right of Entry.** Representatives of the Authority shall, subject to reasonable security precautions, have the right to enter upon the Property during reasonable business hours (and in emergencies at all times) (i) to inspect the same, (ii) for any purpose connected with the rights or obligations of the Authority under this Sublease, or (iii) for all other lawful purposes.

**Section 10. Quiet Enjoyment.** The Authority covenants and agrees that the District, upon keeping and performing the covenants and agreements herein contained, shall, at all times during the Lease Term, peaceably and quietly have, hold, and enjoy the Property.

**Section 11. Indemnification and Hold Harmless Agreement.** To the extent permitted by law and subject to the provisions of Section 4.6(c) herein, the District hereby agrees to indemnify and hold the Authority and the Trustee and their respective officers and directors harmless against any and all liabilities that might arise out of or are related to the Property or any portion thereof, the Trust Agreement, the Lease, the Assignment Agreement, the Certificates or any disclosure document related to the Certificates and the District further agrees to defend the Authority and the Trustee and their respective officers and directors in any action arising out of or related to the Property and the Certificates; provided, however, that the District shall not indemnify and hold the Trustee and its officers and directors harmless against any liability that might arise out of the negligence or willful misconduct of the Trustee or its officers and directors. The provisions of this Section 11 and the obligation of the District to pay Additional Rental to the Trustee shall survive the termination of this Sublease.

**Section 12. Default by District.**

(a) **Events of Default.** The following shall be events of default hereunder: (i) the District shall fail to deposit with the Trustee any Base Rental payment required to be so deposited pursuant to Section 3.1(a) or 3.1(b) hereof by the close of business on the day such deposit is required to be deposited pursuant to Section 3.1(a) or 3.1(b) hereof; (ii) the District shall fail to pay any item of Additional Rental as and when the same shall become due and payable pursuant to Section 3.1(d) hereof; or (iii) the District shall breach any other terms, covenants or conditions contained herein or in the Trust Agreement, and shall fail to remedy any such breach with all reasonable dispatch within a period of 30 days after written notice thereof from the Trustee or the Authority, or its assignee to the District, or, if such breach cannot be remedied within such 30-day period, shall fail to institute corrective action within such 30-day period and diligently pursue the same to completion.

(b) **Remedies on Default.** Upon an Event of Default, the Authority or its assignee shall have the right to exercise the remedies provided hereunder. The Authority or its assignee shall have the right, without any further demand or notice (i) to reenter the Property and eject all parties in possession therefrom and, without terminating this Sublease, relet the Property as the agent and for the account of the District upon such terms and conditions as the Authority may deem advisable, in which event the rents received on such reletting shall be applied as set forth in the Trust Agreement; provided, that if a sufficient sum shall not be realized to pay such

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sums and other charges then the District shall pay to the Authority any net deficiency existing on the date when the Base Rental or Additional Rental is due hereunder; provided, however, that such reentry and reletting shall be done only with the consent of the District, which consent is hereby irrevocably given; or (ii) in lieu of the above, so long as the Authority does not terminate this Sublease or the District's possession of the Property, to enforce all of its rights and remedies under this Sublease, including the right to recover Base Rental payments as they become due under this Sublease pursuant to section 1951.4 of the California Civil Code by pursuing any remedy available in law or in equity, except as expressly provided herein. Any reentry pursuant to this Section 12 shall be allowed by the District without hindrance, and the Authority shall not be liable in damages for any reentry or be guilty of trespass. The Authority or any assignee of the rights of the Authority hereunder shall not exercise its remedies hereunder so as to cause the interest with respect to the Certificates to be includable in gross income for federal income tax purposes or subject to State personal income taxes. Notwithstanding any other provision of this Sublease or the Trust Agreement, in no event shall the Authority have the right to accelerate the payment of any Base Rental hereunder.

Each and every remedy of the Authority or any assignee of the rights of the Authority hereunder is cumulative and the exercise of one remedy shall not impair the right of the Authority or its assignee to any or all other remedies. If any statute or rule validly shall limit the remedies given to the Authority or any assignee of the rights of the Authority hereunder, the Authority or its assignee nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

All damages and other payments received by the Authority pursuant to this Section 12 shall be applied in the manner set forth in Section 23 hereof.

**Section 13. Waiver.** The waiver by the Authority of any breach by the District, and the waiver by the District of any breach by the Authority of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

**Section 14. DISCLAIMER OF WARRANTIES.** NEITHER THE AUTHORITY NOR ANY PERSON ACTING ON ITS BEHALF HAS MADE OR MAKES ANY WARRANTY OR REPRESENTATION AS TO THE PAST, PRESENT OR FUTURE CONDITION OF THE PROPERTY NOT HEREIN EXPRESSED, AND THE DISTRICT HAS ENTERED INTO THIS SUBLEASE WITHOUT REPRESENTATIONS OR WARRANTIES WITH RESPECT THERETO ON THE PART OF THE AUTHORITY, ITS AGENTS, REPRESENTATIVES OR EMPLOYEES.

**Section 15. Prepayment.** The District shall have the option to purchase on any Business Day the Authority's interest in any portion of the Property upon payment of an option price in an amount sufficient to provide funds to pay the aggregate amount for the entire remaining Lease Term of the part of the total rent hereunder attributable to such portion of the Property (determined by reference to the proportion which the fair market value of such portion of the Property bears to the fair market value of the entire Property) consisting of principal and interest on such principal to the applicable prepayment date. Any such payment shall be made to the Trustee to pay the principal and interest with respect to the Certificates. Upon the making of

such payment to the Trustee, the interest and principal components of each annual installment of Base Rental thereafter payable under this Sublease shall be reduced by the amount attributable to such portion of the Property and theretofore paid pursuant to Section 3.1 of this Sublease, provided, however, that in no event shall the Base Rental be reduced below the amount required to pay principal and interest with respect to the then Outstanding Certificates.

If the Business Day on which the District intends to exercise its option hereunder is, in accordance with Sections \_\_\_\_ of the Trust Agreement, a date on which Certificates are subject to optional prepayment, then the District shall give notice to the Trustee of its intention to exercise its option hereunder not later than five days prior to the date on which the Trustee is required to send notice of prepayment to the Owners pursuant to the Trust Agreement. If the Business Day on which the District intends to exercise its option hereunder is not a date on which Certificates are subject to optional payment, then the District shall exercise its option to purchase by giving notice thereof to the Trustee not later than five days prior to the Business Day on which it desires to exercise such option.

On any Business Day as to which the District shall properly have exercised the option granted it pursuant hereto, and shall have paid or made provision (as set forth in the preceding paragraph) for the payment of the required option price, the Authority shall execute and deliver to the District a quitclaim deed conveying to the District or its nominee the Authority's right, title and interest in the affected portion of the Property. If the District shall properly exercise the option provided in this Section 15 prior to the expiration of the Lease Term to purchase the entire Property, and the Authority shall execute and deliver the quitclaim deed to the Property as aforesaid, then this Sublease shall terminate, but such termination shall not affect the District's obligation to pay the option price on the terms herein set forth.

**Section 16. Release and Substitution.** If no Lease Event of Default has occurred and is continuing hereunder, this Sublease and the Lease may be modified or amended at any time, and the Trustee may consent thereto without the consent of the Owners, if such amendment is to modify or amend the description of the Property or to release from this Sublease any portion of the Property, or to substitute other property and improvements for the Property, provided that the District shall have obtained the prior written consent of the Bank and shall have delivered to the Trustee, S&P and Moody's all of the following:

(i) Executed copies of the Sublease and the Lease or amendments thereto containing the amended legal description of the Property;

(ii) Evidence satisfactory to the Trustee that copies of the Sublease, the Lease and the Assignment Agreement or amendments thereto containing the amended legal description of the Property have been duly recorded in the official records of the County Recorder of the County of Placer;

(iii) A certificate of the District Representative, accompanied by evidence satisfactory to the Trustee evidencing that the annual fair rental value of the property which will constitute the Property after such release or substitution will be at least equal to 100% of the maximum amount of Base Rental payments becoming due in the then current Lease Year or in any subsequent Lease Year;

(iv) A certificate provided by the District insurer evidencing the insured value of the property which will constitute the Property or any portion thereof after such release or substitution;

(v) In the case of substitution of property for the then existing Property, a CLTA Owner's policy or policies and a CLTA Leasehold Owner's policy or policies, in each case meeting the requirements of Section 4.3(c) hereof, or a commitment or commitments for such policies or amendments or endorsements to existing policies resulting in title insurance with respect to the Property after such substitution in an amount at least equal to the amount of such insurance provided with respect to the Property prior to such substitution. Each such insurance instrument, when issued, shall insure such substituted property subject only to such exceptions as do not substantially interfere with the District's right to use and occupy such substituted property and as will not result in an abatement of Base Rental payments payable by the District under this Sublease;

(vi) A certificate of the District Representative stating that such removal or substitution does not materially adversely affect the interest of the Owners of the Certificates then Outstanding and that the property which will constitute the Property is essential to the operations of the District;

(vii) An opinion of reputable bond counsel stating that such amendment or modification (1) is authorized or permitted by the Constitution and laws of the State and by this Sublease; (2) complies with the terms of the Constitution and laws of the State and of this Sublease; (3) will, upon the execution and delivery thereof, be valid and binding upon the Authority and the District in accordance with its terms; and (4) will not cause the interest component of the Base Rental payments to be included in gross income for federal income tax purposes;

(viii) A certificate of useful life demonstrating that the useful life of the property which will constitute the Property after such release or substitution meets or exceeds the remaining term of the Certificates; and

(ix) A certificate of the District Representative evidencing that the property which will constitute the Property after such release or substitution is not encumbered by any prior liens (other than liens described in the last paragraph of Section 4.1 or in Section 4.4 and liens which do not, in the aggregate, prohibit the use of the Property in the manner intended by the District).

**Section 17. Notices.** All notices, requests, demands and other communications under this Sublease shall be in writing (unless otherwise specified herein) and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or if mailed by first class registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

- (a) if to the District, to
- (b) if to the Authority, to
- (c) if to the Trustee, to
- (d) if to the Bank, to

or to such other address or addresses as any such person shall have designated to the others by notice given in accordance with the provisions of this Section 18.

**Section 18. Validity.** If any one or more of the terms, provisions, promises, covenants or conditions of this Sublease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, then each and all of the remaining terms, provisions, promises, covenants and conditions of this Sublease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

If for any reason this Sublease shall be held by a court of competent jurisdiction to be void, voidable or unenforceable by the Authority or by the District, or if for any reason it is held by such a court that any of the covenants and agreements of the District hereunder, including the covenant to pay Rental Payments hereunder, is unenforceable for the full term hereof, then and in such event for and in consideration of the right of the District to possess, occupy and use the Property, which right in such event is hereby granted, this Sublease shall thereupon become and shall be deemed to be a lease from year to year under which the annual Base Rental payments and Additional Rental payments herein specified will be paid by the District.

**Section 19. Execution in Counterparts.** This Sublease may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same agreement.

**Section 20. Law Governing.** This Sublease is made in the state of California under the Constitution and laws of California and is to be so construed.

**Section 21. Amendment.**

(a) This Sublease and the Lease, and the rights and obligations of the Authority and the District hereunder and thereunder, may be amended at any time by an amendment hereto or thereto which shall become binding upon execution by the District and the Authority, but only with the prior written consent of the Owners of a majority of the principal evidenced by the Certificates then Outstanding, provided that no such amendment shall (i) extend the payment date of any Base Rental, reduce the interest component or principal component of any Base Rental or change the prepayment terms and provisions, without the prior written consent of the Owner of each Certificate so affected, (ii) reduce the percentage of the principal evidenced by the Certificates the consent of the Owners of which is required for the execution of any amendment of this Sublease or the Lease, or (iii) modify any of the rights or obligations of the Bank without the prior written consent of the Bank. Notwithstanding any other provision of this Section 21, this Sublease and the Lease, and the rights and obligations of

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the Authority and the District hereunder and thereunder, may be amended at any time with the consent of the Bank acting in their sole discretion based upon their underwriting criteria at that time (but without the consent of the holders of the Certificates) to increase the Base Rental payable hereunder in connection with the issuance of one or more series of additional Certificates secured by Base Rental and amounts on deposit in the funds and accounts established under the Trust Agreement (other than the Rebate Fund) on a parity with the Series A Certificates in accordance with Section 11.01(a) of the Trust Agreement.

(b) This Sublease and the Lease, and the rights and obligations of the District and the Authority hereunder and thereunder, may also be amended at any time by an amendment hereto or thereto which shall become binding upon execution by the District and the Authority, with the written consent of the Bank (so long as the Bank is not in default under the Facility), but without the written consents of any Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(i) to add to the agreements, conditions, covenants and terms required by the Authority or the District to be observed or performed herein or therein other agreements, conditions, covenants and terms thereafter to be observed or performed by the Authority or the District, or to surrender any right or power reserved herein or therein to or conferred herein or therein on the Authority or the District, and which in either case shall not materially adversely affect the interests of the Bank or the Owners;

(ii) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or therein or in regard to questions arising hereunder or thereunder which the Authority or the District may deem desirable or necessary and not inconsistent herewith or therewith, and which shall not materially adversely affect the interests of the Bank or the Owners;

(iii) to make such additions, deletions or modifications as may be necessary or appropriate to assure the exclusion from gross income for federal income tax purposes of the interest components of Base Rental; or

(iv) to make such other changes herein or therein or modifications hereto or thereto as the Authority or the District may deem desirable or necessary, and which shall not materially adversely affect the interests of the Bank or the Owners.

(c) This Sublease and the Lease, and the rights and obligations of the Authority and the District hereunder and thereunder, may also be amended as of any Conversion Date by an amendment hereof or thereof which shall become binding on such Conversion Date, but without the written consents of any Owners, but only to the extent permitted by law and only if the Certificates have been remarketed by the Remarketing Agent pursuant to Article IV of the Trust Agreement for purchase on such Conversion Date with such amended rights or obligations of the Authority and the District under this Sublease and the Lease.

**Section 22. Excess Payments.** Notwithstanding anything contained herein or in the Trust Agreement to the contrary, if for any reason, including but not limited to damage, destruction, condemnation, transfer, sale or disposition, the District or the Trustee receives

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payments, proceeds or awards with respect to the Property in excess of the amount necessary to pay or prepay or provide in accordance with the Trust Agreement for the payment or prepayment of all of the Outstanding Certificates and all other amounts due hereunder and under the Trust Agreement, such excess shall represent the District's equity interest in the Property and shall all be paid to the District.

**Section 23. No Merger.** If both the Authority's and the District's estate under this or any other lease relating to the Property or any portion thereof shall at any time for any reason become vested in one owner, this Sublease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the District so elects as evidenced by recording a written declaration so stating, unless and until the District so elects, the District shall continue to have and enjoy all of its rights and privileges as to the separate estates.

**Section 24. Rights of Bank.** If (i) any event described in clause (i), (ii) or (iii) of subsection (a) of this Section has occurred, and (ii) all Outstanding Certificates are Bank Certificates, then the Bank shall have all rights of approval, consent and waiver, and all rights to institute actions and direct remedies, enjoyed by the Insurer hereunder prior to the occurrence of such event.

**Section 25. Third-Party Beneficiary.** The Bank is a third-party beneficiary of this Sublease Agreement.

**Section 26. References to Bank Ineffective.** If the Letter of Credit is no longer in effect, and all obligations to the Bank under the Standby Agreement have been paid in full, then all references in this Sublease Agreement to the Bank, the Letter of Credit and the Reimbursement Agreement shall be of no effect.

**Section 27. Further Assurances and Corrective Instruments.** The District and the Authority agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property leased hereby or intended to be so leased or for carrying out the express intention of this Sublease.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto have executed this  
Sublease as of the date first above written.

**WESTERN PLACER UNIFIED SCHOOL  
DISTRICT**

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

\_\_\_\_\_ **AUTHORITY**

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

5.44

STATE OF CALIFORNIA

)

)

ss.

COUNTY OF \_\_\_\_\_

)

On \_\_\_\_\_, 2003 before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, personally known  
to me to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

3.45



STATE OF CALIFORNIA

)

) ss.

COUNTY OF LOS \_\_\_\_\_

)

On \_\_\_\_\_, 2003 before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_, personally known  
to me to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

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**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

Certain real property located in the County of Placer, California as more particularly described below and the improvements thereon:

## EXHIBIT B

### BASE RENTAL PAYMENT SCHEDULE

The Principal component of the Base Rental Payments for the Certificates shall be paid in the amounts and on the dates specified below:

Payment Date (\_\_\_\_\_1)

Principal Component  
of Base Rental Payment

TO BE RECORDED AND WHEN RECORDED RETURN TO:  
O'Melveny & Myers LLP  
400 S. Hope Street  
Los Angeles, CA 90071

Attn:

SUBLEASE AGREEMENT

Dated as of July 1, 2003

by and between

\_\_\_\_\_ AUTHORITY

and

WESTERN PLACER UNIFIED SCHOOL DISTRICT

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## ASSIGNMENT AGREEMENT

**THIS ASSIGNMENT AGREEMENT**, dated as of July 1, 2003 (the "**Assignment Agreement**"), by and between \_\_\_\_\_, a joint powers agency duly organized and existing under the laws of the State of California (the "**Authority**"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America and authorized to accept assignments of the nature herein set forth, as trustee (the "**Assignee**");

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

**WHEREAS**, the Authority and the Western Placer Unified School District (the "**District**") have entered into a Lease Agreement, dated as of the date hereof (the "**Lease**"), pursuant to which the District agrees, among other things, to lease certain real property described in Exhibit A thereto, including all buildings and improvements thereon (collectively, the "**Property**"), to the Authority; and

**WHEREAS**, the District and the Authority have entered into a Sublease Agreement, dated as of the date hereof (the "**Sublease**"), pursuant to which the Authority agrees, among other things, to sublease the Property to the District in consideration for which the District has agreed to pay Base Rental and Additional Rental as more particularly described in the Sublease; and

**WHEREAS**, the Authority and the Assignee have entered into a Master Trust Agreement, dated as of the date hereof (the "**Master Trust Agreement**"), as supplemented by the First Supplemental Trust Agreement, dated the date hereof, by and among the Authority, the District and the Assignee pursuant to which the Assignee has agreed to execute and deliver certificates of participation (the "**Certificates**"), representing undivided proportionate interests in the Sublease, including the right to receive Base Rental payments made thereunder; and

**WHEREAS**, the Authority desires to assign and transfer certain of its rights, title and interest in and to the Lease and the Sublease to the Assignee on the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and conditions contained herein, the parties hereto agree as follows:

**Section 1. Definitions.** All capitalized terms used herein without definition shall have the meanings given to such terms in the Master Trust Agreement and the Sublease.

**Section 2. Assignment.** The Authority does hereby sell, assign and transfer to the Assignee, for the benefit of the Owners of the Certificates, all of the Authority's rights, title and interest in and to the Lease and the Sublease (excepting only the Authority's rights to indemnification in accordance with the provisions thereof and its rights to receive notices thereunder), including the Authority's right to receive Base Rental, as well as its rights to enforce payment of such Base Rental when due or otherwise to protect its interests in the event of a default or termination by the District under the Sublease. The Base Rental and other rights of the

Authority assigned hereunder shall be applied and the rights so assigned shall be exercised by the Assignee as provided in the Master Trust Agreement.

**Section 3. Acceptance of Assignment.** The Assignee hereby accepts the assignment of such of the Authority's rights under the Lease and the Sublease as are assigned pursuant to the terms of this Assignment Agreement, for the purpose of securing such Base Rental and rights to the Owners, from time to time, of the Certificates.

**Section 4. No Additional Rights or Duties.** This Assignment Agreement shall not confer any rights nor impose any duties, obligations or responsibilities upon the Assignee beyond those expressly provided in the Lease, the Sublease and the Master Trust Agreement. This Assignment Agreement shall not impose any duties, obligations or responsibilities upon the Authority or the District beyond those expressly provided in the Lease, the Sublease and the Master Trust Agreement or as otherwise set forth herein.

**Section 5. Further Assurances.** The Authority will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Assignment Agreement, and for the better assuring and confirming to the Owners of the Certificates the rights and benefits intended to be conveyed pursuant hereto.

**Section 6. Amendments.** This Assignment Agreement may be amended by an instrument in writing executed by the Authority and the Assignee, with the written consent of the District; provided, however, that any such amendment shall not adversely affect the rights of the Owners of the Certificates.

**Section 7. Governing Law.** This Assignment Agreement is made in the State under the Constitution and laws of the State of California and is to be so construed.

**Section 8. Counterparts.** This Assignment Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same agreement.

[Signatures on next page]

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**IN WITNESS WHEREOF**, the parties hereto have executed this Assignment Agreement as of the date first above written.

**[AUTHORITY]**

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

ATTEST:

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

**U.S. BANK NATIONAL  
ASSOCIATION,**  
as Assignee

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

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State of California                    )  
  ) SS  
County of \_\_\_\_\_ )

On July \_\_, 2003, before me, \_\_\_\_\_, a Notary Public for the State of California, personally appeared \_\_\_\_\_ of the \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for the  
State of California

5.55

State of California                    )  
  ) SS  
County of \_\_\_\_\_ )

On July \_\_\_\_, 2003, before me, \_\_\_\_\_, a Notary Public for the State of California, personally appeared \_\_\_\_\_ of U.S. BANK NATIONAL ASSOCIATION, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for the  
State of California

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## **EXHIBIT A**

**[to come]**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:  
O'MELVENY & MYERS  
400 South Hope Street  
Los Angeles, California 90071-2899  
Attention:

)  
)  
)  
)  
)  
)

---

(Space above for Recorder's Use)

**ASSIGNMENT AGREEMENT**

**Dated as of July 1, 2003**

**by and between**

**[AUTHORITY]**

**and**

**U.S. BANK NATIONAL ASSOCIATION  
"Assignee"**

**NO DOCUMENTARY TRANSFER TAX**

This Assignment Agreement is exempt pursuant to  
Section 6103 of the California Government Code.

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[\_\_\_\_\_ AUTHORITY],

**WESTERN PLACER UNIFIED SCHOOL DISTRICT**

and

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

---

**FIRST SUPPLEMENTAL TRUST AGREEMENT**

Dated as of July 1, 2003

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\$\_\_\_\_\_

Principal Amount of Certificates of Participation

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This **FIRST SUPPLEMENTAL TRUST AGREEMENT**, is dated as of July 1, 2003 (the "**First Supplemental Trust Agreement**"), by and among \_\_\_\_\_ **AUTHORITY**, a joint powers authority formed under the laws of the State of California (the "**Authority**"), **WESTERN PLACER UNIFIED SCHOOL DISTRICT**, a school district organized and existing under the laws of the State of California (the "**District**") and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America (the "**Trustee**");

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

**WHEREAS**, the Authority and the Trustee previously entered into that certain Master Trust Agreement dated as of July 1, 2003 (the "**Master Trust Agreement**") providing for the execution and delivery of Certificates of Participation evidencing undivided interests in the Base Rental payments to be made by Members;

**WHEREAS**, Section 2.12 of the Master Trust Agreement permits the Authority, the Trustee and the District to enter into a supplemental trust agreement to provide for the execution and delivery of the "Western Placer Unified School District Certificates of Participation (School Facilities Project), Series 2003 (the "**WPUSD Certificates**)";

**WHEREAS**, the Authority and the District have entered into a Lease Agreement, dated as of the date hereof (the "**Lease**"), pursuant to which the District has leased certain real property, together with all buildings and improvements thereon (collectively, the "**Property**"), as more particularly described therein, to the Authority;

**WHEREAS**, the District and the Authority have entered into a Sublease Agreement, dated as of the date hereof (the "**Sublease**"), pursuant to which the Authority has subleased the Property to the District;

**WHEREAS**, the Authority and the Trustee have entered into an Assignment Agreement, dated as of the date hereof (the "**Assignment Agreement**"), pursuant to which the Authority has transferred all of its rights, title and interest (other than its rights to indemnification, its rights to payment of its expenses and its rights to receipt of notices) in and to the Lease and the Sublease, including the right to receive certain rental payments due under the Sublease (the "**Base Rental**"), to the Trustee for the benefit of the Owners of the WPUSD Certificates;

**WHEREAS**, all acts and proceedings required by law to constitute the First Supplemental Trust Agreement 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 the First Supplemental Trust Agreement have been in all respects duly authorized.

**NOW, THEREFORE, THIS FIRST SUPPLEMENTAL TRUST AGREEMENT WITNESSETH**, in consideration of the premises and of the mutual covenants herein contained, and for other valuable considerations, the receipt whereof is hereby acknowledged, the parties hereto covenant and agree for the benefit of the respective owners from time to time of the WPUSD Certificates, as follows:

5.6.1



## ARTICLE I

### DEFINITIONS; EFFECT OF FIRST SUPPLEMENTAL INDENTURE

#### SECTION 1.01 Definitions

(a) Unless a different meaning clearly appears from the context, the capitalized terms used in this First Supplemental Trust Agreement shall have the meanings specified in the Master Trust Agreement, as supplemented hereby.

(b) Section 1.01 of the Trust Agreement is amended to add definitions of the following terms:

[add definitions, if any]

## ARTICLE II

### THE CERTIFICATES

**SECTION 2.01 Authorization.** The Trustee is hereby authorized and directed upon written request from the Authority to execute and deliver WPUSD Certificates in an aggregate principal amount of \$ \_\_\_\_\_ to the Original Purchaser. The Certificates evidence direct, undivided fractional interests in the Sublease, including the right to receive Base Rental payments thereunder.

The WPUSD Certificates shall be executed and delivered as Adjustable Rate Certificates, shall mature on \_\_\_\_\_ 1, 2028 and shall initially represent interest at the Initial Adjustable Interest Rate of \_\_\_\_%.

**SECTION 2.02 Application of Proceeds.** The proceeds received by the Trustee from the sale of the Certificates (net of the Bank's initial fees for the Letter of Credit of \$ \_\_\_\_\_, wire transferred directly to the Bank by the Original Purchaser, less Underwriter's discount and expenses of \$ \_\_\_\_\_), in the aggregate amount of \$ \_\_\_\_\_, shall forthwith be set aside by the Trustee in the following respective funds and accounts:

(a) The Trustee shall deposit into the Costs of Issuance Account an amount equal to \$ \_\_\_\_\_;

(b) The Trustee shall deposit an amount equal to the District's Reserve Requirement, being \$ \_\_\_\_\_, into the Reserve Fund; and

(c) The Trustee shall deposit the remaining proceeds of the WPUSD Certificates, being the sum of \$ \_\_\_\_\_ into the Project Fund.

5.62

## ARTICLE III

### PREPAYMENT

**SECTION 3.01 Prepayment.** The WPUSD Certificates shall be subject to prepayment as provided in Section 4.01 of the Master Trust Agreement and as follows:

(a) in whole or in part in Authorized Denominations on any Interest Payment Date when interest with respect to the WPUSD Certificates of such Series is payable at the Fixed Interest Rate, in the event and to the extent the principal component of Base Rental payments is voluntarily prepaid by the District under the Lease Agreement, at a prepayment price of one hundred percent (100%) of the principal amount of the WPUSD Certificates of such Series to be prepaid plus a premium described below, expressed as a percentage of the principal amount of the WPUSD Certificates of such Series called for prepayment and subject to the following:

(i) if on the Conversion Date from an Adjustable Rate Period to a Fixed Interest Rate Period there remain at least fifteen (15) years to the maturity of the WPUSD Certificates, the WPUSD Certificates may be prepaid on or after the first \_\_\_\_\_ 1 following the seventh anniversary of the Conversion Date, with a prepayment premium commencing at 2% on such \_\_\_\_\_ 1, with such premium declining and being reduced by 1/2% on each anniversary of such \_\_\_\_\_ 1 until it reaches 0%; or

(ii) if on the Conversion Date from an Adjustable Rate Period to a Fixed Interest Rate Period there remain at least ten (10) years but less than fifteen (15) years to the maturity of the WPUSD Certificates, the WPUSD Certificates may be prepaid on or after the first \_\_\_\_\_ 1 following the fifth anniversary of the Conversion Date, with a prepayment premium commencing at 2% on such \_\_\_\_\_ 1, with such premium declining and being reduced by 1/2% on each anniversary of such \_\_\_\_\_ 1 until it reaches 0%;

(iii) if on the Conversion Date from an Adjustable Rate Period to a Fixed Interest Rate Period there remains at least five (5) years but less than ten (10) years to the maturity of such WPUSD Certificates, the WPUSD Certificates may be prepaid on or after the first \_\_\_\_\_ 1 following the third anniversary of the Conversion Date, with a prepayment premium commencing at 2% on such \_\_\_\_\_ 1, with such premium declining and being reduced by 1/2% on each anniversary of such February 1 until it reaches 0%.

(b) Should the District receive reimbursement from the State, or should the District issue general obligation bonds for all or part of the costs of the Project, the principal component of Base Rental payments with respect to such WPUSD Certificates may be prepaid on any Interest Payment Date selected for such prepayment by the District, no later than two years following the date upon which such reimbursement is or such proceeds are received by the District, at a prepayment price of par, plus accrued interest, if any, to the date of prepayment.

(c) the WPUSD Certificates shall be subject to prepayment in part on \_\_\_\_\_ 1 in each year on or after \_\_\_\_\_ 1, 20\_\_\_\_, to the extent of the principal components of

scheduled Base Rental payments required to be paid by the District pursuant to the Sublease with respect to each such prepayment date, at a prepayment price equal to the principal amount thereof to be prepaid, together with accrued interest with respect thereto to the date fixed for prepayment, without premium, as follows:

Mandatory Sinking Fund Prepayment Date ( <u>      1      </u> )	Principal Amount of Certificates to Be <u>Prepaid</u>	Mandatory Sinking Fund Prepayment Date ( <u>      1      </u> )	Principal Amount of Certificates to Be <u>Prepaid</u>
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In the event that the Trustee shall prepay the WPUSD Certificates in part but not in whole pursuant to subsections (a) or (b) of this Section 3.01, the amount of the WPUSD Certificates to be prepaid in each subsequent year pursuant to this subsection (d) shall be reduced as directed in writing by the District, but if no such direction is received by the Trustee, then pro rata to correspond to the principal components of the Base Rental payments related to the WPUSD Certificates prevailing following such prepayment, determined as set forth in Section 4.4(b) of the Lease Agreement.

**SECTION 3.02** The WPUSD Certificates will be subject to mandatory tender for purchase and demand purchase as set forth in Sections 4.04 and 4.05 of the Master Trust Agreement.

## ARTICLE IV

### NOTICES

**SECTION 4.01 Notices.** The address of the District for receipt of notices under the Master Trust Agreement is:

Western Placer Unified School District  
810 J St.  
Lincoln, CA 95648  
Attn: Superintendent  
Phone: (916) 645-6350  
Fax: (916) 645-6356

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## ARTICLE V

### MISCELLANEOUS

**SECTION 5.01 Execution in Several Counterparts.** This First Supplemental Trust Agreement 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, The District and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 5.02 Governing Law.** This First Supplemental Trust Agreement shall be construed in accordance with and governed by the Constitution and laws of the State of California.

**SECTION 5.03 Article and Section Headings and References.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Trust Agreement.

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

**SECTION 5.04 Severability of Invalid Provisions.** If any one or more of the provisions contained in this First Supplemental Trust Agreement 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 First Supplemental Trust Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this First Supplemental Trust Agreement, and this First Supplemental Trust Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority, The District and the Trustee each hereby declares that it would have entered into this First Supplemental Trust Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this First Supplemental Trust Agreement may be held illegal, invalid or unenforceable.

**SECTION 5.05 Effect of First Supplemental Trust Agreement.** As supplemented hereby, the Master Trust Agreement and the trusts conferred thereby are in all respects ratified, confirmed and surviving, and the Master Trust Agreement, as supplemented by this First Supplemental Trust Agreement, shall be read, taken and considered as one instrument and references to Articles or Sections of the Trust Agreement shall be deemed to refer to such Articles or Sections as supplemented hereby. By execution hereof, the District agrees to the provisions hereof and further agrees to be bound by the provisions of the Master Trust Agreement to the extent applicable to the WPUSD Certificates.

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(remainder of the page intentionally left blank)

IN WITNESS WHEREOF, \_\_\_\_\_  
AUTHORITY has caused this First Supplemental Trust Agreement to be signed in its name by one of its duly authorized officers, **WESTERN PLACER UNIFIED SCHOOL DISTRICT** has caused this First Supplemental Trust Agreement to be signed in its name by one of its duly authorized representatives, and **U.S. BANK NATIONAL ASSOCIATION**, in token of its acceptance of the trusts created hereunder, has caused this First Supplemental Trust Agreement to be signed in its corporate name by one of its duly authorized officers, all as of the day and year first above written.

\_\_\_\_\_  
By \_\_\_\_\_  
Member of the Commission  
of the Authority

**WESTERN PLACER UNIFIED SCHOOL  
DISTRICT**

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

**U.S. BANK NATIONAL ASSOCIATION, as  
Trustee**

By \_\_\_\_\_  
Authorized Officer

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**MASTER TRUST AGREEMENT**

Dated as of July 1, 2003

by and between

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee,

and the

**[NAME OF AUTHORITY]**

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## MASTER TRUST AGREEMENT

**THIS MASTER TRUST AGREEMENT**, dated as of July 1, 2003 (this "Trust Agreement"), by and between the [NAME OF AUTHORITY], a joint powers agency duly organized and existing under the laws of the State of California (the "**Authority**"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States (together with any successor trustee serving as such pursuant to this Trust Agreement, the "Trustee");

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

**WHEREAS**, the Authority is a joint powers agency duly organized and existing under the laws of the State of California (the "**State**"), and is authorized pursuant to Section 6500 et. seq. of the California Government Code, as amended (the "**JPA Act**"), to provide for the execution and delivery of certificates of participation to provide funds to achieve its purposes; and

**WHEREAS**, the Authority is authorized under the JPA Act and has heretofore determined to adopt and implement a School Facilities Program (the "**School Facilities Program**") under which the Authority will provide for the execution and delivery of certificates of participation evidencing undivided interests in and Sublease Agreements (as defined herein) with its Members (as defined herein) the proceeds of which will be used by such Member to acquire and/or construct school facilities; and

**WHEREAS**, the Authority desires to execute, sell and deliver certificates of participation (the "**Certificates of Participation**" or "**Certificates**") in series (each, a "**Series**") to provide moneys to carry out the School Facilities Program, all under and in accordance with the Constitution and laws of the State, including the JPA Act; and

**WHEREAS**, the Members which enter into Sublease Agreements are individually referred to herein as an "**Obligor**" and together referred to herein as "**Obligors**"; and

**WHEREAS**, the Certificates of each Series shall evidence undivided proportionate interests in the related Sublease Agreements, including the right to receive rental payments payable by the respective Obligor thereunder; and

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

## ARTICLE I

### DEFINITIONS; INTERPRETATION; AUTHORIZATION; EXHIBITS

**Section 1.01 Definitions.** The terms defined in this Trust Agreement, as used and capitalized herein, shall, for all purposes of this Trust Agreement and any Supplemental Trust Agreement, have the meanings ascribed to them herein, unless the context clearly requires some other meaning.

***"Accreted Value"*** means, with respect to the Capital Appreciation Certificates of any Series, the principal amount thereof plus the interest accrued thereon, compounded at the applicable interest rate thereon on each date specified therein. The Accreted Value at any date shall be the amount set forth in the applicable Accreted Value Table as of such date, if such date is a compounding date, and if not, as of the immediately preceding compounding date plus the amount of daily interest accrued from such preceding compounding date to the date of determination.

***"Accreted Value Table"*** means, with respect to Capital Appreciation Certificates of any Series, the table denominated as such which appears as an exhibit to the Supplemental Trust Agreement providing for the execution and delivery of such Series.

***"Additional Payments"*** means the payments so designated and required to be paid by each Obligor pursuant to the respective Sublease Agreement.

***"Adjustable Period"*** means, with respect to any Series of Certificates, following the Initial Adjustable Period for such Series prior to the Conversion Date for such Series, the period commencing on the Thursday after each Adjustable Rate Calculation Date to and including Wednesday of the following week, and from and after the Conversion Date for such Series means the remaining term of such Certificates.

***"Adjustable Rate"*** means, with respect to a Series of Certificates, the Adjustable Rate determined in accordance with the respective Sublease Agreement.

***"Adjustable Rate Calculation Date"*** means, with respect to Adjustable Rate Certificates of any Series of Certificates, Wednesday of each week prior to the Conversion Date for such Series or, if any such Wednesday is not a Business Day, the next preceding Business Day.

***"Adjustable Rate Certificates"*** means any Certificates subject to an Adjustable Rate, as further described in Section 2.02(b) hereof.

***"Adjustable Rate Period"*** means, with respect to any Series of Certificates, the period during which such Certificates represent Base Rental calculated at the Adjustable Rate.

***"Assignment Agreement"*** means, with respect to any Series of Certificates, the Assignment Agreement, by and between the Authority and the Trustee, together with any duly authorized, executed and acknowledged amendments thereto, whereby the Authority assigns certain of its rights in the respective Sublease Agreement to the Trustee..

***"Authority Representative"*** means the President of the Authority, the Vice President or Secretary of the Authority, or any other person authorized by resolution of the Board of the Authority to act on behalf of the Authority under or with respect to this Trust Agreement and each Sublease Agreement, Assignment Agreement and Lease Agreement.

***"Authorized Denomination"*** means (a) with respect to any Adjustable Rate Certificates, the minimum amount of \$100,000 or any integral multiple of \$5,000 above \$100,000, although one Certificate of each Series in an Adjustable Rate may be in an amount greater than \$100,000 but less than an integral multiple of \$5,000, (b) with respect to any Fixed Rate Certificates, \$5,000 or any integral multiple thereof, and (iii) with respect to any Capital Appreciation

Certificates, prior to the Conversion Date for such Certificates, the Accreted Value per \$5,000 Final Compounded Amount as of the date of calculation or any integral multiple thereof and, on and after the Conversion Date for such Certificates, \$5,000 of Final Compounded Amount or any integral multiple thereof.

**"Available Moneys"** means (a) moneys derived from drawings under the Letter of Credit, (b) remarketing proceeds, (c) the proceeds of any obligations issued or incurred to refund the Certificates, (d) insurance proceeds or a condemnation award paid directly to the Trustee, or (e) investment income derived from the investment of moneys described in clauses (a), (c), or (d) hereof.

**"Bank"** means, with respect to any Series of Certificates, Bank of America, N.A., acting as the issuer of any Letter of Credit for such Series, or the issuer of Substitute Security or Post-Conversion Security, if such security has been issued as provided in the respective Sublease Agreement and Supplemental Trust Agreement.

**"Bank Certificates,"** with respect to any Series of Certificates, shall have the meaning ascribed thereto in the respective Reimbursement Agreement.

**"Bank Rate"** means, with respect to any Series of Certificates, the interest rate to be represented by Bank Certificates as determined in accordance with the respective Reimbursement Agreement.

**"Base Rental"** means the payments so designated and required to be paid by each Obligor pursuant to the respective Sublease Agreement.

**"Base Rental Account"** means, with respect to any Series of Certificates, the account of that name established within the respective Certificate Fund pursuant to Section 5.02 hereof.

**"Base Rental Payment Date"** means, with respect to any Series of Certificates, (i) with respect to Adjustable Rate Certificates (a) prior to and including the Conversion Date, each date occurring five (5) Business Days prior to each Interest Payment Date, and (b) after the Conversion Date, the fifteenth (15<sup>th</sup>) day of each calendar month preceding an Interest Payment Date, and (ii) with respect to all other Certificates, the fifteenth (15<sup>th</sup>) day of each calendar month preceding an Interest Payment Date.

**"Business Day"** means a day other than a Saturday, a Sunday or a day on which the New York Stock Exchange is closed or banks in the city in which the principal corporate trust office of the Trustee is located or in the city in which the office of the Bank designated for presentation of drawings under the respective Letter of Credit is located are authorized or obligated by law or executive order to close.

**"Capital Appreciation Certificates"** means Certificates of any Series designated as "Capital Appreciation Certificates" in the Supplemental Trust Agreement providing for the execution and delivery of such Series and with respect to which interest is compounded and paid at maturity or on prior prepayment or payment, as further described in Section 2.02(a) hereof.

**"Certificate Fund"** means, with respect to any Series of Certificates, the fund by that name established and held by the Trustee pursuant to Section 5.02 of this Trust Agreement.

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***"Certificate of Completion"*** means the certificate of a Obligor Representative certifying that the respective Project has been completed and that all Project Costs related to such Project have been paid.

***"Certificate Year"*** means, with respect to any Series of Certificates, the twelve-month period designated as such in the respective Supplemental Trust Agreement.

***"Certificate of the Obligor"*** means a written certification, signed on behalf of the respective Obligor by a Obligor Representative.

***"Certificates"*** means the Certificates of Participation of each Series executed and delivered by the Trustee pursuant to and Outstanding under this Trust Agreement, which shall include, without limitation, Bank Certificates.

***"Closing Date"*** with respect to any Series of Certificates, means the date upon which there is a physical delivery of such Series of Certificates in exchange for the amount representing the purchase price of such Certificates by the Original Purchaser thereof.

***"Code"*** means the Internal Revenue Code of 1986, as amended, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

***"Completion Date"*** means, with respect to each Project as a whole, or any discrete component thereof, the date of completion of such Project, as evidenced by the filing by the respective Obligor with the Trustee of a Certificate of Completion.

***"Conversion Date"*** means, with respect to any Series of Certificates, (i) during an Adjustable Rate Period for such Certificates, the date, which shall be an Interest Payment Date, after which such Certificates begin to be payable with respect to interest at the Fixed Rate for such Series as provided in the respective Sublease Agreement, (ii) during a Fixed Rate Period for such Certificates, the expiration date of the then current Fixed Rate Period as provided in the respective Sublease Agreement, and (iii) for Capital Appreciation Certificates, the date so specified in the respective Supplemental Trust Agreement.

***"Costs of Issuance"*** means, with respect to any Series of Certificates, all the costs of executing and delivering the Certificates, including, but not limited to, all printing and document preparation expenses in connection with this Trust Agreement, the respective Supplemental Trust Agreement, Sublease, Site Lease, Assignment Agreement, Letter of Credit and Reimbursement Agreement, the Certificates and the preliminary and final official statements pertaining to the Certificates; any premium or other fees with respect to insurance provided for the Certificates; rating agency fees; CUSIP Service Bureau charges; consultant fees; market study fees; any computer and other expenses incurred in connection with the Certificates; the initial fees and expenses of the Trustee and the Trustee's counsel and any paying agent (including without limitation, origination fees); and expenses incurred in connection with the execution and delivery of the Certificates or the implementation of the financing for the Project, to the extent such fees and expenses are approved by the District.

***"Costs of Issuance Account"*** means, with respect to any Series of Certificates, the account of that name established within the respective Project Fund pursuant to Section 3.03 hereof.

***"Defeasance Obligations"*** means (a) cash, (b) non-callable and non-prepayable Federal Securities, (c) evidences of ownership of proportionate interests in future interest and principal payments on U.S. Treasury obligations held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying U.S. Treasury obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated, or (d) pre-refunded municipal obligations rated "Aaa" by Moody's, if Moody's has rated the Certificates, and/or "AAA" by S&P, if S&P has rated the Certificates.

***"Demand Purchase Option"*** means, with respect to any Series of Certificates, the option of the Certificate Owners to have Outstanding Certificates purchased by the Tender Agent in accordance with Section 4.05 of this Trust Agreement.

***"Earnings Fund"*** means, with respect to any Series of Certificates, the fund of that name established pursuant to Section 5.06 hereof.

***"Event of Default"*** means, with respect to any Series of Certificates, an event of default under the Sublease Agreement, as defined in Section 9.1 of the Sublease Agreement.

***"Excess Earnings Account"*** means, with respect to any Series of Certificates, the account of that name established within the Earnings Fund pursuant to Section 5.06 hereof.

***"Federal Securities"*** means direct general obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury) the United States of America, or obligations the payment of principal of and interest on which are guaranteed as to full and timely payment by the United States of America.

***"Final Compounded Amount"*** means the Accreted Value of any Capital Appreciation Certificate on its Conversion Date.

***"Fiscal Year"*** means the twelve-month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period selected by the respective Obligor as its fiscal year.

***"Fixed Rate"*** means the interest rate represented by Fixed Rate Certificates.

***"Fixed Rate Certificates"*** means any Certificates representing the interest component of Base Rental calculated and payable at the Fixed Rate for the applicable Fixed Rate Period as calculated in the respective Sublease Agreement.

***"Fixed Rate Period"*** means, for Fixed Rate Certificates of any Series, each period of at least 360 days for which the respective Obligor has determined that such Certificates represent Base Rental calculated at the Fixed Rate.

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***"Governing Board"*** means the Board of Trustees of the respective Obligor.

***"Information Services"*** means Financial Information, Inc.'s "Daily Called Special Service," 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Mergent/FIS, Inc., 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28217, Attention: Municipal News Reports; and Kenny S&P, 55 Water Street, 45th Floor, New York, New York 10041, Attention: Notification Department; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called bonds as the respective Obligor may designate in a request of the respective Obligor delivered to the Trustee.

***"Initial Adjustable Period"*** means, with respect to any Adjustable Rate Certificates of any Series, the period beginning on the Closing Date, and ending on the following Wednesday, during which time interest with respect to such Certificates will be payable at the Initial Adjustable Rate for such Certificates.

***"Initial Adjustable Rate"*** means, with respect to any Adjustable Rate Certificates of any Series, the interest rate applicable to such Certificates during the Initial Adjustable Period for such Certificates as provided the Sublease Agreement.

***"Insurance Proceeds Account"*** has the meaning assigned to that term in Section 3.08 hereof.

***"Interest Account"*** means, with respect to any Series of certificates, the account of that name established within the respective Certificate Fund pursuant to Section 5.02 hereof

***"Interest Payment Date"*** means, with respect to any Series of Certificates, (i) for Adjustable Rate Certificates, the first Business Day of each month, commencing the first day of the month immediately following the respective Closing Date to the Conversion Date for such Series, (ii) for (x) Fixed Rate Certificates and (y) Adjustable Rate Certificates and Capital Appreciation Certificates from and after their respective Conversion Date, semiannually on the dates set forth in the respective Supplemental Trust Agreement, and (ii) with respect to Bank Certificates, "Interest Payment Date" shall mean the date on which any interest with respect to Bank Certificates of such Series is due under the Reimbursement Agreement for such Certificates.

***"Investment Earnings"*** means interest received in respect to the investment of money on deposit in any fund or account maintained hereunder.

***"Investment Earnings Account"*** means, with respect to any Series, the account of that name established within the Earnings Fund pursuant to Section 5.06 hereof.

***"JPA Act"*** means Section 6500 *et. seq.* of the California Government Code, as amended.

***"JPA Agreement"*** means that certain Joint Exercise of Powers Agreement, dated July \_\_, 2003, between the Western Placer Unified School District and the \_\_\_\_\_, as duly amended and supplemented from time to time.

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***"Lease Agreement"*** means, with respect to a Series of Certificates, the agreement for the lease by the respective Obligor to the Authority, of the Property, together with any duly authorized and executed amendments thereto.

***"Letter of Credit"*** means, with respect to any Series of Certificates, the irrevocable direct-pay letter of credit, issued on the Closing Date in favor of the Trustee, as trustee, or, following the delivery of any Substitute Security, such Substitute Security.

***"Letter of Credit Account"*** means, with respect to any Series of Certificates, the account by that name established under Section 5.02 within the Certificate Fund for deposit of proceeds of drawings under the Letter of Credit, other than drawings to pay the Purchase Price of tendered Certificates.

***"Maximum Interest Rate"*** means, with respect to Certificates of any Series other than Bank Certificates, twelve percent (12%), and with respect to Bank Certificates of such Series, the maximum rate permitted under law.

***"Member"*** means a member of the Authority which has executed, and at the time in question is a party to, the JPA Agreement.

***"Moody's"*** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such corporation shall for any reason no longer perform the function of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized rating agency designated by the respective Obligor with the approval of the respective Obligor and the Bank.

***"Net Proceeds,"*** when used with respect to insurance or condemnation proceeds, means any insurance proceeds or condemnation award paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

***"Nonarbitrage Certificate"*** means, with respect to an Series of Certificates, the Tax and Nonarbitrage Certificate of the respective Obligor executed in connection with such Series of Certificates, if any.

***"Obligor"*** means each Member which enters into a Sublease Agreement evidenced by the Certificates executed and delivered hereunder and ***"Obligors"*** refers to such Members collectively.

***"Obligor Representative"*** means, with respect to a Series of Certificates, each person authorized by resolution of the Board of Trustees of the respective Obligor delivered to the Trustee to act on behalf of such District under or with respect to the respective Lease Agreement, Sublease Agreement, Remarketing Agreement and Reimbursement Agreement and this Trust Agreement.

***"Original Purchaser"*** means, with respect to any Series of Certificates, the first purchaser of such Certificates.

***"Outstanding,"*** when used with respect to the Certificates and as of any particular date, means all Certificates theretofore delivered except: (a) any Certificate canceled by the Trustee or

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surrendered for cancellation at or before said date, (b) Certificates for the payment or prepayment of which funds or eligible securities in the necessary amount, including accrued interest with respect thereto, shall have theretofore been deposited with the Trustee (whether upon or prior to the maturity or prepayment date of such Certificates), provided that, if such Certificates are to be prepaid prior to maturity, notice shall have been given as provided in Section 4.03 of this Trust Agreement or provision satisfactory to the Trustee shall have been made for the giving of such notice, and (c) any Certificate in lieu of, in substitution for or in exchange for which another Certificate shall have been delivered pursuant to this Trust Agreement.

**"Owner"** or **"Certificate Owner,"** when used with respect to a Certificate, means the person in whose name the ownership of such Certificate shall be registered.

**"Payment Date"** means any Interest Payment Date or Principal Payment Date.

**"Permitted Encumbrances"** means, with respect to any Property, as of any particular time: (i) liens for general *ad valorem* taxes and assessments, if any, not then delinquent, or which the respective Obligor may permit to remain unpaid; (ii) the respective Assignment Agreement; (iii) the respective Sublease Agreement; (iv) the respective Lease Agreement; (v) any right or claim of any mechanic, laborer, material man, supplier or vendor filed or perfected in the manner prescribed by law; (vi) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record on the related Closing Date and which are acceptable to the Bank, as evidenced by the delivery of the respective Letter of Credit; and (vii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of the respective Sublease Agreement and to which the respective Obligor and the Bank consent in writing.

**"Post-Conversion Security"** means, with respect to any Series of Certificates, either (i) any credit facility sufficient to provide for payment of the principal and interest represented by the Certificates of such Series, which shall be maintained at all times from and after the Conversion Date for such Series at an amount not less than the aggregate principal amount of Certificates of such Series Outstanding plus 210 days' (or such other number of days as Moody's, if Moody's has rated the Certificates, and/or S&P, if S&P has rated the Certificates, shall require) interest thereon or (ii) such other security as is approved in writing by Moody's, if Moody's has rated the Certificates, and/or S&P, if S&P has rated the Certificates, and the respective Obligor, equivalent in substance to the Letter of Credit, for the benefit of the Trustee, which in each case will not result in a reduction or withdrawal of the then-existing ratings of the Certificates by Moody's, if Moody's has rated the Certificates, and/or S&P, if S&P has rated the Certificates which, in the opinion of Special Counsel, will not cause the interest payable with respect to such Certificates to be subject to federal income taxes.

**"Prepayment Account"** means, with respect to any Series of Certificates, the account of that name established within the respective Certificate Fund pursuant to Section 5.02 hereof.

**"Principal"** means, as of any date of calculation, (i) as to each Capital Appreciation Certificate, the then Accreted Value thereof, and, (ii) as to all other Certificates, the principal amount thereof.

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***"Principal Account"*** means, with respect to any Series of certificates, the account of that name established within the respective Certificate Fund pursuant to Section 5.02 hereof.

***"Principal Amount,"*** when used with respect to Base Rental, means the total principal component of Base Rental then unpaid.

***"Principal Office"*** means, (a) with respect to the Trustee, the main or principal corporate trust office of the Trustee located in Los Angeles, California, and (b) with respect to the Tender Agent, the main or principal corporate trust office of the Tender Agent located in Los Angeles, California, provided for registration, transfer, exchange, surrender or payment of Certificates means the corporate trust office of the Trustee in St. Paul, Minnesota, or such other offices as may be designated in writing by the Trustee or the Tender Agent to the respective Obligor and the Authority.

***"Principal Payment Date"*** means, with respect to any Series of Certificates, the dates designated as such in the respective Supplemental Trust Agreement with respect to such Series.

***"Proceeds"*** means, with respect to any Series of Certificates, the principal amount of such Certificates, plus accrued interest, if any, and premium, if any, less original issue discount.

***"Project"*** means, with respect to any Series of Certificates, the capital improvements to be constructed, acquired or installed by the respective Obligor with the proceeds of such Certificates as set forth in the respective Supplemental Trust Agreement with respect to such Series

***"Project Costs"*** means, with respect to any Series of Certificates, all costs of payment of, or reimbursement for, planning, construction, improvement and equipping of the respective Project, including, but not limited to, architect and engineering fees, costs relating to environmental remediation, if any, title insurance premiums, costs of feasibility and other reports, inspection costs and permit fees.

***"Project Fund"*** means, with respect to any Series of Certificates, the fund by that name established and held by the Trustee pursuant to Section 3.01 of this Trust Agreement.

***"Property"*** means, with respect to a Series of Certificates, the site and the buildings and other improvements thereon to be leased by the respective Obligor to the Authority.

***"Purchase Date"*** means, with respect to any Series of Certificates, the date of purchase for any Certificate tendered pursuant to Section 4.04 or 4.05 of this Trust Agreement.

***"Purchase Fund"*** means with respect to a Series of Certificates the fund by that name established pursuant to Section 4.09 of this Trust Agreement.

***"Purchase Price"*** means the amount payable to an Owner upon optional or mandatory tender of his Certificates, being the Principal amount thereof, plus interest accrued to the Purchase Date.

***"Qualified Investments"*** means the investments in which the amounts related to any Series of Certificates may be invested as established in a Supplemental Trust Agreement.

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***“Rating Category”*** means any generic rating category of Moody’s or S&P, without regard to any refinement of such category by plus or minus sign or by numerical or other qualifying designation.

***“Record Date”*** means (i) with respect to any Adjustable Rate Certificate prior to the respective Conversion Date, except for a payment of defaulted interest, the date five (5) days before such Interest Payment Date, and (ii) for all other Certificates and for Adjustable Rate Certificates after the Conversion Date for such Series, the fifteenth day of the calendar month preceding an Interest Payment Date. With respect to any payment of defaulted interest, a special record date shall be established in accordance with the provisions of this Trust Agreement.

***“Registration Books”*** means, with respect to any Series of Certificates, the records maintained by the Trustee pursuant to Section 2.09 of this Trust Agreement for registration and transfer of ownership of the Certificates.

***“Regulations”*** means temporary and permanent regulations promulgated under the Code.

***“Reimbursement Agreement”*** means, with respect to any Series of Certificates, the Reimbursement Agreement by and between the respective Obligor and the Bank, pursuant to which the respect initial Letter of Credit is issued.

***“Remarketing Agent”*** means, with respect to any Series of Certificates, the agent appointed in accordance with the provisions of Section 4.06 of this Trust Agreement, initially being Banc of America Securities LLC.

***“Remarketing Agreement”*** means, with respect to any Series of Certificates, the Remarketing Agent Agreement between the respective Obligor and the Remarketing Agent, together with any duly authorized and executed amendments thereto or substitute agreement.

***“Reserve Fund”*** means, with respect to any Series of Certificates, the fund by that name established and held by the Trustee pursuant to Section 5.05 hereof.

***“Reserve Policy”*** means any insurance policy, surety bond, letter of credit or other credit facility deposited with the Trustee pursuant to Section 5.05 hereof.

***“Reserve Requirement”*** means, with respect to any Series of Certificates, the amount so designated in the Supplemental Trust Agreement with respect to such Series.

***“S&P”*** means Standard & Poor’s, a division of The McGraw-Hill Companies, 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 for any reason no longer perform the function of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized rating agency designated by the respective Obligor with the approval of the respective Obligor and the Bank.

***“Seasoned Funds”*** means moneys deposited by the respective Obligor with the Trustee and so designated by the respective Obligor, which moneys shall have been held by the Trustee in an account in the Certificate Fund for at least 123 days prior to the date notice of tender or prepayment is given, and not commingled with any moneys so held for less than said period and

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during which period, no petition in bankruptcy was filed by the respective Obligor under the United States Bankruptcy Code, unless such petition was dismissed and all applicable appeal periods have expired without an appeal having been filed.

**"Securities Depositories"** means The Depository Trust Company, 711 Stewart Avenue, Garden City, NY 11530, Fax (516) 227-4171 or -4190; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the respective Obligor may designate in a certificate of the respective Obligor delivered to the Trustee.

**"Series,"** when used with respect to the Certificates, means all of the Certificates designated as being of the same series, executed and delivered in a simultaneous transaction, regardless of variations in principal payment date, interest rate mode, prepayment and other provisions, and any Certificates thereafter executed and delivered upon transfer or exchange of or in lieu of or in substitution for (but not to refund) such Certificates pursuant to this Trust Agreement and the Supplemental Trust Agreement with respect thereto.

**"Special Counsel"** means O'Melveny & Myers LLP.

**"State"** means the State of California.

**"Sublease Agreement"** means, with respect to any Series of Certificates, the Sublease Agreement between the Authority and the respective Obligor providing for the sublease of the Property to the Obligor.

**"Substitute Security"** means, with respect to any Series of Certificates, an irrevocable letter of credit, bond insurance and/or a standby purchase agreement or other security delivered by the respective Obligor to the Trustee in replacement of the then-existing Letter of Credit for such Series which (a) shall be either (i) an irrevocable letter of credit equal in amount and substantially identical in substance to the Letter of Credit for such Series then in effect, or (ii) other security which has been approved in writing by the Bank in its sole discretion, if the Letter of Credit shall remain in place following the substitution, Moody's, if Moody's shall have rated the Certificates of such Series B and/or S&P, if S&P shall have rated the Certificates of such Series (but only if such firm is then maintaining a rating with respect to such Certificates) and the Authority and the respective Obligor, equivalent in substance to the Letter of Credit then in effect for such Series; and (b) contemporaneously with the issuance of the Substitute Security: (i) the Trustee and the Bank, shall receive an opinion of Counsel to the effect that (A) the Substitute Security is the valid and binding obligation of the Bank therefor, enforceable against the issuer thereof in accordance with its terms, except insofar as its enforceability may be limited by any insolvency or similar proceedings applicable to such issuer or by proceedings affecting generally the rights of such issuer's creditors, but only if required by the Rating Agencies, that (B) a payment with respect to the Certificates of such Series from the proceeds of a drawing on or receipt of the proceeds of the Substitute Security, as the case may be, will not constitute a voidable preference under the Federal Bankruptcy Code or under other applicable laws and regulations in the event of a bankruptcy or insolvency of any entity other than such issuer; (ii) the Trustee shall receive written evidence from Moody's, if Moody's shall have rated such Certificates and S&P, if S&P shall have rated such Certificates and such other rating agency as shall then maintain a rating on such Certificates, that such Substitute Security will have a short-

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term rating of at least "A-1;" (iii) the Trustee shall provide prompt written notice of the mandatory tender of such Certificates pursuant to Section 4.04(b) of this Trust Agreement to each Owner of such Certificates; and (iv) an opinion of Special Counsel addressed to the Trustee, and the Bank, as applicable, to the effect that such Substitute Security will not cause the interest payable with respect to such Certificates to not be excluded from gross income for purposes of federal income taxation.

***"Supplemental Trust Agreement"*** means an agreement amending or supplementing the terms of this Trust Agreement entered into pursuant to the terms of this Trust Agreement.

***"Tax Certificate"*** means, with respect to any Series of Certificates, the Tax Certificate and Agreement dated as of the Closing Date for the Certificates of such Series concerning certain matters pertaining to the use and investment of proceeds of such Certificates executed by the respective Obligor on the date of execution and delivery of such Certificates, including any and all exhibits attached thereto.

***"Tender Agent"*** means, with respect to any Series of Certificates, the Trustee or another tender agent, which must be a commercial bank with trust powers or trust company acting in the capacity of tender agent under this Trust Agreement.

***"Trustee"*** means U.S. Bank National Association, a national banking association, organized and existing under the laws of the United States of America, or any successor thereto acting as Trustee pursuant to this Trust Agreement.

***"Written Request of the respective Obligor"*** means, with respect to any Series of Certificates, an instrument in writing signed by a Obligor Representative.

#### **Section 1.02 Interpretation.**

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

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

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Trust Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

**Section 1.03 Authorization.** Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Trust Agreement, and has taken all actions necessary to authorize the execution of this Trust Agreement by the officers and persons signing it.

**Section 1.04 References to Bank.** If no Letter of Credit shall be in effect with respect to a Series of Certificates, all references herein to Bank, Letter of Credit and Reimbursement Agreement shall be of no effect.

**Section 1.05 Exhibits.** The following Exhibits are attached to, and by reference made a part of, this Trust Agreement:

Exhibit A: Form of Lease Agreement

Exhibit B: Form of Sublease Agreement.

## **ARTICLE II**

### **THE CERTIFICATES OF PARTICIPATION**

#### **Section 2.01 Authorization.**

(a) The Trustee is hereby authorized and directed at any time and from time to time upon written request from a Member to execute and deliver a Series of Certificates. The Certificates evidence direct, undivided fractional interests in the related Sublease Agreement, including the right to receive Base Rental thereunder.

(b) The Certificates of each Series shall initially be executed and delivered as Certificates in an Adjustable Rate Period, Certificates in a Fixed Rate Period or as Capital Appreciation Certificates, all as set forth in the Supplemental Trust Agreement with respect to such Series.

(c) Each Supplemental Trust Agreement shall be executed by the respective Obligor whereby the Obligor agrees to be bound by the provisions hereof and thereof applicable to such series of Certificates.

#### **Section 2.02 Terms of Certificates.**

##### **(a) Capital Appreciation Certificates.**

(i) The Capital Appreciation Certificates of each Series shall be dated by the Trustee as of their date of execution and shall be executed and delivered in Authorized Denominations. The Capital Appreciation Certificates shall mature on the dates and in the aggregate Final Compounded Amount set forth in the respective Supplemental Trust Agreement.

(ii) Prior to the Conversion Date, interest on each Capital Appreciation Certificate shall accrete from the respective Closing Date and shall be compounded semi-annually at the per annum yield to maturity at the rate and on the semi-annual dates set forth in the respective Supplemental Trust Agreement to and including the Conversion Date, compounded using a year of 360 days comprised of twelve 30-day months, and shall be payable only at maturity as part of its Final Compounded Amount. The Accreted Value for the Capital Appreciation Certificates per \$5,000 Final Compounded Amount shall be illustrated on the respective Accreted Value Table. Any Accreted Value

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determined by the respective Obligor or the Trustee by computing interest in accordance with the provisions of this paragraph shall control over any different Accreted Value determined by reference to the Accreted Value Table.

(iii) At and after the respective Conversion Date, the Capital Appreciation Certificates of a Series shall bear interest at the rate specified in the respective Supplemental Trust Agreement payable on each Interest Payment Date. Interest with respect to the Capital Appreciation Certificates from and after the Conversion Date shall be computed using a year of 360 days consisting of twelve 30-day months and shall be payable as provided in Section 2.03 hereof. After the Conversion Date, interest with respect to Capital Appreciation Certificates of a Series shall be payable from the Interest Payment Date next preceding the date of execution thereof, unless: (i) it is executed as of an Interest Payment Date, in which event interest represented thereby shall be payable from such Interest Payment Date; or (ii) it is executed after a Record Date and before the following Interest Payment Date, in which event interest represented thereby shall be payable from such Interest Payment Date; or (iii) it is executed before the close of business on the first Record Date with respect thereto, in which event interest with respect thereto shall be payable from the dated date for such Series; provided, however, that if, as of the date of execution of any such Certificate, interest represented by such Certificate is in default, interest represented by such Certificate shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Outstanding Certificates of such Series.

(b) Adjustable Rate Certificates.

(i) The Adjustable Rate Certificates of each Series shall be dated by the Trustee as of their respective Closing Date and shall be executed and delivered in Authorized Denominations. Interest with respect to each Adjustable Rate Certificate of a Series shall be payable from the Interest Payment Date next preceding the date of execution thereof, unless: (i) it is executed as of an Interest Payment Date, in which event interest represented thereby shall be payable from such Interest Payment Date; or (ii) it is executed after a Record Date and before the following Interest Payment Date, in which event interest represented thereby shall be payable from such Interest Payment Date; or (iii) it is executed before the close of business on the first Record Date with respect thereto, in which event interest with respect thereto shall be payable from the Closing Date for such Series; provided, however, that if, as of the date of execution of any Certificate, interest represented by such Certificate is in default or interest is in default with respect to any Outstanding Certificates of such Series, interest represented by such Certificate shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Outstanding Certificates of such Series.

(ii) The Adjustable Rate Certificates shall mature as provided in the respective Supplemental Trust Agreement. Interest with respect to the Adjustable Rate Certificates of each Series shall be payable initially at the Initial Adjustable Rate for such Series during the Initial Adjustable Period and thereafter at an Adjustable Rate for such Series identified by the Remarketing Agent to the respective Obligor, the Trustee, the Tender Agent and the Bank calculated in accordance with the respective Sublease Agreement,



except with respect to Bank Certificates, which shall represent interest and be payable as set forth in the Reimbursement Agreement. In no event shall interest with respect to the Certificates (other than Bank Certificates) be payable in excess of the Maximum Interest Rate. Except for Bank Certificates which shall evidence interest at the Bank Rate, if the Remarketing Agent shall fail to determine an Adjustable Rate on an Adjustable Rate Calculation Date, then such Adjustable Rate shall be (i) one hundred percent (100%) of the rate for 60-day tax exempt commercial paper published the afternoon of said Adjustable Rate Calculation Date by the Munifacts Wire System, Inc., or (ii) if no such rate is then published, it shall continue to be the same as for the prior Adjustable Period.

(c) Fixed Rate Certificates. The Fixed Rate Certificates of each Series shall be executed in the aggregate principal amounts and for such initial Fixed Rate Period bearing interest at the rates set forth in the respective Supplemental Trust Agreement. Interest with respect to each Fixed Rate Certificate of a Series shall be payable from the Interest Payment Date next preceding the date of execution thereof, unless: (i) it is executed as of an Interest Payment Date, in which event interest represented thereby shall be payable from such Interest Payment Date; or (ii) it is executed after a Record Date and before the following Interest Payment Date, in which event interest represented thereby shall be payable from such Interest Payment Date; or (iii) it is executed before the close of business on the first Record Date with respect thereto, in which event interest with respect thereto shall be payable from the dated date for such Series; provided, however, that if, as of the date of execution of any Certificate, interest represented by such Certificate is in default, interest represented by such Certificate shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Outstanding Certificates of such Series.

### **Section 2.03 Principal; Interest.**

(a) The principal, premium, if any, and interest payable with respect to the Certificates shall be payable in lawful money of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts. Subject to the provisions of Section 2.13 hereof, interest shall be paid on each Interest Payment Date to the Owner thereof at the close of business on the Record Date with respect to such interest payment (or in the case of Bank Certificates to the Bank) and shall be paid by check mailed by first class mail, postage prepaid, to such Owner at his address as it appears on the Registration Books or, upon the request of an Owner of at least \$1,000,000 in aggregate principal amount of Certificates received by the Trustee prior to the Record Date, or to the Bank, by wire transfer in immediately available funds to an account designated by such Owner or the Bank, irrespective of the cancellation of such Certificates upon any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date, unless the respective Obligor shall default in the payment of interest due with respect to such Interest Payment Date. Subject to the provisions of Section 2.13 hereof, payment of principal or premium due shall be paid only upon surrender of such Certificate at the Principal Office of the Trustee. In the event of any default in the payment of interest, such defaulted interest shall be payable to the Owner of such Certificate on a special record date for the payment of such defaulted interest, which date shall be established by the Trustee by notice mailed by or on behalf of the respective Obligor to the Owners of Certificates not less than fifteen (15) days preceding such special record date.

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(b) The total principal and interest due with respect to all Certificates of a Series shall not exceed the total Base Rental due under the respective Sublease Agreement. The Owners of the Certificates, except the Bank with respect to Bank Certificates, shall be entitled to receive interest with respect to the Certificates at the rate of interest as determined in accordance with this Trust Agreement and in no event at the Bank Rate.

**Section 2.04 Form.** The Certificates will be executed and delivered in fully registered form without coupons, in Authorized Denominations. The Certificates of any Series shall be in substantially the respective forms set forth in Supplemental Trust Agreement.

**Section 2.05 Execution.** The Certificates shall be executed by and in the name of the Trustee by the manual signature of an authorized signatory of the Trustee. If any officer whose signature appears on any Certificate ceases to be such officer before the date of delivery of said Certificate, such signature shall nevertheless be as effective as if the signatory had remained in office until such date. Any Certificate may be executed on behalf of the Trustee by such person as at the actual date of the execution of such Certificate shall be the proper signatory of the Trustee.

**Section 2.06 Transfer and Exchange.**

(a) **Transfer of Certificates.** The registration of any Certificate may, in accordance with its terms, be transferred upon the Registration Books maintained for such Series by the person in whose name it is registered, in person or by his attorney duly authorized in writing upon surrender of such Certificate for cancellation at the Principal Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Certificate or Certificates shall be surrendered for registration of transfer, the Trustee shall execute and deliver a new Certificate or Certificates of the same Series for like aggregate principal amount in Authorized Denominations. The Trustee may require the payment by the Certificate Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer. The Trustee shall not be required to transfer Certificates (i) if the Trustee has received written notice from the Remarketing Agent that the Remarketing Agent has received notice from the Owner of such Certificate that such Certificate will be delivered to the Tender Agent for purchase on or before the next succeeding Interest Payment Date, or (ii) if such Certificates have been called for prepayment, and the date of the request for transfer is within seven (7) days of the scheduled prepayment date.

(b) **Exchange of Certificates.** Certificates may be exchanged, upon surrender thereof, at the Principal Office of the Trustee for a like aggregate principal amount of Certificates of other Authorized Denominations of the same Series, interest rate mode and maturity. Whenever any Certificate or Certificates shall be surrendered for exchange, the Trustee shall execute and deliver a new Certificate or Certificates of the same Series for like aggregate principal amount in Authorized Denominations. The Trustee may require the payment by the Certificate Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange. The Trustee shall not be required to exchange (i) any Certificates during the period between the date seven (7) days prior to the date of selection of Certificates for prepayment and such date of selection, or (ii) any Certificates selected for prepayment.

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**Section 2.07 Certificates Mutilated, Lost, Destroyed or Stolen.** If any Certificate shall become mutilated, the Trustee, at the expense of the Owner of said Certificate, shall execute and deliver a new Certificate of like Series, tenor, maturity and amount in exchange and substitution for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Trustee shall be canceled by it and destroyed with a certificate of destruction furnished to the respective Obligor. If any Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft shall be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and if an indemnity satisfactory to it shall be given, the Trustee, at the expense of the Certificate Owner, shall execute and deliver a new Certificate of like Series, tenor, maturity and amount and numbered as the Trustee shall determine in lieu of and in substitution for the Certificate so lost, destroyed or stolen. The Trustee may require payment of the expenses which may be incurred by the Trustee in carrying out the duties under this Section 2.07. Any Certificate executed and delivered under the provisions of this Section 2.07 in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally and fractionally entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The Trustee shall not be required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be executed and delivered hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate shall be treated as one and the same. Notwithstanding any other provision of this Section 2.07, in lieu of delivering a new Certificate in exchange for a Certificate which has been mutilated, lost, destroyed or stolen, and which has matured or has been called for prepayment, the Trustee may make payment with respect to such Certificate upon receipt of the aforementioned indemnity.

**Section 2.08 Execution of Documents and Proof of Ownership.** Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Certificates. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Certificates shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Owner or his attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions, that the persons signing such instruments acknowledged before him the execution thereof. Where any such instrument is executed by an officer of a Authority or association or a member of a partnership on behalf of such Authority, association or partnership, such certificate shall also constitute sufficient proof of his authority.

(b) The fact of the ownership of Certificates by any person and the amount, the maturity and the numbers of such Certificates and the date of his holding the same shall be proved by the Registration Books.

Any request or consent of the Owner of any Certificate shall bind every future Owner of the same Certificate in respect of anything done or suffered to be done by the Trustee pursuant to such request or consent.

**Section 2.09 Registration Books.** The Trustee shall keep or cause to be kept, at its Principal Office, sufficient separate records for each Series of the Certificates for the registration and registration of transfer of the Certificates of such Series, which shall at all reasonable times be open to inspection by the respective Obligor, the Bank and the Authority during regular business hours with reasonable prior notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Certificates as hereinbefore provided. The respective Obligor, the Authority, the Bank, the Trustee and the Tender Agent shall be entitled to treat the Owner of a Certificate as the absolute owner thereof for all purposes.

**Section 2.10 CUSIP Numbers.** The Trustee, the Tender Agent, the respective Obligor and the Authority shall not be liable for any defect or inaccuracy in the CUSIP number that appears on any Certificate or in any prepayment notice. The Trustee may, in its discretion, include in any prepayment notice a statement to the effect that the CUSIP numbers on the Certificates have been assigned by an independent service and are included in such notice solely, for the convenience of the Owners and that neither the Trustee, the respective Obligor nor the Authority shall be liable for any inaccuracies in such numbers.

**Section 2.11 Use of Depository for Certificates.** Notwithstanding any provision of this Trust Agreement to the contrary:

(a) At the request of the appropriate Original Purchaser, the Certificates of any Series shall be initially executed and delivered and registered in the name of "Cede & Co.," as nominee of The Depository Trust Company ("DTC"), the depository designated by the Original Purchaser, and shall be evidenced by one Certificate in a denomination corresponding to the total principal amount of the Certificates. Registered ownership of such Certificates, or any portions thereof, may not thereafter be transferred except:

(i) to any successor of DTC or its nominee, or of any substitute depository designated pursuant to paragraph (ii) of this subsection (a) ("substitute depository"); provided that any successor of DTC or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(ii) to any substitute depository designated in a written request of the respective Obligor, upon (A) the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or (B) a determination by the respective Obligor that DTC or its successor is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) to any person as provided below, upon (A) the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or (B) a determination by the respective Obligor that DTC or its successor is no longer

able to carry out its functions as depository, provided that no substitute depository which is not objected to by the respective Obligor and the Trustee can be obtained.

(b) In the case of any transfer pursuant to paragraph (i) or paragraph (ii) of subsection (a) of this Section 2.11, upon receipt of all Outstanding Certificates by the Trustee, together with a written request of the respective Obligor to the Trustee, a single new Certificate shall be executed and delivered for each maturity of such Certificate 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 written request of the respective Obligor. In the case of any transfer pursuant to paragraph (iii) of subsection (a) of this Section 2.11, upon receipt of all Outstanding Certificates by the Trustee together with a written request of the respective Obligor, new Certificates shall be executed and delivered in such denominations and registered in the names of such persons as are requested in a written request of the respective Obligor provided the Trustee shall not be required to deliver such new Certificates within a period less than sixty (60) days from the date of receipt of such a written request of the respective Obligor.

(c) In the case of partial prepayment of any Certificates evidencing all of the principal maturing in a particular year, DTC shall deliver the Certificates to the Trustee for cancellation and re-registration to reflect the amounts of such reduction in principal.

(d) The respective Obligor and the Trustee shall be entitled to treat the person in whose name any Certificate is registered as the absolute Owner thereof for all purposes of this Trust Agreement and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the respective Obligor; and the respective Obligor and the Trustee shall have no responsibility for transmitting payments to, communication with, notifying or otherwise dealing with any beneficial owners of the Certificates. Neither the respective Obligor nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party including DTC or its successor (or substitute depository or its successor), except for the registered Owner of any Certificate.

(e) So long as all Outstanding Certificates are registered in the name of Cede & Co. or its registered assign, the respective Obligor and the Trustee shall reasonably cooperate with Cede & Co., as sole registered Owner, or its registered assign in effecting payment of the principal and prepayment premium, if any, and interest due with respect to the Certificates 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. Upon any such payment to Cede & Co., or its registered assign, of principal or prepayment premium, if any, or interest due with respect to an Outstanding Certificate, all liability with respect to the amount so paid shall be satisfied.

(f) So long as all Outstanding Certificates are registered in the name of Cede & Co. or its registered assign (hereinafter, for purposes of this paragraph (f), the "Owner"):

(i) All notices and payments addressed to the Owner shall contain the Certificates' CUSIP numbers.

(ii) Notices to the Owner shall be forwarded in the manner and to the telephone numbers (in the case of notice by telecopy) and addresses as set forth in

paragraphs 6 through 11 of the standard form letter of representations directed to DTC and executed by the respective Obligor and the Trustee, if required (the "Letter of Representations").

(iii) The Owner shall in writing provide the Trustee with examples of signatures of those authorized to act on its behalf, which shall be subject to change and the Trustee shall accept direction in writing from such persons or their designated successors with respect to such Certificate.

(g) Reference is hereby made to the Letter of Representations for certain actions by the respective Obligor and the Trustee under specified circumstances.

(h) Notwithstanding the foregoing, in the event any Certificate is tendered but not remarketed, with the result that such Certificate becomes a Bank Certificate, at the request of the Bank, the Trustee and the respective Obligor shall take all such actions as shall be necessary to remove the Certificates from the full book-entry system of DTC and to (i) register such tendered but not remarketed Certificates in the name of the Bank or its nominee, and (ii) register tendered but remarketed Certificates in the name of the purchaser thereof, or their nominee. Bank Certificates shall be held by the Tender Agent on behalf, and for the benefit, of the Bank and registered in the name of the Bank or its nominee. At such time as all Bank Certificates have been remarketed such that no Bank Certificates remain Outstanding and the Letter of Credit has been reinstated to its required stated amount, the Trustee and the respective Obligor shall take all such actions as shall be necessary to return the Certificates to the full book-entry system of DTC or register such Certificates in the name of the purchaser thereof or their nominee, as applicable.

**Section 2.12 Proceedings for Authorization of a Series of Certificates.** Whenever the respective Obligor shall request that the Trustee authorize the execution and delivery of any Series of Certificates, the respective Obligor, the Authority and the Trustee shall enter into a Supplemental Trust Agreement without the consent of the Owners of any Certificates, providing for the execution and delivery of such Series of Certificates, specifying the maximum principal amount of such Series of Certificates and prescribing the terms and conditions of such Series of Certificates.

Such Supplemental Trust Agreement shall prescribe the form or forms of such Series of Certificates and shall provide for the distinctive designation, denominations, dates, principal payment dates, interest rates, interest payment dates, provisions for prepayment and places of payment of principal and interest. Such Supplemental Trust Agreement shall also prescribe whether such Series shall be Adjustable Rate Certificates, Capital Appreciation Certificates or Fixed Rate Certificates and other terms thereof, including, in the case of Fixed Rate Certificates, the duration of the initial Fixed Rate Period. Before such Series of Certificates shall be executed and delivered, the respective Obligor shall file or cause to be filed the following documents with the Trustee:

(a) An opinion of Special Counsel, addressed to the Trustee and the Bank, setting forth (1) that such counsel has examined the Supplemental Trust Agreement, the Lease Agreement, the Sublease Agreement and Assignment Agreement with respect to such Series; (2) that the execution and delivery of such Series of Certificates have been sufficiently and duly authorized by the respective Obligor; (3) that said Supplemental Trust Agreement, the Lease

Agreement, the Sublease Agreement and Assignment Agreement, when duly executed by the respective Obligor, will be valid and binding obligations of the respective Obligor; and (4) that this Trust Agreement creates a valid pledge, to secure the payment of Base Rental with respect to such Series of Certificates.

(b) A certification by the respective Obligor as to the fair rental value of the Property, sufficient to support payment of Base Rental with respect to such Series of Certificates and to the use of Proceeds received therefrom.

(c) Certified copies of the resolutions of the Board of Directors of the Authority and the Governing Board of the respective Obligor authorizing the execution of the Supplemental Trust Agreement and the respective Sublease Agreement, Lease Agreement and Assignment Agreement.

(d) An executed counterpart or duly authenticated copy of the Supplemental Trust Agreement, the Sublease Agreement, the Lease Agreement and the Assignment Agreement. Each of the Lease Agreement and Sublease Agreement shall be substantially in the form attached hereto as Exhibit A and Exhibit B, respectively.

(e) If such Series will be secured by a Letter of Credit, an executed copy of the Letter of Credit and the Reimbursement Agreement.

(f) A certificate of insurance verifying coverage under the policies of insurance required by the Sublease Agreement.

Upon the delivery to the Trustee of the foregoing instruments, the Trustee shall execute and deliver said Series of Certificates, in the aggregate principal amount specified in such Supplemental Trust Agreement, to, or upon the Written Request of the respective Obligor.

### ARTICLE III

#### PROJECT FUND AND COSTS OF ISSUANCE ACCOUNT

**Section 3.01 Project Funds.** The Trustee shall establish and maintain for each Series of Certificates a special fund designated as, the "**Project Fund.**" The Trustee shall keep such fund separate and apart from all other funds and moneys held by it, and shall administer such fund as provided herein. Proceeds of the sale of such Series of Certificates shall be deposited in the Project Fund in the amount required to be deposited therein pursuant to the respective Supplemental Trust Agreement, together with any other amounts from time to time deposited with the Trustee for such purpose as may be identified in writing to the Trustee, and shall be used and withdrawn by the Trustee to pay Project Costs. Notwithstanding the foregoing, to the extent that amounts on deposit in the Costs of Issuance Account are insufficient to pay all Costs of Issuance, the respective Obligor Representative may requisition amounts from the Project Fund to pay any shortfall.

**Section 3.02 Payment of Project Costs.** Amounts in each Project Fund shall be disbursed for the respective Project Costs. The Trustee shall disburse moneys in each Project Fund to pay the respective Project Costs upon receipt of a sequentially numbered requisition requesting disbursement executed by the respective Obligor Representative. Notwithstanding

the foregoing, following the occurrence of an Event of Default with respect to a Series of Certificates, the respective Obligor may requisition amounts from the Project Fund only (i) for the purpose of prepaying Certificates or (ii) for additional Project Costs, but only upon the prior written consent of the Bank.

**Section 3.03 Costs of Issuance Accounts.** Within each Project Fund the Trustee shall establish and maintain an account designated as the "Costs of Issuance Account." The Trustee shall keep each such account separate and apart from all other funds and moneys held by it, and shall administer such account as provided herein. There shall be deposited in each Costs of Issuance Account the proceeds of the respective Series of Certificates required to be deposited therein pursuant to the Supplemental Trust Agreement authorizing such Series of Certificates.

**Section 3.04 Payment of Costs of Issuance.**

(a) Amounts in the Costs of Issuance Account shall be disbursed for Costs of Issuance with respect to the respective Series of Certificates. The Trustee shall disburse moneys in the Costs of Issuance Account only upon a receipt of a written requisition, with bills, invoices or statements attached, executed by a Obligor Representative, setting forth the amounts to be disbursed for payment or reimbursement of Costs of Issuance and the name and address of the person or persons to whom said amounts are to be disbursed, stating that the amounts to be disbursed are for Costs of Issuance with respect to the respective Series of Certificates properly chargeable to the Costs of Issuance Account and have not been the subject of any prior requisitions. Should amounts on deposit in the Costs of Issuance Account prove insufficient to pay all Costs of Issuance, the respective Obligor may submit such a Requisition to be paid from amounts then on deposit in the Project Fund.

Upon the earlier of (i) the date which is one (1) year from the date of the respective Closing Date, or (ii) receipt by the Trustee of written notice from an Obligor Representative that all Costs of Issuance with respect to any Series of Certificates have been paid, the Trustee shall transfer to the project Fund any moneys with respect to such Series then remaining in the Costs of Issuance Account (and not specified in writing by the respective Obligor Representative to be held in the Costs of Issuance Account for the payment of Costs of Issuance with respect to a Series of Certificates) for the payment of Project Costs.

**Section 3.05 Transfers of Unexpended Proceeds.** The Trustee is hereby directed that all unexpended moneys remaining in each Project Fund and not identified in writing by an Obligor Representative to be required for payment of Project Costs for the respective Project, on the Completion Date designated for that Project by the respective Obligor Representative, be paid to the Bank, to satisfy any obligations then owed by the respective Obligor to the Bank as identified by the Bank in writing to the Trustee, and thereafter be transferred to the respective Lease Payment Fund and applied to pay the Base Rental respecting the related Series of Certificates as the same become due and payable.



## ARTICLE IV

### PREPAYMENT; PURCHASE AND REMARKETING OF CERTIFICATES

**Section 4.01 Prepayment.** The Certificates of each Series shall be subject to prepayment as follows and as may be additionally set forth in the Supplemental Trust Agreement pursuant to which such Certificates are delivered:

(a) in whole or in part in any integral multiple of an Authorized Denomination, with the prior written consent of the Bank, at a prepayment price equal to the principal amount of the Certificates of such Series called for prepayment without premium, on any date while the Certificates of such Series are payable at the Adjustable Rate, in the event and to the extent the principal component of Base Rental related to such Series is voluntarily prepaid by the respective Obligor under the Sublease Agreement;

(b) in whole or in part in Authorized Denominations on any Interest Payment Date when interest with respect to the Certificates of such Series is payable at the Fixed Rate or represented by Capital Appreciation Certificates, in the event and to the extent the principal component of Base Rental related to such Series is voluntarily prepaid by the respective Obligor under the Sublease Agreement, at a prepayment price of one hundred percent (100%) of the principal amount of the Certificates of such Series to be prepaid plus a premium described below, expressed as a percentage of the principal amount of the Certificates of such Series called for prepayment should the respective Obligor receive reimbursement from the State, or should the respective Obligor issue general obligation bonds for all or part of the costs of the Project, the principal component of Base Rental with respect to such Certificates may be prepaid on any Interest Payment Date selected for such prepayment by the respective Obligor, no later than two years following the date upon which such reimbursement is or such proceeds are received by the respective Obligor, at a prepayment price of par, plus accrued interest, if any, to the date of prepayment.

(c) in whole or in part in any integral multiple of an Authorized Denomination, on any Interest Payment Date, to the extent of Net Proceeds of insurance or condemnation awards with respect to the Property, which Net Proceeds are deposited in the Certificate Fund and credited towards the prepayment of the Base Rental made by the respective Obligor pursuant to Section 10.3 of the Sublease Agreement, at a prepayment price equal to the principal amount of the Certificates of such Series to be prepaid, together with accrued interest to the date fixed for prepayment, without premium; and

In the event that the Trustee shall prepay the Certificates in part but not in whole pursuant to subsections (a), (b) or (c) of this Section 4.01, the amount of the Certificates to be prepaid in each subsequent year pursuant to this subsection (d) shall be reduced as directed in writing by the respective Obligor, but if no such direction is received by the Trustee, then pro rata to correspond to the principal components of the Base Rental related to the Certificates prevailing following such prepayment, determined as set forth in the Sublease Agreement.

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#### **Section 4.02 Partial Prepayment; Selection.**

(a) Adjustable Rate Certificates Prior to a Conversion Date. With respect to Adjustable Rate Certificates of any Series, all or a portion of such Certificate of such Series may be prepaid, but only by lot and in a principal amount equal to an Authorized Denomination. In the event that less than all of the Adjustable Rate Certificates of any Series Outstanding are to be prepaid, the Trustee shall first select for prepayment any Bank Certificates of such Series Outstanding and thereafter shall select the Adjustable Certificates of such Series to be prepaid by lot. Upon surrender of any Certificate of any Series for prepayment in part, the Trustee shall execute and deliver to the Owner thereof, at the expense of the respective Obligor, a new Certificate or Certificates of such Series of Authorized Denominations of the same type and maturity and in an aggregate principal amount equal to the unpaid portion of the Certificate so surrendered.

(b) Fixed Rate Certificates; Adjustable Rate Certificates From and After a Conversion Date. With respect to (x) Fixed Rate Certificates, (y) Capital Appreciation Certificates and (z) Adjustable Rate Certificates from and after the Conversion Date, all or a portion of any Certificate of such Series may be prepaid, but only in a principal amount equal to an Authorized Denomination. In the event that less than all of the Certificates of such Series Outstanding are to be prepaid, the Trustee shall first select for prepayment any Bank Certificates of such Series Outstanding and thereafter shall select the Certificates of such Series to be prepaid in such order of prepayment as shall be selected by the respective Obligor. Upon surrender of any Certificate of any Series for prepayment in part, the Trustee shall execute and deliver to the Owner thereof, at the expense of the respective Obligor, a new Certificate or Certificates of Authorized Denominations of the same Series, tenor and maturity and in an aggregate principal amount equal to the unpaid portion of the Certificate so surrendered.

**Section 4.03 Notice of Prepayment.** Notice of any such prepayment shall be given by the Trustee on behalf and at the expense of the respective Obligor by mailing a copy of a prepayment notice by first class mail at least thirty (30) days and not more than sixty (60) days prior to the date fixed for prepayment to such Owner of the Certificate or Certificates to be prepaid at the address shown on the Certificate registration books maintained by the Trustee; provided, however, that neither the failure to receive such notice nor any defect in any notice shall affect the sufficiency of the proceedings for the prepayment of the Certificates.

All notices of prepayment shall be dated and shall state: (i) the prepayment date, (ii) the prepayment price, (iii) if less than all Outstanding Certificates of a Series are to be prepaid, the identification (and, in the case of partial prepayment, the respective principal amounts) of the Certificates to be prepaid, (iv) that on the prepayment date the prepayment price will become due and payable with respect to each such Certificate or portion thereof called for prepayment, and that interest with respect thereto shall cease to accrue from and after said date, (v) the place where such Certificates are to be surrendered for payment of the prepayment price, and (vi) whether the respective Obligor has deposited, or caused the deposit of, an amount of money sufficient to pay the prepayment price of all the Certificates or portions of Certificates which are to be prepaid on such date and, if not, that such notice of prepayment is revocable.

Prior to the mailing of any notice of prepayment, the respective Obligor shall deposit, or cause to be deposited, with the Trustee an amount of money sufficient to pay the prepayment price of all the Certificates or portions of Certificates which are to be prepaid on that date.

Notice of prepayment having been given as aforesaid, the Certificates or portions of Certificates so to be prepaid shall, on the prepayment date, become due and payable at the prepayment price therein specified, and from and after such date (unless the respective Obligor shall default in the payment of the prepayment price) interest with respect to such Certificates or portions of Certificates shall cease to be payable. Upon surrender of such Certificates for prepayment in accordance with said notice, such Certificates shall be paid by the Trustee at the prepayment price. Installments of interest due on or prior to the prepayment date shall be payable as herein provided for payment of interest. Upon surrender for any partial prepayment of any Certificate, there shall be prepared for the Owner a new Certificate or Certificates of the same Series and maturity in the amount of the unpaid principal. All Certificates which have been prepaid shall be canceled by the Trustee, shall not be redelivered and shall be destroyed pursuant to Section 11.09.

In addition to the foregoing notice to the Owners, notice shall also be given by the Trustee at least thirty (30) days before the prepayment date, by telecopy, registered, certified or overnight mail, or by such other method acceptable to such institutions, to the Bank, to all Securities Depositories and to an Information Service which shall state the information set forth above, but no defect in said notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for prepayment if notice thereof is given as prescribed above.

The Trustee shall have no responsibility for a defect in the CUSIP number that appears on any Certificate or in the prepayment notice. The prepayment notice may provide that the CUSIP numbers have been assigned by an independent service and are included in the notice solely for the convenience of Certificate Owners and that the Trustee, the Authority and the respective Obligor shall not be liable in any way for inaccuracies in said numbers.

**Section 4.04 Mandatory Tender of Certificates.** The following provisions for mandatory tender of Certificates shall apply to all and only those Certificates then representing interest payable at an Adjustable Rate.

(a) **Conversion to Fixed Rate.** Upon receipt of a notice of conversion of the interest with respect to any Series of Certificates to the Fixed Rate for such Series pursuant to the Sublease Agreement, the Trustee shall provide notice not less than thirty (30) days prior to the Conversion Date for such Series to such Owner of the Certificates or Certificates to be converted at the address shown on the Certificate Registration Books maintained by the Trustee, with a copy to the Bank, by first class mail, postage prepaid, of such Conversion Date and requiring each such Certificate Owner to tender his Certificates of such Series to the Tender Agent for purchase on the Conversion Date for such Series. All Certificates of such Series, whether or not tendered for purchase on or prior to the Conversion Date, shall be deemed tendered and purchased on the Conversion Date for such Series at a price of one hundred percent (100%) of the principal amount thereof, plus accrued and unpaid interest to such date. The Trustee shall cancel all Certificates of such Series on its records not tendered by Certificate Owners as required pursuant to the aforesaid notice and **the respective Obligor shall prepare a revised**

form of Certificate, with the advice of Special Counsel and consistent with the terms of this Trust Agreement, provided that the Trustee receives the opinion of Special Counsel that such conversion of the interest with respect to any Series of Certificates to the Fixed Rate will not adversely affect the exclusion of interest from income of the Owners thereof for federal income tax purposes. [What happens if the Trustee does not receive the opinion of Special Counsel??]

(b) Expiration of Fixed Rate Period. Upon the expiration of any Fixed Rate Period with respect to the Certificates of any Series, the Trustee shall provide notice not less than thirty (30) days prior to the Conversion Date for such Series to each Owner of the Certificates to be converted at the address shown on the Certificate Registration Books maintained by the Trustee, with a copy to the Bank, by first class mail, postage prepaid, of such Conversion Date and requiring each such Certificate Owner to tender his Certificates of such Series to the Tender Agent for purchase on the Conversion Date for such Series. All Certificates of such Series, whether or not tendered for purchase on or prior to the Conversion Date, shall be deemed tendered and purchased on the Conversion Date for such Series at a price of one hundred percent (100%) of the principal amount thereof, plus accrued and unpaid interest to such date. The Trustee shall cancel all Certificates of such Series on its records not tendered by Certificate Owners as required pursuant to the aforesaid notice and **the respective Obligor shall** prepare a revised form of Certificate, with the advice of Special Counsel and consistent with the terms of this Trust Agreement, provided that the Trustee receives the opinion of Special Counsel that such conversion of the interest with respect to any Series of Certificates to the new Fixed Rate Period will not adversely affect the exclusion of interest from income of the Owners thereof for federal income tax purposes. [See comment above]

(c) Substitute Security. Upon the determination of the respective Obligor to provide a Substitute Security with respect to any Series of Certificates, the Trustee shall provide notice not less than thirty (30) days prior to the effective date of such Substitute Security to such Owner of the Certificate or Certificates to be converted at the address shown on the Certificate registration books maintained by the Trustee, with a copy to the Bank, by first class mail, postage prepaid, of a mandatory tender date which shall be the effective date of such Substitute Security (which effective date must be a Business day), and requiring each Owner of Certificates of such Series to tender his Certificates of such Series to the Tender Agent for purchase on the effective date of the Substitute Security. All Certificates of such Series, whether or not tendered for purchase on or prior to the effective date of the Substitute Security, shall be deemed tendered and purchased on the effective date of the Substitute Security (unless such day is not a Business Day, in which case such purchase date shall be on the next preceding Business Day), at a price of one hundred percent (100%) of the principal amount thereof, plus accrued and unpaid interest to the effective date of the Substitute Security (which effective date must be a Business Day).

(d) Bank Election. Upon the receipt by the Trustee of written notice from the Bank of the Bank's election to cause a mandatory tender of Certificates upon an event of default (as defined in the Reimbursement Agreement), the Trustee shall within five (5) Business Days following receipt by the Trustee of such notice from the Bank provide notice, to such Owner of the Certificate or Certificates to be tendered at the address shown on the Certificate registration books maintained by the Trustee, with a copy to the Bank, by first class mail, postage prepaid, of a mandatory tender date which will be no more than seven (7) days (unless such day is not a Business Day, in which case such mandatory tender date shall be on the next preceding Business

Day) after the mailing of such notice by the Trustee, and requiring each Owner to tender his Certificates of such Series for purchase on such date. All Certificates of the affected Series, whether or not tendered for purchase on or prior to such mandatory tender date, shall be deemed tendered and purchased on such mandatory tender date at a price of one hundred percent (100%) of the principal amount thereof, plus accrued and unpaid interest to such date.

(e) Expiration of Letter of Credit. The Trustee shall provide notice at least fifteen (15) days prior to the expiration date of the Letter of Credit to each Owner of the Certificates at the address shown on the Certificate registration books maintained by the Trustee, with a copy to the Bank, by first class mail, postage prepaid, of a mandatory tender date which will be a Business Day at least ten (10) days prior to the Expiration Date of such Letter of Credit, as defined in such Letter of Credit, and requiring each Owner to tender his Certificates to the Tender Agent for purchase on the date ten (10) days prior to the Expiration Date of such Letter of Credit, and stating that such mandatory tender shall be required. All Certificates of such Series, whether or not tendered for purchase on or prior to such mandatory tender date, shall be deemed tendered and purchased on such mandatory tender date at the Purchase Price.

(f) Nonreinstatement of the Letter of Credit. Upon receipt by the Trustee of written notice from the Bank that the interest portion of the Letter of Credit will not be reinstated, the Trustee shall within **five (5) Business Days** after receipt by the Trustee of such notice from the Bank) provide notice by first class mail, postage prepaid, of a mandatory tender date, which shall be no more than seven (7) days (unless such day is not a Business Day, in which case such mandatory tender date shall be on the next preceding Business Day) after the mailing of such notice by the Trustee, and requiring each Owner to tender his Certificates for purchase on such date. Such Certificates, whether or not tendered for purchase on or prior to such mandatory tender date, shall be deemed purchased on such mandatory tender date at their Purchase Price.

(g) No Call of Previously Tendered Certificates. Certificates previously called for prepayment are not subject to mandatory tender provided the prepayment price is paid to the Owner prior to the mandatory tender date.

(h) Bank Certificates and Disqualified Certificates. The provisions of this Section shall not be applicable to Bank Certificates or to Certificates that are otherwise disqualified under Section 9.03 hereof.

**Section 4.05 Demand Purchase Option.** At the option of the Owner thereof, on any Business Day with respect to any Series of Certificates during which interest with respect to such Certificates is payable at an Adjustable Rate, any Certificates of such Series will be purchased at a purchase price equal to one hundred percent (100%) of the principal amount thereof plus accrued and unpaid interest to the date of purchase (the "Purchase Date") (unless the Purchase Date falls between a Record Date and an Interest Payment Date, in which event no accrued interest shall be paid until the next succeeding Interest Payment Date and interest accrued from the Purchase Date to such Interest Payment Date shall be paid by such Owner to the subsequent Owner by tendering a due bill for such interest on the Purchase Date), upon:

(a) delivery to the Tender Agent, not less than seven (7) days prior to the date on which such Certificates are to be purchased, of a notice of exercise of option to demand purchase of Certificates in substantially the form set forth on the Certificates, duly completed and

executed by the Owner of the Certificate or Certificates to be purchased (which notice shall be effective upon receipt), which sets forth (i) the principal amount of Certificates to be tendered, (ii) the identifying numbers and CUSIP numbers thereof, (iii) the Purchase Date applicable thereto, and (iv) an acknowledgment that such tender is irrevocable; and

(b) delivery to the Tender Agent of the Certificates to be purchased, in negotiable form, for payment at or prior to 8:30 a.m., California time, on the Purchase Date specified in the aforesaid notice; provided, however, that if a Certificate Owner fails to deliver a Certificate as provided herein, such Certificate will nonetheless be deemed to have been delivered on the date required and will no longer be Outstanding and such Certificate Owner will be entitled only to the purchase price payable for such Certificate, and such purchase price will be paid to such Certificate Owner upon surrender of such Certificate to the Tender Agent.

**Section 4.06 Remarketing Agent.** The Remarketing Agent for a Series shall signify its acceptance of the duties and obligations imposed on it hereunder by execution of the Remarketing Agreement under which the Remarketing Agent will agree to perform the obligations of the Remarketing Agent set forth in Section 4.08 hereof. The Remarketing Agent may be removed from, and may at any time resign and be discharged of, the duties and obligations created by this Trust Agreement, under the circumstances and in the manner described in the Remarketing Agreement.

**Section 4.07 Qualifications of Successor Remarketing Agent.** Any successor Remarketing Agent selected by the respective Obligor shall be approved in writing by the Bank and be a member of the National Association of Securities Dealers, Inc. or a banking corporation or association having a net capitalization of at least \$100,000,000 and authorized by law to perform all the duties imposed upon it by this Trust Agreement. The successor Remarketing Agent shall signify its acceptance of the duties and obligations imposed on it hereunder by a written instrument of acceptance delivered to the respective Obligor, the Bank and the Trustee, and satisfactory in form and substance to the respective Obligor and the Bank, under which the successor Remarketing Agent will agree to perform the obligations of the Remarketing Agent set forth in Section 4.08 hereof.

**Section 4.08 Remarketing of Certificates.**

(a) On the Business Day that is five (5) days prior to the Conversion Date with respect to any Series of Adjustable Rate Certificates, seven (7) days prior to a mandatory tender date other than with respect to a Substitute Security, five (5) days prior to the effective date of the Substitute Security or upon the delivery of the notice in accordance with Section 4.05(a) hereof to the Tender Agent by any Certificate Owner, as applicable, the Tender Agent shall determine the Certificates tendered or deemed to be tendered under Section 4.04 or Section 4.05 hereof and shall immediately give the Remarketing Agent, the Bank, the respective Obligor and the Trustee facsimile or telephonic notice thereof, promptly confirmed by a written notice, and the Remarketing Agent shall offer for sale and use its best efforts to sell the Certificates identified in such notice which are subject to mandatory tender in accordance with Section 4.04 hereof (other than pursuant to subsections (c), (d) or (e)), or subject to demand purchase in accordance with Section 4.05 hereof. Any sale of Certificates under this subsection (a) shall be made at a price equal to the principal amount of the Certificates sold, plus interest accrued to a mandatory tender date, the Conversion Date, the effective date of the Substitute Security or the

Purchase Date for such Certificates, as the case may be, provided that no accrued interest shall be paid if the Conversion Date, a mandatory tender date, the effective date of the Substitute Security or the Purchase Date for such Certificates, as the case may be, falls on an Interest Payment Date or between a Record Date and an Interest Payment Date; provided further, however, that no Certificates shall be remarketed to the respective Obligor or the Authority. In no event shall any Certificates be remarketed at any time to the respective Obligor, the Authority or to any affiliates or related entities thereof.

(b) By 4:00 p.m., California time, on the Business Day preceding the Conversion Date, the effective date of the Substitute Security or the Purchase Date for such Series of Certificates, as the case may be, the Remarketing Agent shall give facsimile or telephonic notice, promptly confirmed by a written notice, to the Tender Agent, the Trustee, the respective Obligor and the Bank (A) directing the Tender Agent to deliver or make available for pick-up any Certificates which the Remarketing Agent has sold pursuant to this Section 4.08 to the new purchasers thereof on such Conversion Date, mandatory tender date, effective date of the Substitute Security or Purchase Date, as the case may be, (B) stating the principal amount of Certificates sold and the principal amount of Certificates not sold pursuant to subsection (a) of this Section 4.08, and (C) directing the Tender Agent to pay the Certificate Owner who was required to tender pursuant to Section 4.04 hereof or to the Certificate Owner who demanded payment pursuant to Section 4.05 hereof. The Remarketing Agent shall deliver or cause to be delivered to the Tender Agent by 8:00 a.m., California time, on the Conversion Date, mandatory tender date, the effective date of the Substitute Security or the Purchase Date for such Certificates, the principal and interest to accrue to the Conversion Date, mandatory tender date, the effective date of the Substitute Security or the Purchase Date for such Certificates, as the case may be, with respect to the Certificates to be so purchased. To the extent that moneys otherwise available to the Tender Agent pursuant to Section 4.09 to purchase the tendered Certificates are insufficient for such purpose (which information shall be provided by the Tender Agent to the Trustee no later than 8:15 a.m., California time, on the Conversion Date, the mandatory tender date, the effective date of the Substitute Security or the Purchase Date), or if the Remarketing Agent fails to provide notice to the Tender Agent as required above, the Trustee shall draw on the Letter of Credit with respect to such Series of Certificates in an amount sufficient to make timely payment for Certificates of such Series tendered pursuant to Sections 4.04 and 4.05 hereof. The Remarketing Agent shall continue to remarket any Bank Certificates (except those purchased pursuant to Sections 4.04(c), (d) or (e)), until otherwise directed by the Bank. The Remarketing Agent shall remarket any Bank Certificates purchased pursuant to Sections 4.04(c), (d) or (e) upon (i) request of the Bank and notice from the Bank that it has either elected to cause interest with respect to the Certificates to be converted to a Fixed Rate or it is prepared to reinstate the Letter of Credit upon the remarketing of such Bank Certificates or (ii) upon delivery of a Substitute Security.

(c) Certificates of any Series tendered for purchase under Section 4.05 after the date notice is given of the posting of Substitute Security or of conversion to the Fixed Rate for such Series shall not be remarketed except to a buyer who has acknowledged, in a writing delivered to the Trustee concurrently with the written notice of sale described in subparagraph (b), at the time of such purchase that such Certificates must be tendered for purchase at par, plus accrued interest, on the effective date of the Substitute Security or on the Conversion Date for such Series, as applicable.

**Section 4.09 Purchase of Certificates Delivered to Tender Agent.**

(a) With respect to each Series of Certificates, there shall be deposited into the "Purchase Fund," which fund is to be established for such Series upon receipt of moneys to be held pursuant to this Section 4.09 and which shall be held by the Tender Agent, separate and apart from all other funds and accounts held by it, all moneys drawn by the Trustee under the Letter of Credit in connection with the purchase of Certificates of the related Series pursuant to Section 4.04 or Section 4.05, all moneys received from the remarketing of Certificates pursuant to Section 4.08 hereof, all moneys received from the respective Obligor which have become Seasoned Funds and have been directed by the respective Obligor to be deposited in the Purchase Fund and all income or other gain realized from the investment of moneys in the Purchase Fund; **provided, however, that amounts deposited in the Project Fund shall only be invested at the direction of the Bank.** The Tender Agent will hold all moneys delivered to it for deposit in the Purchase Fund in trust in a segregated account until remitted as provided in this Trust Agreement.

(b) Funds for the purchase of Certificates at the principal amount with respect thereto, plus interest accrued to the payment date, shall be paid out of the Purchase Fund in the order of priority indicated:

(i) proceeds from the sale of remarketed Certificates received from the Remarketing Agent pursuant to Section 4.08 hereof;

(ii) moneys advanced to the Trustee under the Letter of Credit; and

(iii) lawfully available moneys furnished by the respective Obligor, solely at its own discretion, and the proceeds of the investment thereof, which constitute Seasoned Funds.

(c) The Tender Agent shall:

(i) hold all Certificates delivered to it pursuant to Section 4.04 hereof in trust for the benefit of the respective Owners which shall have so delivered such Certificates until moneys representing the Purchase Price of such Certificates shall have been delivered to or for the account of or to the order of such Owners; and

(ii) deliver to the respective Obligor, the Remarketing Agent, **the Trustee (if the Tender Agent is not the Trustee)** and the Bank a copy of each notice delivered to it in accordance with Sections 4.04 and 4.05(a) hereof and, immediately upon the delivery to it of Certificates in accordance with said Section 4.05, give telephonic or telegraphic notice to the respective Obligor, the Authority, **the Trustee (if the Tender Agent is not the Trustee)** and the Bank specifying the principal amount of the Certificates so delivered.

(d) The Tender Agent shall hold all moneys delivered to it pursuant to Sections 4.08, 4.09 or 4.11 in trust for the benefit of the respective purchasers until the Certificates purchased with such moneys can be delivered to such purchasers, and any money obtained from the Bank that is not needed to pay the Purchase Price of tendered Certificates shall be returned to the Bank.



(e) There shall be no obligation on the part of the respective Obligor or the Authority to purchase Certificates that are tendered for purchase in accordance with their terms, but are not remarketed and are not, in fact, purchased with amounts drawn under the Letter of Credit.

**Section 4.10 Delivery of Remarketed Certificates.** Upon the purchase of Certificates with funds described in subsection (b)(i) of Section 4.09 hereof, transfer of the ownership thereof shall be registered by the Trustee. Upon the purchase of Certificates with funds described in subsection (b)(iii) of Section 4.09, such Certificates shall be canceled. Upon the purchase of Certificates with moneys described in subsection (b)(ii) of Section 4.09, such Certificates shall become Bank Certificates and shall be registered by the Tender Agent in the name of the Bank or its nominee in the manner **specified in writing by the Bank to the Tender Agent**; provided, however, that the respective Obligor may, at its option, reimburse the Bank at any time for drawings under the Letter of Credit resulting in the purchase of Certificates which became Bank Certificates, in which case, such Certificates shall be canceled, or, at the option of the respective Obligor, registered in the name of a new third-party purchaser or his nominee; provided, however, that re-registration of such Certificates shall be conditioned upon receipt by the Trustee of confirmation of the reinstatement of the Letter of Credit. The Trustee agrees to cooperate with the parties to arrange the transfer of the Bank Certificates to new custody or ownership as may be required by the Bank.

**Section 4.11 Delivery of Proceeds of Sale of Bank Certificates.** The proceeds of the sale by the Remarketing Agent of any Bank Certificates of any Series shall be deposited in the Purchase Fund. On the settlement date for such purchase, the Tender Agent shall pay the Bank, simultaneously with the receipt of telephonic notice by the Bank to the Trustee, promptly confirmed in writing, of the reinstatement of the related Letter of Credit in an amount equal to the principal amount of Certificates of such Series Outstanding (other than Bank Certificates not remarketed) plus interest for 49 days, calculated at the Maximum Interest Rate, from the proceeds of the remarketing of such Bank Certificates as are required to fully reimburse the Bank for draws under the Letter of Credit with respect to the Certificates being purchased, and shall thereafter receive such Bank's release of such Bank Certificates pursuant to the Reimbursement Agreement. Notwithstanding the foregoing, in the event that the proceeds of remarketing of Bank Certificates to third parties, together with any lawfully available moneys of the respective Obligor applied for such purpose, are insufficient to reimburse the Bank for all of the interest accumulated with respect to such Bank Certificates while they were Outstanding in that form, accumulated interest shall continue as an obligation of the respective Obligor under the Lease until paid in full, as provided in the Reimbursement Agreement. No release of Bank Certificates shall occur until the Trustee shall have received notice of such reinstatement of the Letter of Credit. The Trustee shall thereupon register such Certificates in such names and deliver them to such new Owners as shall have been specified to the Tender Agent by the Remarketing Agent or the respective Obligor.

**Section 4.12 No Remarketing After Default.** Anything in this Trust Agreement to the contrary notwithstanding, the Remarketing Agent shall not remarket Certificates pursuant to this Article IV without the Bank's prior written consent if there shall have occurred and be continuing an Event of Default which shall cause a failure of the payment of principal or interest with respect to the Certificates or if any event shall have occurred which with notice or the lapse of time would constitute an Event of Default which shall cause a failure of the payment of

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principal or interest with respect to the Certificates or upon purchase of Certificates pursuant to Section 4.04(c).

**Section 4.13 Mandatory Conversion.** The respective Obligor shall (or, in the absence of direction from the respective Obligor, the Bank may) commence conversion of interest payable with respect to the Adjustable Rate Certificates of a Series to the Fixed Rate for such Series in accordance with the procedures set forth in the Sublease Agreement upon (i) failure of the Bank to purchase Certificates in accordance with the terms of the Certificates and as provided in the Letter of Credit; (ii) on or after the day which is 30 days prior to the scheduled expiration date of the Letter of Credit, unless there shall have been provided to the respective Obligor, the Bank and the Trustee a commitment of another provider to deliver a Substitute Security no less than 15 days prior to said scheduled expiration date; (iii) if Certificates remain in the status of Bank Certificates for a consecutive period of forty-five (45) days or longer in any Certificate Year; (iv) if Bank Certificates shall represent interest at any time in excess of the Maximum Interest Rate; (v) the respective Obligor fails to deliver a Substitute Security as required by Section 4.16; or (vi) within fifteen (15) days after it is determined by a court of competent jurisdiction that the Letter of Credit is not enforceable, if the respective Obligor does not cause a Substitute Security to be delivered to the Trustee within such time period.

Notwithstanding the foregoing, no Letter of Credit for any Series of Certificates shall be released by the Trustee until notice of such substitution [notice given by what party?] is provided to the Bank or the Substitute Security for such Series is delivered the Trustee and is in full force and effect.

**Section 4.14 Maintenance of Letter of Credit; Return of Letter of Credit.**

(a) The respective Obligor covenants and agrees to use its best efforts to maintain a Letter of Credit in place to provide for the payment of tendered Certificates hereunder, for so long as the Certificates evidence and represent interest at an Adjustable Rate. Prior to the scheduled termination of the then-current Letter of Credit, the respective Obligor shall apply for an extension of the term thereof in accordance with the terms of said Letter of Credit, or shall apply for the delivery of a Substitute Security in replacement thereof.

(b) The Trustee covenants and agrees, so long as the Bank has honored all draws under the Letter of Credit, to return the Letter of Credit with respect to any Series of Certificates to the related Bank promptly after such Letter of Credit has been terminated or substituted pursuant to the terms of such Letter of Credit.

**Section 4.15 Notice of Remarketing of Bank Certificates; Election Not to Sell Bank Certificates.** The Remarketing Agent shall continue to use its best efforts to remarket Bank Certificates, prior to its remarketing of any other Certificates, at a price which, together with any moneys to be provided by the respective Obligor under this Trust Agreement, will equal the principal amount with respect thereto, plus accrued and unpaid interest thereon to such date. In connection with the remarketing of any Bank Certificates, the related Letter of Credit shall be reinstated at such time and in such amount as provided under the terms of such Letter of Credit (or subsequent Substitute Security); provided, however, that the Tender Agent shall not release any Bank Certificates delivered to it prior to the time the Tender Agent has received a confirmation from the Bank to the effect that the Letter of Credit has been reinstated with respect

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to the Bank Certificates so delivered to the Tender Agent. The Bank (or any subsequent owner of a Bank Certificate) shall have the right, by written notice or by telephonic notice, promptly confirmed in writing to the Remarketing Agent, the Trustee and the Tender Agent, to elect not to sell the Bank Certificates or any portion thereof. From and after any sale by the Remarketing Agent and upon receipt by the Tender Agent on behalf of the Bank (or any subsequent owner of Bank Certificates) of the purchase price therefor (including accrued interest to the date of delivery), or of any such election described in the preceding sentence not to sell the Bank Certificates, such Certificates shall cease to be Bank Certificates and shall thereafter evidence and represent interest as provided for Certificates other than Bank Certificates.

**Section 4.16 Mandatory Substitution of Letter of Credit.** In the event that the long-term credit rating of the Bank shall fall to below "A1" (or its equivalent) or its short-term rating to below "P-1" with Moody's (or its equivalent), the respective Obligor shall use its best efforts to deliver to the Trustee a Substitute Security in replacement of such Letter of Credit from the related Bank. Any delivery of a Substitute Security shall be subject to the prior written consent of the Authority.

## ARTICLE V

### BASE RENTAL; CERTIFICATE FUND; RESERVE FUND

**Section 5.01 Assignment of Rights in Sublease Agreement.** The Authority will, in each Assignment Agreement, transferred, assigned and set over to the Trustee certain of its rights in the respective Sublease Agreement, including but not limited to all of the Authority's rights to receive and collect all of the Base Rental and all other amounts required to be deposited in the Certificate Fund pursuant to the Sublease Agreement or pursuant hereto. All Base Rental and such other amounts to which the Authority may at any time be entitled shall be paid directly to the Trustee, and all of the Base Rental 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 Trustee, and if received by the Authority at any time shall be deposited by the Authority with the Trustee within one Business Day after the receipt thereof, and all such Base Rental and such other amounts shall be forthwith deposited by the Trustee upon the receipt thereof in the respective Certificate Fund.

**Section 5.02 Establishment of Certificate Fund.** With respect to each Series of the Certificates the Trustee shall establish in trust a special fund designated the "**Certificate Fund**" which fund shall be held by the Trustee and which shall be kept separate and apart from all other funds and money held by the Trustee. Each respective Certificate Fund shall each be maintained by the Trustee until all respective Base Rental is paid in full pursuant to the terms of the Sublease Agreement, or until such earlier date as there are no Certificates Outstanding.

Within each Certificate Fund, the Trustee shall establish the (i) Base Rental Account, (ii) Interest Account, (iii) Principal Account; (iv) Prepayment Account; and (v) Letter of Credit Account.

(i) **Base Rental Account.** Base Rental and proceeds of rental interruption insurance with respect to the Property, if any, allocable to Base Rental received by the Trustee shall be deposited in the Base Rental Account. On each Interest Payment Date, monies in the Base Rental Account shall be transferred to the Interest Account and/or the

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Principal Account in accordance with subsection (ii) or (iii) of this Section 5.02. Any amounts remaining in the Base Rental Account on an Interest Payment Date after the transfers referred to in the preceding sentence have been made shall be deposited into the following funds and accounts in the order of priority indicated: (i) the Reserve Fund to the extent that the amount therein is less than the Reserve Requirement with respect to the Certificates; (ii) the Interest Account to the extent necessary to make the total amount so deposited equal to the amount of the interest component of the next succeeding Base Rental payment; and (iii) the Principal Account to the extent necessary to make the total amount so deposited equal to the amount of the principal component of the next succeeding Base Rental payment which has a principal component. Amounts not required to be so deposited shall be remitted to the respective Obligor. Any delinquent Base Rental payments and any proceeds of rental interruption insurance with respect to the Property deposited in the Base Rental Account shall be applied first to the Interest Account for the immediate payment of interest payments past due and then to the Principal Account for immediate payment of Principal past due according to the tenor of any Certificate, and then to the Reserve Fund to the extent necessary to make the amount on deposit therein equal to the Reserve Requirement with respect to the Certificates. Any remaining money representing delinquent Base Rental payments and any proceeds of rental interruption insurance shall remain on deposit in the Base Rental Account to be applied in the manner provided herein.

(ii) Interest Account. The Trustee shall transfer from the Base Rental Account to the Interest Account on each Interest Payment Date an amount which, together with monies on deposit in the Interest Account, equals the interest then due on such Interest Payment Date with respect to the Certificates in accordance with the terms of this Trust Agreement.

(iii) Principal Account. The Trustee shall transfer from the Base Rental Account to the Principal Account on each Interest Payment Date or maturity date an amount which, together with monies on deposit in the Principal Account, equals the Principal and Accreted Value then due or required to be prepaid on such Interest Payment Date, Sinking Account Installment Date or maturity date with respect to the Certificates, in accordance with the terms of this Trust Agreement.

(iv) Prepayment Account. Any proceeds of insurance (other than rental interruption insurance) or awards in respect of a taking under the power of eminent domain not required to be used for repair, reconstruction or replacement of the Property and any other amounts provided for the prepayment of Certificates in accordance with 4.01(c) hereof or the respective Supplemental Trust Agreement, shall be deposited by the Trustee in the Prepayment Account. On the scheduled prepayment date, the Trustee shall withdraw from the Prepayment Account and pay to the Owners entitled thereto the prepayment price of the Certificates prepaid on such date.

(v) Letter of Credit Account. On each date upon which the Trustee receives the proceeds of a drawing under the Letter of Credit to pay principal or interest with respect to the Certificates (except as a part of their Purchase Price), the Trustee shall deposit such proceeds into the Letter of Credit Account and shall thereafter pay such moneys to the Owners, from time to time, of the Certificates, as required by the terms

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thereof. Following the Trustee's receipt of moneys under the Letter of Credit, it shall withdraw an equal sum from the Certificate Fund, representing Base Rental made by the respective Obligor for the Adjustable Period then concluding, **and wire transfer such amount to the Bank as a reimbursement for the amount drawn under the Letter of Credit.** The Trustee shall have the sole right of withdrawal from the Letter of Credit Account, which is established as a special trust fund for the sole benefit of the Owners, and neither the respective Obligor nor the Authority shall have any legal, beneficial or equitable right, title or interest in the Letter of Credit Account.

**Section 5.03 Notice to Obligor.** The Trustee covenants and agrees to provide advance notice to the respective Obligor of estimated Base Rental in accordance with the Sublease Agreement.

**Section 5.04 Drawings Under the Letter of Credit.** Each Letter of Credit shall be held by the Trustee and the Trustee shall make requests for payments thereunder in accordance with its terms. Moneys drawn under the Letter of Credit to pay regularly scheduled payments of principal and interest with respect to the respective Certificates shall be deposited by the Trustee upon receipt into the Letter of Credit Account; moneys drawn under the Letter of Credit to provide for payment of the Purchase Price of tendered Certificates shall be deposited by the Trustee upon receipt into the Purchase Fund.

The Trustee shall draw moneys under the Letter of Credit in accordance with the terms thereof in the full amount as may be necessary to make timely payments of the principal, prepayment price and interest (but not premium) due with respect to the Certificates and for the purchase of Certificates of such Series tendered but not remarketed, but the Trustee shall not draw on such Letter of Credit for the purchase of Bank Certificates of such Series or Certificates of such Series owned by the respective Obligor or the Authority or any broker-dealer acting on behalf of the respective Obligor or the Authority. In accordance with the preceding paragraph, the Trustee shall draw moneys under such Letter of Credit (which draw shall be made under the terminating Letter of Credit in the case of a mandatory tender due to the delivery of a Substitute Security for a Series of Certificates) to make payments due with respect to such Certificates as set forth below and the Trustee shall present an appropriate purchase request to the Bank no later than the dates and times indicated below.

(a) No later than 10:00 a.m., California time, on the Business Day preceding each Interest Payment Date, in an amount sufficient to pay (i) the interest becoming due and payable on the Certificates on such Interest Payment Date, and (ii) the principal with respect to the Certificates maturing on such Interest Payment Date, if any;

(b) No later than 10:00 a.m., California time, on the Business Day preceding each date fixed for prepayment of the Certificates, in an amount which, when added to any Seasoned Funds available for such purpose, will be sufficient to prepay the Certificates then being called for prepayment; and

(c) No later than 8:00 a.m., California time [timing issue—needs to be later in the morning for Trustee cut off to draw], on each Purchase Date for any such Certificates for which remarketing proceeds are not on deposit with the Tender Agent in an amount sufficient to

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make timely payment of the Purchase Price of all Certificates of such Series tendered or deemed tendered on such Purchase Date.

**Section 5.05 Establishment and Application of Reserve Fund.** The Trustee shall establish for each Series a special trust fund designated as the "**Reserve Fund**," that shall be held by the Trustee and that shall be kept separate and apart from all other funds and money held by the Trustee. The Reserve Fund for each Series shall be maintained by the Trustee until the respective Base Rental is paid in full pursuant to the Sublease Agreement and until there are no longer any Certificates of such Series Outstanding. There shall be deposited in the Reserve Fund all amounts required to be deposited therein pursuant to the Supplemental Trust Agreement necessary to satisfy the Reserve Requirement. The Reserve Requirement may be satisfied by provision of a Reserve Policy.

If on any Interest Payment Date the amounts in the Principal Account and the Interest Account of the Certificate Fund are less than the principal, Final Compounded Amount and interest payments, respectively, due with respect to the Certificates on such date, the Trustee shall transfer from the Reserve Fund for credit to the Principal Account or the Interest Account of the Certificate Fund amounts sufficient to make up such deficiencies and only in the event such amounts are insufficient to make up such deficiency shall the Trustee make a claim upon the Reserve Policy for such purpose. In the event of any transfer pursuant to this paragraph, the Trustee shall, within five days thereafter, provide written notice to the respective Obligor of the amount and the date of such transfer. The respective Obligor thereafter shall pay as Additional Rental an amount equal to such transfer to the Trustee as soon as possible from any lawful amounts. In addition, the respective Obligor shall restore any decrease in value of the securities held therein as determined in accordance with Section 5.13 hereof within one year of the valuation date.

If a Reserve Policy shall be in effect, on any date that is three (3) Business Days prior to an Interest Payment Date, the amount on deposit in the Interest Account and the Principal Account, together with available moneys in the Reserve Fund, is insufficient to pay the Principal and interest payments due with respect to the Certificates on such Interest Payment Date, the Trustee shall no later than 1:00 p.m. New York Time on such date three (3) Business Days prior to such Interest Payment Date, make a claim for payment under the Reserve Policy, in accordance with the provisions thereof, in an amount that, together with other available moneys in the Reserve Fund will be sufficient to make said deposit in the Interest Account and the Principal Account. If and to the extent that, in addition to the Reserve Policy, another credit facility is credited to the Reserve Fund to satisfy a portion of the Reserve Requirement, drawings thereunder and under the Reserve Policy, and repayment of expenses with respect thereto, shall be made on a pro-rata basis (calculated by reference to the policy limits available thereunder).

The Trustee shall, not less frequently than semiannually, transfer such amounts to the Base Rental Account of the Certificate Fund for application in accordance with Section 5.02 hereof.

**Section 5.06 Establishment and Application of Earnings Fund.** The Trustee shall establish for each Series a special trust fund designated as the "**Earnings Fund**." The Earnings Fund shall be maintained by the Trustee until the Trustee receives written notification from the respective Obligor Representative that it be closed.

The Trustee shall establish and maintain in the Earnings Fund a separate account designated as the "**Investment Earnings Account**," and a separate account designated as the "**Excess Earnings Account**." All moneys in the Investment Earnings Account and the Excess Earnings Account shall be held by the Trustee in trust and shall be kept separate and apart from all other funds and moneys held by the Trustee. Pursuant to Section 5.15 hereof, the Trustee shall transfer all Investment Earnings on deposit in the funds and accounts established hereunder (other than the Excess Earnings Account) to the Investment Earnings Account. All Investment Earnings on amounts on deposit in the Excess Earnings Account of the Earnings Fund shall be retained therein. Amounts on deposit in the Investment Earnings Account shall be transferred to the Excess Earnings Account pursuant to written instructions from the respective Obligor Representative in accordance with the provisions of the Nonarbitrage Certificate. Upon such transfer, any amount remaining in the Investment Earnings Account or any amount on deposit in the Excess Earnings Account that exceeds the amount required to be maintained therein shall be transferred by the Trustee pursuant to the written instructions from the respective Obligor Representative in accordance with the provisions of the Nonarbitrage Certificate. Except as set forth in the preceding sentence, amounts on deposit in the Excess Earnings Account shall only be applied to payments made to the United States in accordance with written instructions of the respective Obligor Representative.

**Section 5.07 Surplus.** After (a)(i) payment or prepayment or provision for payment or prepayment of all amounts due with respect to a Series of Certificates and payment of all amounts due hereunder and under the Sublease Agreement, or (ii) defeasance of all the Certificates of such series pursuant to Section 11.01 hereof, and (b) the transfer of any additional amounts required to be deposited into the Excess Earnings Account of the Earnings Fund pursuant to the written instructions from a respective Obligor Representative in accordance with Section 5.06 hereof and the Nonarbitrage Certificate, any amounts remaining in any of the funds or accounts established hereunder (other than in the Excess Earnings Account of the Earnings Fund) and not required for such purposes shall, after payment of any amounts due to the Trustee, the Bank, be remitted to the respective Obligor and used for any lawful purpose; provided, however, in the event of defeasance, amounts shall not be remitted to the respective Obligor until the respective Obligor has delivered or caused to be delivered an opinion of Special Counsel to the effect that remission of such amounts to the respective Obligor shall not affect the exclusion from gross income for federal income tax purposes of that portion of Base Rental designated and comprising interest with respect to the Certificates.

**Section 5.08 Additional Rental.** In the event the Trustee receives Additional Rental pursuant to a Sublease Agreement, such Additional Rental shall be applied by the Trustee solely to the payment of any costs in respect of which such Additional Rental was received as specified in writing by the respective Obligor, and shall not be commingled in any way with any other funds received by the Trustee pursuant to the respective Sublease Agreement or this Trust Agreement.

**Section 5.09 Repair or Replacement; Application of Insurance Proceeds and Condemnation Awards.** If any portion of the Property shall be damaged or destroyed, or shall be taken by eminent domain proceedings, the respective Obligor, with the consent or at the direction of the Bank, shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted the repair or replacement thereof, unless the respective Obligor, with

the consent or at the direction of the Bank, elects not to repair or replace the Property in accordance with the provisions of this Section 5.09.

The proceeds of any insurance (other than any rental interruption or workers' compensation insurance), including the proceeds of any self-insurance fund and of any condemnation award, received on account of any damage, destruction or taking of the Property or portion thereof shall as soon as possible be deposited with the Trustee and be held by the Trustee in a special account for the respective Series to be designated the "**Insurance Proceeds Account**" and, with the consent or at the direction of the Bank, made available for and, to the extent necessary, shall be applied to the cost of repair or replacement of the Property or affected portion thereof upon receipt of a written request of a respective Obligor Representative, together with invoices therefor. Pending such application, such proceeds may be invested by the Trustee solely at the written direction of a respective Obligor Representative, in Qualified Investments that the respective Obligor Representative has determined will mature not later than such times moneys are expected to be needed to pay such costs of repair or replacement.

Notwithstanding the foregoing, the respective Obligor Representative shall, within 90 days of the occurrence of the event of damage, destruction or taking, notify the Trustee and the Bank in writing of whether the Obligor intends to replace or repair the Property or the portions of the Property that were damaged or destroyed. If the Obligor, with the consent or at the direction of the Bank, elects to replace or repair the Property or portions thereof, the Obligor shall deposit with the Trustee the full amount of any insurance deductible to be credited to the Insurance Proceeds Account.

If the damage, destruction or taking was such that there resulted a substantial interference with the Obligor's right to the use or occupancy of the Property or any portion thereof and an abatement of Base Rental and Additional Rental payments will result from such damage or destruction pursuant to the Sublease, then the Obligor, with the consent or at the direction of the Bank, shall be required either to (i) apply sufficient funds from the insurance proceeds, condemnation award and other legally available funds to the replacement or repair of the Property or portions thereof that have been damaged, destroyed or taken to the condition that existed prior to the occurrence of such damage, destructive event or taking, or (ii) direct the Trustee in writing to transfer moneys to the Prepayment Account to prepay Certificates and to apply funds from the insurance proceeds or condemnation award and deliver other legally available funds sufficient to prepay, as set forth in Section 4.01 hereof, in full of all the Outstanding Certificates or all of those Outstanding Certificates that would have been payable from that portion of the Base Rental payments that are abated as a result of the damage, destruction or taking, such that the Base Rental payable with respect to the remaining portions of the Property is sufficient to pay all Principal and interest due with respect to the Certificates to remain Outstanding after such prepayment. Any amounts received by the Trustee under this Section 5.09 in excess of the amount certified by the Respective Obligor to be needed either to repair or replace a damaged, destroyed or taken portion of the Property or to prepay Certificates shall be transferred to the respective Reserve Fund to the extent necessary to make the amount on deposit therein equal to the Reserve Requirement and thereafter, with the consent of the Bank, any excess shall be remitted to the Respective Obligor.