

TO BE RECORDED AND WHEN RECORDED  
RETURN TO:  
Jones Hall, A Professional Law Corporation  
475 Sansome Street, Suite 1700  
San Francisco, California 94111  
Attention: Charles F. Adams, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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## **LEASE AGREEMENT**

Dated as of July 1, 2018

between the

**MT. DIABLO UNIFIED SCHOOL DISTRICT EDUCATION  
FACILITIES FINANCING CORPORATION**

*as lessor*

and the

**MT. DIABLO UNIFIED SCHOOL DISTRICT**

*as lessee*

Relating to

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

**2018 Certificates of Participation**

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## LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease"), dated as of July 1, 2018, is between the MT. DIABLO UNIFIED SCHOOL DISTRICT EDUCATION FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), and the MT. DIABLO UNIFIED SCHOOL DISTRICT, a unified school district duly organized and existing under the laws of the State of California (the "District").

### *BACKGROUND:*

1. At a special election held on November 7, 1989, more than two-thirds of the voters of the District approved Measure A, authorizing the levy and collection of a special tax at the rate of \$67 per taxable unit (the "Special Taxes"), for the purpose of providing financing for the rehabilitation and improvement of existing elementary, middle and high school facilities and other facilities, and the construction and installation of new elementary, middle and high school facilities at existing school sites, together with necessary appurtenances thereto and furniture and equipment therefor (collectively, the "Authorized Projects").

2. The District wishes at this time to provide financing for projects and facilities which constitute Authorized Projects under Measure A (the "Projects").

3. In order to provide financing for the Projects, the District has leased the land and buildings at the \_\_\_\_\_ School, as described more fully in Appendix A attached hereto and made a part hereof (the "Leased Property"), to the Corporation under a Site Lease recorded concurrently herewith in consideration of the payment of an upfront rental payment in an amount sufficient for such purposes, and the Corporation has agreed to lease the Leased Property back to the District under this Lease in consideration of the agreement by the District to pay semiannual lease payments (the "Lease Payments").

4. The Lease Payments will be payable from any source of legally available funds of the District, including the General Fund of the District, and will additionally be payable from and secured by a pledge of and lien on the Special Taxes which is subordinate to the pledge and lien which secures outstanding Special Tax Bonds of the District.

5. The Corporation has agreed to assign its right to receive the Lease Payments to U.S. Bank National Association, as trustee (the "Trustee"), and in consideration of such assignment the Trustee has agreed to execute and deliver \$\_\_\_\_\_ aggregate principal amount of 2018 Certificates of Participation (the "Certificates"), each evidencing a direct, undivided fractional interest in the lease payments to be paid by the District hereunder, the proceeds of which will be applied by the Corporation to finance the acquisition and construction of the Projects under a Trust Agreement dated as of July 1, 2018 (the "Trust Agreement"), among the Corporation, the District and the Trustee.

6. The District is authorized to enter into the Site Lease and this Lease Agreement under Section 17456 of the Education Code of the State of California.

7. Payment of principal and interest represented by the Certificates is insured by a Municipal Bond Insurance Policy (the "Certificate Insurance Policy") issued by \_\_\_\_\_ (the "Certificate Insurer").

## A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the District and the Corporation formally covenant, agree and bind themselves as follows:

### ARTICLE I

#### DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Lease have the respective meanings specified in the recitals hereof and in Appendix A to the Trust Agreement.

SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only 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 do 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 Lease; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or subdivision hereof.

### ARTICLE II

#### COVENANTS, REPRESENTATIONS AND WARRANTIES

SECTION 2.1. *Covenants, Representations and Warranties of the District.* The District makes the following covenants, representations and warranties to the Corporation and the Certificate Insurer as of the Closing Date

(a) Due Organization and Existence. The District is a unified school district duly organized and validly existing under the laws of the

State of California, has full legal right, power and authority under the laws of the State of California to enter into this Lease, the Site Lease and the Trust Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the District has duly authorized the execution and delivery of this Lease, the Site Lease and the Trust Agreement.

- (b) Due Execution. The representatives of the District executing this Lease, the Site Lease and the Trust Agreement have been fully authorized to execute the same under a resolution duly adopted by the Board of Trustees of the District.
- (c) Valid, Binding and Enforceable Obligations. This Lease, the Site Lease and the Trust Agreement have been duly authorized, executed and delivered by the District and constitute the legal, valid and binding agreements of the District enforceable against the District in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and subject to the exercise of judicial discretion in accordance with principles of equity or otherwise in appropriate cases.
- (d) No Conflicts. The execution and delivery of this Lease, the Site Lease and the Trust Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the District is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease and the Trust Agreement or the financial condition, assets, properties or operations of the District.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the District or of the voters of the District, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease, the Site Lease and the Trust Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the District after reasonable investigation, threatened against or affecting the District or the assets, properties or operations of the District which, if determined adversely to the District or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease, the Site Lease or the Trust Agreement, or upon the financial condition, assets, properties or operations of the District, and the District is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease or the Trust Agreement or the financial conditions, assets, properties or operations of the District.

SECTION 2.2. *Covenants, Representations and Warranties of the Corporation.* The Corporation makes the following covenants, representations and warranties to the District and the Certificate Insurer as of the Closing Date

- (a) Due Organization and Existence. The Corporation is a nonprofit corporation duly organized and existing under the laws of the State of California, has full legal right, power and authority to enter into this Lease, the Site Lease, the Trust Agreement and the Assignment Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the Corporation has duly authorized the execution and delivery of this Lease, the Site Lease, the Trust Agreement and the Assignment Agreement.
- (b) Maintenance of Existence. The Corporation shall maintain its existence as a nonprofit corporation duly organized and existing under the laws of the State of California at all times during the Term hereof.
- (c) Due Execution. The representatives of the Corporation executing this Lease, the Site Lease, the Trust Agreement and the Assignment Agreement are fully authorized to execute the same under official action taken by the Board of Directors of the Corporation.
- (d) Valid, Binding and Enforceable Obligations. This Lease, the Site Lease, the Trust Agreement and the Assignment Agreement have been duly authorized, executed and delivered by the Corporation and constitute the legal, valid and binding agreements of the Corporation, enforceable against the Corporation in accordance with their respective terms.

- (e) No Conflicts. The execution and delivery of this Lease, the Site Lease, the Trust Agreement and the Assignment Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Corporation is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, the Trust Agreement and the Assignment Agreement or the financial condition, assets, properties or operations of the Corporation.
- (f) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease, the Site Lease, the Trust Agreement or the Assignment Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- (g) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or operations of the Corporation which, if determined adversely to the Corporation or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease, the Site Lease, the Trust Agreement or the Assignment Agreement, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, the Trust Agreement or the Assignment Agreement or the financial conditions, assets, properties or operations of the Corporation.
- (h) The Corporation is not acting as a "Municipal Advisor" as such term is defined in Section 15B of the Securities Exchange Act of 1934, as

amended, and the related final rules, or otherwise serving as an agent or fiduciary of the District.

### ARTICLE III

#### DEPOSIT AND APPLICATION OF FUNDS; CONSTRUCTION OF THE PROJECTS

SECTION 3.1. *Deposit of Moneys.* On the Closing Date, the Corporation shall cause the proceeds of sale of the Certificates to be deposited with the Trustee. Under Section 4.01 of the Trust Agreement, from the proceeds of sale of the Certificates the estimated amount of the Costs of Issuance will be deposited in the Costs of Issuance Fund and the balance of such proceeds will be deposited in the Project Fund to be applied to finance the Projects as set forth herein and in the Trust Agreement.

SECTION 3.2. *Construction of Projects.* The District will enter into, administer and enforce all purchase orders or other contracts relating to the acquisition and construction of the Projects. The District will requisition the payment of Project Costs from amounts held by it in the Project Fund, under and in accordance with Section 4.04 of the Trust Agreement. All contracts for, and all work relating to, the acquisition and construction of the Projects are subject to all applicable provisions of law relating to the acquisition, construction, improvement, and equipping of like facilities and property by the District. The District will supervise and undertake to completion the acquisition and construction of the Projects in accordance with the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the District under all applicable requirements of law.

SECTION 3.3. *Completion of Projects; Certification of Completion.* The District expects that the Projects will be substantially completed by \_\_\_\_\_, 20\_\_\_. The failure to complete the Projects by such date will not constitute an Event of Default hereunder or a grounds for termination of this Lease.

Upon the completion of the acquisition and construction of the Projects, but in any event not later than 30 days following such completion, the District shall execute and deliver to the Corporation and the Trustee a written certificate which (a) states that the acquisition and construction of the Projects have been substantially completed, (b) identifies the total Project Costs theretofore paid from the Project Fund, and (c) identifies (i) the amounts, if any, to remain on deposit in the Project Fund for payment of Project Costs thereafter intended to be requisitioned by the District, and (ii) the amounts (if any) to be transferred by the Trustee from the Project Fund to the Lease Payment Fund under Section 4.04 of the Trust Agreement.

## ARTICLE IV

### LEASE OF LEASED PROPERTY; LEASE PAYMENTS

SECTION 4.1. *Lease of Leased Property.* The Corporation hereby leases the Leased Property to the District, and the District hereby leases the Leased Property from the Corporation, upon the terms and conditions set forth in this Lease.

SECTION 4.2. *Term.* The Term of this Lease commences on the Closing Date and ends on the date on which the Trust Agreement is discharged under Section 13.01 thereof, but under any circumstances not later than September 1, 2036. The provisions of this Section are subject to the provisions of Section 5.2 relating to the substitution of property, the provisions of Section 4.3 relating to the release of property, and the provisions of Section 7.2 relating to the taking in eminent domain of the Leased Property or any portion thereof. Notwithstanding the foregoing provisions of this Section, the District may not terminate this Lease as a remedy for a default by the Corporation.

SECTION 4.3. *Lease Payments.*

(a) Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3, the District will pay to the Corporation, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Appendix B hereto, to be due and payable in immediately available funds on the Interest Payment Dates immediately following each of the respective Lease Payment Dates specified in Appendix B, and to be deposited by the District with the Trustee on each of the Lease Payment Dates specified in Appendix B. Any amount held in the Lease Payment Fund on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole and other than amounts required for payment of past due principal or interest represented by any Certificates not presented for payment) will be credited towards the Lease Payment then required to be paid; and no Lease Payment need be deposited with the Trustee on any Lease Payment Date if the amounts then held in the Lease Payment Fund are at least equal to the Lease Payment then required to be deposited with the Trustee. The Lease Payments payable in any Rental Period are for the use of the Leased Property during such Rental Period.

(b) Rate on Overdue Payments. If the District fails to make any of the payments required in this Section, the payment in default will continue as an obligation of the District until the amount in default has been fully paid, and the District agrees to pay the same with interest thereon, from the date of default to the date of payment at the highest rate of interest represented by any Outstanding Certificate.

(c) Fair Rental Value. The Lease Payments and Additional Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and the District will pay the Lease Payments and Additional Payments in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period. The Corporation and the District have agreed and determined that the total Lease Payments and Additional Payments represent the fair

rental value of the Leased Property. In making such determination, consideration has been given to the estimated value of the Leased Property as of the Closing Date, other obligations of the District and the Corporation under this Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the District and the general public.

(d) Assignment. The District acknowledges that the Site Lease, this Lease, and all Lease Payments have been assigned by the Corporation to the Trustee in trust under the Assignment Agreement, dated as of July 1, 2018 and recorded concurrently herewith, for the benefit of the Owners of the Certificates and the Certificate Insurer, and the District consents to such assignment. The Corporation directs the District, and the District agrees to pay to the Trustee at its Office, all payments payable by the District under this Section and all amounts payable by the District under Article VII.

(e) No Optional Prepayment. The District shall not have the option to prepay the Lease Payments prior to their respective Lease Payment Dates.

(f) Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain. The District is obligated to prepay the principal components of the Lease Payments, in whole on any date, from and to the extent of any Net Proceeds of insurance award or eminent domain award with respect to the Leased Property theretofore deposited in the Lease Payment Fund for such purpose under Article VII hereof and Article VI of the Trust Agreement. The District and the Corporation hereby agree that such Net Proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be credited towards the District's obligations under this Section. Such prepayment price shall be deposited by the Trustee in the Lease Payment Fund to be applied to the prepayment of Certificates under Section 3.01(b) of the Trust Agreement.

SECTION 4.4. *Additional Payments*. In addition to the Lease Payments, the District shall pay when due, as additional rental for the Leased Property hereunder, all costs and expenses incurred by the District hereunder or under the Trust Agreement, or incurred by the Corporation to comply with the provisions of the Trust Agreement, including without limitation all Costs of Issuance (to the extent not paid from amounts on deposit in the Costs of Issuance Fund), annual compensation due to the Trustee and all of its reasonable costs and expenses (including amounts payable to the Trustee by virtue of indemnification) payable as a result of the performance of and compliance with its duties under the Trust Agreement, all reimbursements of costs to the Certificate Insurer that do not constitute payment of Lease Payments, all amounts owed pursuant to that certain Debt Service Reserve Agreement, by and between the District and the Certificate Insurer as issuer of the Reserve Policy, all amounts required to repay draws on the Reserve Policy, and all reasonable costs and expenses of attorneys, auditors, engineers and accountants engaged by the Corporation or the Trustee in connection with the Leased Property or the performance of their duties hereunder or under the Trust Agreement.

SECTION 4.5. *Source of Payments; Covenant to Budget and Appropriate*. The Lease Payments shall be payable from, and shall be secured by a pledge of and lien on, the Surplus Special Tax Revenues. The District shall take all actions as shall be required under the Community Facilities District Act to levy and collect, and to enforce the payment and collection of, the Special Taxes when due and to apply the Surplus

Special Tax Revenues to the payment of the Lease Payments when due. As provided in the Community Facilities District Act, the Special Taxes shall be payable and be collected in the same manner and at the same time and in the same installments as the *ad valorem* taxes on real property are payable, and have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the *ad valorem* taxes on real property. The Surplus Special Tax Revenues shall be deposited and applied as set forth in Section 5.03 of the Trust Agreement.

In the event and to the extent the Surplus Special Tax Revenues are insufficient to enable the District to pay any Lease Payment when due, the District shall be the amount of such insufficiency from any source of available funds of the District, including but not limited to amounts on deposit in the General Fund of the District which may lawfully be used to pay the Lease Payments. The Additional Payments shall also be payable from any source of available funds of the District.

The District covenants to take such action as may be necessary to include all estimated Lease Payments and all estimated Additional Payments due hereunder in each of its final approved budgets. The District further covenants to make all necessary appropriations (including any supplemental appropriations) from the Surplus Special Tax Revenues and, if needed, from any source of legally available funds of the District, for all the actual amount of Lease Payments and Additional Payments which come due and payable during the period covered by each such budget. The covenants on the part of the District contained herein are duties imposed by law and it is the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the District.

SECTION 4.6. *Security Deposit.* Notwithstanding any other provision of this Lease, the District may on any date secure the payment of the Lease Payments in whole or in part by depositing with the Trustee an amount of cash which, together with other available amounts on deposit in the funds and accounts established under the Trust Agreement, is either (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Appendix B, or (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an independent certified public accountant, (which opinion shall be addressed and delivered to the Trustee), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay such Lease Payments when due under Section 4.3(a) as the District instructs at the time of said deposit.

If the District posts a security deposit under this Section with respect to all unpaid Lease Payments and if the District has paid or caused to be paid all Additional Payments then due and payable, and notwithstanding the provisions of Section 4.2, (a) the Term of this Lease will continue, (b) all obligations of the District under this Lease, and all security provided by this Lease for said obligations, will thereupon cease and terminate, excepting only the obligation of the District to make, or cause to be made all of the Lease Payments from such security deposit, and (c) under Section 5.1, title to the Leased Property will vest in the District on the date of said deposit automatically and without further action by the District or the Corporation. Said security deposit constitutes

a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

## ARTICLE V

### TITLE; SUBSTITUTION AND RELEASE OF PROPERTY

SECTION 5.1. *Title.* At all times during the Term of this Lease, the District will hold title to the Leased Property, subject to the Site Lease and other Permitted Encumbrances, including all additions which comprise fixtures, repairs, replacements or modifications thereto, and subject to the provisions of Section 5.2.

Upon the termination of this Lease (other than under Section 9.2(b) hereof), all right, title and interest of the Corporation in and to the Leased Property will be transferred to and vested in the District. Upon the payment in full of all Lease Payments allocable to the Leased Property, or upon the deposit by the District of security for such Lease Payments as provided in Section 9.1, all right, title and interest of the Corporation in and to the Leased Property will be transferred to and vested in the District. The Corporation agrees to take any and all steps and execute and record any and all documents reasonably required by the District to consummate any such transfer of title.

SECTION 5.2. *Substitution of Property.* The District has the option at any time and from time to time to substitute other real property (the "Substitute Property") for the Leased Property or any portion thereof (the "Former Property"), provided that the District shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such substitution

- (a) No Event of Default has occurred and is continuing.
- (b) The District has filed with the Corporation and the Trustee, and caused to be recorded in the office of the Contra Costa County Recorder sufficient memorialization of, an amendment hereof which adds to Appendix A hereto a description of such Substitute Property and deletes therefrom the description of such Former Property.
- (c) The District has obtained a CLTA policy of title insurance which insures the District's leasehold estate hereunder in such Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof;
- (d) The District has certified in writing to the Corporation and the Trustee that such Substitute Property serves the educational purposes of the District and constitutes property which the District is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the District and to serve an essential governmental function of the District.

- (e) The Substitute Property does not cause the District to violate any of its covenants, representations and warranties made herein or in the Trust Agreement.
- (f) The District has filed with the Corporation and the Trustee an appraisal or other written documentation which establishes that the estimated value and the fair rental value of the Substitute Property are at least equal to the estimated value and the fair rental value, respectively, of the Former Property, and that the useful life of the Substitute Property at least equals the lesser of (i) the useful life of the Former Property, or (ii) the final Lease Payment Date of the Lease Payments.
- (g) The District has mailed written notice of such substitution to each rating agency which then maintains a rating on the Certificates.
- (h) The District shall have obtained the prior written consent of the Certificate Insurer to such substitution.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The District is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such substitution. The Corporation and the District will execute, deliver and cause to be recorded all documents required to discharge this Lease against the Former Property.

SECTION 5.3. *Release of Property.* The District has the option at any time and from time to time to release any portion of the Leased Property from this Lease and the Site Lease (the "Released Property") provided that the District has satisfied all of the following requirements which are hereby declared to be conditions precedent to such release

- (a) No Event of Default has occurred and is continuing.
- (b) The District has filed with the Corporation and the Trustee, and caused to be recorded in the office of the Contra Costa County Recorder sufficient memorialization of, an amendment hereof which removes the Released Property from this Lease and the Site Lease.
- (c) The District has certified in writing to the Corporation and the Trustee that the estimated value of the property which remains subject to this Lease and the Site Lease following such release is at least equal to the aggregate original principal amount of the Certificates, and the fair rental value of the property which remains subject to this Lease and the Site Lease following such release is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (d) The District has mailed written notice of such release to each rating agency which then maintains a rating on the Certificates.

- (e) The District shall have obtained the prior written consent of the Certificate Insurer to such release.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Released Property. The District is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Corporation and the District shall execute, deliver and cause to be recorded all documents required to discharge this Lease and the Site Lease of record against the Released Property.

SECTION 5.4. *No Merger.* It is the express intention of the Corporation and the District that this Lease and the obligations of the parties hereunder are separate and distinct from the Site Lease and the obligations of the parties thereunder, and that during the term of the Site Lease and this Lease no merger of title or interest may occur or be deemed to occur as a result of the respective positions of the Corporation and the District thereunder and hereunder.

## **ARTICLE VI**

### **MAINTENANCE, TAXES, INSURANCE AND OTHER MATTERS**

SECTION 6.1. *Maintenance, Utilities, Taxes and Assessments.* Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property are the sole responsibility of the District, and the District will pay for or otherwise arrange for the payment of all utility services supplied to the Leased Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the District or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Corporation agrees to provide only the Leased Property, as hereinbefore more specifically set forth. The District waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the District under the terms of this Lease.

The District will also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Corporation or the District affecting the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the District is obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

The District may, at the District's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain

unpaid during the period of such contest and any appeal therefrom unless the Corporation notifies the District that, in its reasonable opinion, by nonpayment of any such items the interest of the Corporation in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the District shall promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation and the Trustee.

SECTION 6.2. *Modification of Leased Property.* The District has the right, at its own expense, to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property will thereafter comprise part of the Leased Property and become subject to the provisions of this Lease. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto under this Section, shall be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements. The District will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the District under this Section; provided that if any such lien is established and the District first notifies the Corporation of the District's intention to do so, the District may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Corporation with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Corporation. The Corporation will cooperate fully in any such contest, upon the request and at the expense of the District.

SECTION 6.3. *Public Liability and Property Damage Insurance.* The District will maintain or cause to be maintained, throughout the Term of this Lease, comprehensive general insurance in protection of the District and its members, officers, agents, employees and assigns. Such insurance shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such insurance shall provide coverage in such liability limits and be subject to such deductibles as the District deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and may be maintained in whole or in part in the form of a program of self-insurance by the District, or in the form of the participation by the District in a joint powers authority or other program providing pooled insurance. The District shall apply the proceeds of such insurance toward extinguishment or satisfaction of the liability with respect to which the net proceeds are paid.

SECTION 6.4. *Casualty Insurance.* The District will procure and maintain, or cause to be procured and maintained, at all times throughout the Term of this Lease, casualty insurance against loss or damage to the insured buildings, facilities and other improvements constituting any part of the Leased Property, in an amount at least equal to the greater of (a) the replacement value of such buildings, facilities and

improvements, or (b) the aggregate principal amount of the Outstanding Certificates. Such insurance shall, as nearly as practicable, cover loss or damage by fire, explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance, and shall include earthquake coverage if such coverage is available at reasonable cost from reputable insurers in the reasonable determination of the District, whose determination is final and conclusive. Such insurance may be subject to such deductibles as the District deems prudent but not in excess of \$100,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and with the consent of the Certificate Insurer may be maintained in whole or in part in the form of the participation by the District in a joint powers authority or other program providing pooled insurance; provided that such insurance may not be maintained by the District in the form of self-insurance. The District shall apply the Net Proceeds of such insurance as provided in Section 7.1.

SECTION 6.5. *Rental Interruption Insurance.* The District will procure and maintain, or cause to be procured and maintained, at all times throughout the Term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the buildings, facilities and other improvements constituting any part of the Leased Property, as a result of any of the hazards covered in the insurance required by Section 6.4, in an amount at least equal to the maximum Lease Payments coming due and payable during any two consecutive Fiscal Years during the remaining Term of this Lease. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, provided that the provider of such insurance shall be rated at least "A" by A.M. Best & Company, and with the consent of the Certificate Insurer may be maintained in whole or in part in the form of the participation by the District in a joint powers authority or other program providing pooled insurance; provided that such insurance may not be maintained by the District in the form of self-insurance. The Net Proceeds of such insurance, if any, shall be paid to the Trustee and deposited in the Lease Payment Fund, and shall be credited towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

SECTION 6.6. *Recordation Hereof; Title Insurance.* The District will, at its expense, cause the Site Lease, the Assignment Agreement and this Lease to be recorded in the office of the Contra Costa County Recorder on or before the Closing Date. Concurrent with such recordation, the District shall obtain a CLTA title insurance policy insuring the District's leasehold estate in the Leased Property hereunder, in an amount at least equal to the aggregate principal amount of the Certificates. All Net Proceeds received under such title insurance policy will be deposited with the Trustee in the Lease Payment Fund and credited towards the prepayment of the Lease Payments under Section 4.3(f).

SECTION 6.7. *Insurance Net Proceeds; Form of Policies.* Each policy of insurance maintained under Sections 6.4, 6.5 and 6.6 shall name the Trustee as loss payee so as to provide that all proceeds thereunder are payable to the Trustee. The District shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease. All such policies shall provide that the Trustee and Certificate Insurer are given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The Trustee is not responsible for the sufficiency, adequacy or amount of any insurance or self-insurance herein required and

is fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss.

SECTION 6.8. *Installation of District's Personal Property.* The District may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Property. All such items will remain the sole property of the District, in which neither the Corporation nor the Trustee has any interest, and may be modified or removed by the District at any time, provided that the District shall repair and restore any and all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease prevents the District from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest attaches to any part of the Leased Property.

SECTION 6.9. *Liens.* The District may not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than as herein contemplated and except for such encumbrances as the District certifies in writing to the Trustee and the Trustee do not materially and adversely affect the leasehold estate in the Leased Property hereunder. Except as expressly provided in this Article, the District will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The District will reimburse the Corporation for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

SECTION 6.10. *Advances.* If the District fails to perform any of its obligations under this Article, the Corporation may take any necessary action to cure the failure, including the advancement of money, and the District shall repay all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.3(b).

## **ARTICLE VII**

### **DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS**

SECTION 7.1. *Application of Net Proceeds.* The Net Proceeds of any insurance award resulting from any damage to or destruction of the Leased Property by fire or other casualty shall be paid to the Trustee, as assignee of the Corporation under the Assignment Agreement, and deposited in the Insurance and Condemnation Fund to be applied as set forth in Section 6.01 of the Trust Agreement. The District shall pay the Net Proceeds of any eminent domain award with respect to the Leased Property resulting from an event described in Section 7.2 to the Trustee for deposit in the Insurance and Condemnation Fund, to be applied as set forth in Section 6.02 of the Trust Agreement.

SECTION 7.2. *Termination or Abatement Due to Eminent Domain.* If the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease will cease with respect thereto as of the day possession is so taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, (a) this Lease will continue in full force and effect with respect thereto and will not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (b) there will be a partial abatement of Lease Payments allocated thereto, in an amount to be determined by the District such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property. Notwithstanding the foregoing, the Lease Payments will not be abated under this Section to the extent that amounts in the Reserve Fund are available to pay Lease Payments which would otherwise be abated under this Section, it being hereby declared that such proceeds and amounts constitute a special fund for the payment of the Lease Payments.

SECTION 7.3. *Abatement Due to Damage or Destruction.* The amount of Lease Payments will be abated during any period in which by reason of damage or destruction (other than by eminent domain which is hereinbefore provided for) there is substantial interference with the use and occupancy by the District of the Leased Property or any portion thereof. The amount of such abatement shall be determined by the District such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portions of the Leased Property not damaged or destroyed. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease shall continue in full force and effect and the District waives any right to terminate this Lease by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section to the extent that the proceeds of hazard insurance, rental interruption insurance or amounts in the Reserve Fund are available to pay Lease Payments which would otherwise be abated under this Section, it being hereby declared that such proceeds and amounts constitute a special fund for the payment of the Lease Payments.

SECTION 7.4. *Covenant Against Eminent Domain.* During the Term of this Lease, the District shall not acquire the sub-leasehold estate of the Corporation in the Leased Property under the Site Lease through the exercise of its eminent domain powers or otherwise.

## **ARTICLE VIII**

### **OTHER COVENANTS**

SECTION 8.1. *Disclaimer of Warranties.* THE CORPORATION MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE DISTRICT OF THE LEASED PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH

RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. THE DISTRICT ACKNOWLEDGES THAT THE CORPORATION IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE DISTRICT LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE DISTRICT. In no event is the Corporation liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease or the Trust Agreement for the existence, furnishing, functioning or the District's use of the Leased Property.

SECTION 8.2. *Access to the Leased Property.* The District agrees that the Corporation and any Corporation Representative and the Certificate Insurer, and their successors or assigns, may at all reasonable times enter upon and to examine and inspect the Leased Property or any part thereof. The Corporation and any Corporation Representative have such rights of access to the Leased Property or any component thereof as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the District to perform its obligations hereunder; *provided, however*, that neither the Corporation nor any of its assigns has any obligation to cause such proper maintenance.

SECTION 8.3. *Release and Indemnification Covenants.* The District shall indemnify the Corporation, the Trustee and their respective officers, agents, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of any of the following

- (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the District,
- (b) any breach or default on the part of the District in the performance of any of its obligations under this Lease,
- (c) any negligence or willful misconduct of the District or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property, or
- (d) any intentional misconduct or negligence of any sublessee of the District with respect to the Leased Property.

No indemnification is made under this Section or elsewhere in this Lease for willful misconduct or negligence under this Lease by the Corporation, the Trustee or their respective officers, agents, employees, successors or assigns.

SECTION 8.4. *Assignment and Subleasing by the District.* The District may sublease the Leased Property, or any portion thereof, subject to all of the following conditions

- (a) This Lease and the obligation of the District to make Lease Payments hereunder shall remain obligations of the District.

- (b) The District shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Corporation, the Certificate Insurer and the Trustee a true and complete copy of such sublease.
- (c) No such sublease by the District shall cause the Leased Property to be used for a purpose which is not authorized under the provisions of the laws of the State of California.
- (d) The District shall furnish the Corporation, the Certificate Insurer and the Trustee with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State of California.
- (e) The District shall obtain the written consent of the Certificate Insurer to such sublease.

SECTION 8.5. *Amendment of Lease Agreement.* The Corporation and the District may at any time amend or modify any of the provisions of this Lease with the prior written consent of the Certificate Insurer, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Certificates; or (b) without the consent of the Trustee or any of the Certificate Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the District contained in this Lease, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the District;
- (ii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, for the purpose of conforming to the original intention of the District and the Corporation;
- (iii) to amend any provision thereof relating to the Tax Code, but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest represented by any of the Certificates under the Tax Code, in the opinion of Bond Counsel;
- (iv) to amend the description of any component of the Leased Property to reflect accurately the property originally intended to be included therein, or to effectuate any substitution of property as permitted by Section 5.2 or any release of property as permitted by Section 5.3;
- (v) to obligate the District to pay additional amounts of rental hereunder for the use and occupancy of the Leased Property or any portion thereof, but only if (A) such additional amounts of rental are pledged or assigned for the payment of any bonds, notes, leases or other obligations the proceeds of which are applied to finance the completion of the Projects or other improvements to the Leased Property, and (B) the District has filed with the Trustee written

evidence that the amendments made under this subsection (v) will not of themselves cause a reduction or withdrawal of any rating then assigned to the Certificates; or

- (vi) in any other respect whatsoever as the Corporation and the District deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Certificates.

The District shall obtain and cause to be filed with the Trustee an opinion of Bond Counsel with respect to any amendment or modification hereof, stating that all conditions precedent to such amendment as set forth in this Section have been satisfied. Promptly following the effective date of any amendment or modification under this Section, the District shall mail written notice thereof to each rating agency which then maintains a rating on the Certificates.

## **ARTICLE IX**

### **EVENTS OF DEFAULT AND REMEDIES**

SECTION 9.1. *Events of Default Defined.* Each of the following events constitutes an Event of Default hereunder:

- (a) Failure by the District to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the District to observe and perform any covenant, condition or agreement on its part to be observed or performed herein or in the Trust Agreement, other than as referred to in the preceding subsection (a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Corporation or the Trustee; *provided, however,* that if the District notifies the Corporation and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 30-day period, the failure will not constitute an Event of Default if the District commences to cure the failure within such 30-day period and thereafter diligently and in good faith cures such failure in a reasonable period of time.
- (c) The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or attachment, or adjudication of the District as a bankrupt, or assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

SECTION 9.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the Corporation may exercise any and all remedies available under law or granted under this Lease. Notwithstanding anything herein or in the Trust Agreement to the contrary, there is no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the District is expressly made a condition and upon the breach thereof the Corporation may exercise any and all rights granted hereunder; provided, that no termination of this Lease shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Corporation may exercise each and every one of the following remedies, subject in all respects to the limitations set forth in Section 9.3.

- (a) Enforcement of Payments Without Termination. If the Corporation does not elect to terminate this Lease in the manner hereinafter provided for in subsection (b) of this Section, the District agrees to remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Corporation for any deficiency arising out of the re-leasing of the Leased Property, or, if the Corporation is unable to re-lease the Leased Property, then for the full amount of all Lease Payments to the end of the Term of this Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Corporation.

The District hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the District to enter upon and re-lease the Leased Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Leased Property, to place such property in storage or other suitable place in the County of Contra Costa for the account of and at the expense of the District, and the District hereby agrees to save harmless the Corporation from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained. The District agrees that the terms of this Lease constitute full and sufficient notice of the right of the Corporation to re-lease the Leased Property in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the Corporation in effecting such re-leasing constitute a surrender or termination of this Lease irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the District the right

to terminate this Lease shall vest in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in subsection (b) of this Section. The District agrees to surrender and quit possession of the Leased Property upon demand of the Corporation for the purpose of enabling the Leased Property to be re-let under this paragraph. Any rental obtained by the Corporation in excess of the unpaid Lease Payments shall be deposited with the Trustee in the Lease Payment Fund, to be applied as a credit against future Lease Payments.

- (b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Corporation at its option may terminate this Lease and re-lease all or any portion of the Leased Property. If the Corporation terminates this Lease at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Leased Property by the Corporation in any manner whatsoever or the re-leasing of the Leased Property), the District nevertheless agrees to pay to the Corporation all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Corporation from such re-leasing shall be deposited in the Lease Payment Fund. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Corporation shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Corporation has given written notice to the District of the election on the part of the Corporation to terminate this Lease. The District agrees that no surrender of the Leased Property, or of the remainder of the Term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.
- (c) Proceedings at Law or In Equity. If an Event of Default occurs and continues hereunder, the Corporation may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

SECTION 9.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy is cumulative and in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article it is not

necessary to give any notice, other than such notice as may be required in this Article or by law.

SECTION 9.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Lease defaults under any of the provisions hereof and the non-defaulting party employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

SECTION 9.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Lease is breached by either party and thereafter waived by the other party, such waiver will be limited to the particular breach so waived and will not constitute a waiver of any other breach hereunder.

SECTION 9.6. *Application of Proceeds.* All net proceeds received from the release of the Leased Property under this Article, and all other amounts derived by the Corporation or the Trustee as a result of the occurrence of an Event of Default, shall be paid to the Trustee and applied in accordance with Section 12.04 of the Trust Agreement.

SECTION 9.7. *Trustee and Certificate Owners to Exercise Rights.* Such rights and remedies as are given to the Corporation under this Article have been assigned by the Corporation to the Trustee under the Assignment Agreement for the benefit of the Certificate Owners, to which assignment the District hereby consents. The Trustee and the Certificate Owners shall exercise such rights as provided in the Trust Agreement.

## **ARTICLE X**

### **PROVISIONS RELATING TO THE CERTIFICATE INSURER**

SECTION 10.1. *Provisions of this Article are Controlling.* The following provisions of this Article shall control and supersede any conflicting or inconsistent provisions in this Lease Agreement, the Site Lease, the Assignment Agreement or the Trust Agreement.

SECTION 10.2. *Certificate Insurer as Sole Owner.* So long as the Certificate Insurance Policy is in effect and the Certificate Insurer is not in default in respect of its payment obligations thereunder, the Certificate Insurer shall be (i) deemed to be the sole and exclusive Owner of the Certificates for purposes of all approvals, consents, waivers, institution of any action, and the direction of all remedies, and (ii) entitled to direct and control the enforcement of all remedies under the Lease and Site Lease.

SECTION 10.3. *Certificate Insurer Consent.* Any amendment or supplement to this Lease Agreement or the Site Lease shall be subject to the prior written consent of the Certificate Insurer. No release or substitution of any property subject to this Lease Agreement or the Site Lease or any deed of trust or other document evidencing a security interest (as used herein, a "Security Interest") in the Leased Property shall occur

without the prior written consent of the Certificate Insurer. No termination, assignment (other than to the Trustee under the Assignment Agreement), transfer or sublease of the Site Lease or this Lease Agreement shall be permitted without the prior written consent of the Certificate Insurer.

SECTION 10.4. *Preservation of Leased Property.* The District shall, on an ongoing basis, execute and deliver all documents and make or cause to be made all filings and recordings necessary or desirable in order to perfect, preserve and protect the interest of the Trustee in the Leased Property to the extent possible under applicable law. Not earlier than 180 days nor later than 30 days prior to each fifth anniversary of the Closing Date, the District shall deliver to the Trustee and the Certificate Insurer evidence indicating that all filings and recordings have been made and all other actions have been taken so as to perfect, preserve and protect such interests under applicable law. This provision shall survive any termination of this Lease while the Certificates are Outstanding.

SECTION 10.5. *Application of Net Proceeds.* If insurance or condemnation proceeds with respect to the Leased Property are received, such proceeds shall be applied to replacement or restoration of the affected property or to the prepayment of the Certificates; *provided, however,* that unless all Outstanding Certificates are to be prepaid from such amount, prior written consent of the Certificate Insurer shall be required for any such prepayment.

SECTION 10.6. *Limit on Debt and Liens.* Other than the Certificates, the District may not incur additional debt payable from the Lease Payments and may not impose a lien or encumbrance on the Leased Property, without the prior consent of the Certificate Insurer; provided nothing herein constitutes a limit on the District's ability to incur additional debt payable from the same source as the Lease Payments.

SECTION 10.7. *Annual Installment Insurance Payments.* The District agrees to pay the Certificate Insurer each annual installment insurance payment due in connection with the Certificate Insurance Policy and the Reserve Policy on the dates and in the amounts set forth in the Certificate Insurance Policy, the Reserve Policy and/or the Debt Service Reserve Agreement relating to the Reserve Policy.

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.1. *Notices.* Any notice, request, complaint, demand or other communication under this Lease may be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice will be effective either (a) upon transmission by facsimile, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The District, the Corporation and the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder. Notices may be delivered in via e-mail to the officer identified below but will only be effective upon receipt by the sender of an acknowledgment of such recipient.

*If to the District  
or the Corporation:*

Mt. Diablo Unified School District  
1936 Carlotta Drive  
Concord, California 94519  
Attention: Superintendent

*If to the Trustee:*

U.S. Bank National Association  
1 California Street, Suite 1000  
San Francisco, California 94111  
Attention: Global Corporate Trust Services

*If to the Certificate Insurer:*

SECTION 11.2. *Binding Effect.* This Lease inures to the benefit of and is binding upon the Corporation, the District, the Certificate Insurer and their respective successors and assigns.

SECTION 11.3. *Severability.* If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding does not invalidate or render unenforceable any other provision hereof.

SECTION 11.4. *Net-net-net Lease.* This Lease is a "net-net-net lease" and the District hereby agrees that the Lease Payments are an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 11.5. *Third Party Beneficiaries.* The Trustee and the Certificate Insurer are hereby made third party beneficiaries hereunder with all rights of third party beneficiaries.

SECTION 11.6. *Further Assurances and Corrective Instruments.* The Corporation and the District shall, 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 Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

SECTION 11.7. *Execution in Counterparts.* This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.8. *Applicable Law.* This Lease is governed by and construed in accordance with the laws of the State of California.

SECTION 11.9. *Corporation and District Representatives.* Whenever under the provisions of this Lease the approval of the Corporation or the District is required, or the Corporation or the District is required to take some action at the request of the other, such approval or such request shall be given for the Corporation by an Corporation Representative and for the District by a District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

SECTION 11.10. *Captions.* The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

IN WITNESS WHEREOF, the Corporation and the District have caused this Lease to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**MT. DIABLO UNIFIED SCHOOL DISTRICT  
EDUCATION FACILITIES FINANCING  
CORPORATION, *as lessor***

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

**MT. DIABLO UNIFIED SCHOOL  
DISTRICT, *as lessee***

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

Attest

\_\_\_\_\_  
Name  
Title

## **APPENDIX A**

### **DESCRIPTION OF THE LEASED PROPERTY**

*The Leased Property consists of the following described land located in the City of Concord, County of Contra Costa, State of California, together with all buildings, facilities and other improvements which constitute real property and which are located thereon:*

## APPENDIX B

### SCHEDULE OF LEASE PAYMENTS

<u>Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Payment</u>
September 1, 2018			
March 1, 2019			
September 1, 2019			
March 1, 2020			
September 1, 2020			
March 1, 2021			
September 1, 2021			
March 1, 2022			
September 1, 2022			
March 1, 2023			
September 1, 2023			
March 1, 2024			
September 1, 2024			
March 1, 2025			
September 1, 2025			
March 1, 2026			
September 1, 2026			

\* Lease Payments are payable to the Trustee on the fifth Business Day preceding each of the listed Payment Dates.