**MASTER LOAN AGREEMENT**

**Recitals**:

WHEREAS, the Authority is a public instrumentality of the State of California (the “State”), created by the California Educational Facilities Authority Act (constituting Chapter 2 (commencing with Section 94100) of Part 59 of Division 10 of Title 3 of the Education Code) (the “Act”), authorized to issue revenue bonds, notes and other obligations and to loan the proceeds thereof to a participating private college or a participating nonprofit entity (both as defined in the Act) to finance and/or refinance projects (as defined in the Act);

WHEREAS, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Borrower”) is a nonprofit [public benefit/religious] corporation duly organized and existing under the laws of the State;

[WHEREAS, the Authority/[*name of issuer*] has previously issued its [Revenue Bonds (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), Series \_\_\_\_\_ (the “Prior Bonds”)], in the aggregate principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of which $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ currently is outstanding, and [made a loan (the “Prior Loan”) of the proceeds thereof to the Borrower to finance or refinance the acquisition or construction of projects, as more particularly described under the caption “Prior Project” in Exhibit A hereto (the “Prior Project”)]/[and made a loan (the “Prior Loan”) of the proceeds thereof to the Borrower for the purposes of financing or refinancing certain projects, as more particularly described under the caption “Prior Project” in Exhibit A hereto (the “Prior Project”), not originally funded pursuant to the Act (including repayment of related costs, as defined in the Act)];]

WHEREAS, the Borrower has requested that the Authority enter into this Master Loan Agreement to (a) issue an obligation to the Lender in the aggregate principal amount of $\_\_\_\_\_\_\_\_\_\_ (the "Authority Loan") and (b) loan the proceeds of the Authority Loan to the Borrower (the "Borrower Loan" and, collectively together with the Authority Loan, the "Loan") to [(i) finance the costs of the \_\_\_\_\_\_\_\_\_; (ii) refund a portion of the outstanding Prior Bonds in the amount of $\_\_\_\_\_\_\_\_\_\_, and (iii) pay costs associated with the execution and delivery of the Master Loan Agreement];

WHEREAS, for and in consideration of the Borrower Loan from the Authority, the Borrower agrees, inter alia, to make loan payments to the Authority sufficient to pay the principal of, and premium, if any, and interest on the Borrower Loan (the "Payments"), plus other Additional Payments (as defined herein), on the dates and according to the terms specified herein;

WHEREAS, the Authority will assign the payments due to the Authority from the Borrower under the Borrower Loan pursuant to this Master Loan Agreement (except any payments due to the Authority pursuant to Reserved Authority Rights (as hereinafter defined)) to the Lender to satisfy the Authority's obligations under the Authority Loan;

WHEREAS, the Borrower shall make the Payments directly to the Lender as assignee of the Authority;

WHEREAS, the Lender acknowledges that the obligations of the Authority to make loan payments under the Authority Loan are special, limited obligations payable solely from such assigned Payments and the Authority is not directly or indirectly or contingently or morally obligated to use any other moneys or assets of the Authority for all or any portion of such loan payments; and

WHEREAS, the Authority, the Lender and the Borrower have duly authorized the execution and delivery of this Master Loan Agreement;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained herein, the parties agree as follows:

**Definitions**:

*The definitions of “Borrower” and “Lender” must include successors and assigns.*

“Administrative Fees and Expenses” means the expenses incurred by the Authority pursuant to this Master Loan Agreement, or incurred by its officers, directors, members, attorneys, agents or employees in the administration and execution of this Master Loan Agreement, including Authority Fees and Expenses.

"Authority Fees and Expenses" means, with respect to this Master Loan Agreement, the fees payable to the Authority for the Authority's services in connection with the preparation, review and execution of this Master Loan Agreement and the Authority's fees, costs and expenses described in Sections [*Authority* *fees and expenses*] and [*indemnification of Authority*] hereof.

"Payments" means payments of principal, interest, and prepayment charges, if any, with respect to the Loan (excluding Additional Payments, including, without limitation, Authority Fees and Expenses, indemnity payments and other payments by Borrower due to the Authority or Lender hereunder) payable by Borrower pursuant to this Master Loan Agreement. Payments shall be payable by Borrower directly to Lender as assignee of the Authority, in the amounts and at the times as set forth in this Master Loan Agreement.

“Reserved Authority Rights” means (i) the right to receive any Administrative Fees and Expenses to the extent payable to the Authority, (ii) any rights of the Authority to be indemnified, held harmless and defended and rights to inspection and to receive notices, certificates and opinions, (iii) express rights to give approvals, consents or waivers, and (iv) the obligation of the Borrower to make deposits pursuant to the Tax Certificate and Agreement.

**Borrower Representations**:

The Borrower represents and warrants, for the benefit of Lender and the Authority, that (such representations and warranties to remain operative and in full effect regardless of the funding of the Loan or any investigations by or on behalf of the Lender or the Authority or the results thereof):

The Borrower is a nonprofit [public benefit/religious] corporation duly incorporated and in good standing under the laws of the State, has or had, as appropriate, the requisite corporate right, power and authority to enter into this Master Loan Agreement, the Tax Certificate and Agreement, [*list other Borrower documents*] (collectively, the "Borrower Loan Documents") and to carry out and consummate all transactions contemplated with respect to the Borrower hereby and thereby, and by proper corporate action has duly authorized the execution and delivery of the Borrower Loan Documents.

The officer[s] of the Borrower executing the Borrower Loan Documents are duly and properly in office and fully authorized to execute the same.

The Borrower has duly executed and delivered each of the Borrower Loan Documents.

Each of the Borrower Loan Documents constitutes the legal, valid and binding agreement of the Borrower, enforceable against the Borrower in accordance with its terms, except, in each case, as enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, by the application of equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law, and by the exercise of judicial discretion in appropriate cases.

The execution and delivery of the Borrower Loan Documents and the consummation of the transactions herein and therein contemplated [and the fulfillment of or compliance with the terms and conditions thereof] will not (1) conflict with or constitute a breach or violation of or default (with due notice or passage of time or both) under the articles of incorporation or the bylaws of the Borrower, any applicable law or administrative rule or regulation or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, bond, debenture, note or other evidence of indebtedness or any contract, agreement, lease or other instrument to which the Borrower is a party or to which or by which the Borrower or any of the Borrower’s property is bound, or (2) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, breach, violation, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents or the financial condition, assets, properties or operations of the Borrower.

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

There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending or, to the knowledge of the Borrower, after reasonable investigation, threatened against or affecting the Borrower or the assets, properties or operations of the Borrower:

(i) seeking to restrain or enjoin the execution and delivery of the Borrower Loan Documents;

(ii) in any way contesting or affecting the validity of the Borrower Loan Documents;

(iii) in any way contesting the corporate existence or powers of the Borrower necessary to consummate the transactions contemplated by the Borrower Loan Documents;

(iv) contesting or affecting the Borrower’s status as an organization described in Section 501(c)(3) of the Code or which would subject any income of the Borrower to federal income taxation to such extent as would result in loss of the exclusion from gross income for federal income tax purposes of interest on any of the Authority Loan under Section 103 of the Code; or

(v) which, if determined adversely to the Borrower, would materially adversely affect the ability of the Borrower to perform its obligations under the Borrower Loan Documents.

The Borrower is an organization described in Section 501(c)(3) of the Code, and is exempt from federal income tax under Section 501(a) of the Code, except for any unrelated business taxable income of the Borrower under Section 511 of the Code, which income is not expected to result from the consummation of any transaction contemplated by the Borrower Loan Documents. The Borrower is not a private foundation within the meaning of Section 509(a) of the Code. The facts and circumstances which formed the basis of the Borrower’s status as an organization described in Section 501(c)(3) of the Code as represented to the Internal Revenue Service continue substantially to exist.

No facility financed or refinanced by any portion of the proceeds of the Loan is or currently is expected to be used by any Person which is not an “exempt person” within the meaning of the Code and the regulations proposed and promulgated thereunder, or by a governmental unit or a 501(c)(3) organization (including the Borrower) in an “unrelated trade or business” within the meaning of Section 513(a) of the Code and the regulations proposed and promulgated thereunder, in such manner or to such extent as would result in loss of exclusion from gross income for federal tax purposes of interest on the Authority Loan under Section 103 of the Code.

The audited [consolidated] balance sheet of the Borrower, as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, and the [consolidated] statements of activities and cash flows for the year then ended (copies of which have been furnished to the Authority) present fairly, in all material respects, the financial position of the Borrower as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_ and the changes in such activities and financial position for the year then ended in accordance with generally accepted accounting principles; and since \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_, there has been no material adverse change in the assets, operations or financial condition of the Borrower.

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

[The Borrower does not maintain a defined benefit plan that is subject to ERISA funding requirements.] / Each ERISA Plan of the Borrower is in compliance in all material respects with the applicable provisions of ERISA and the Code. To the best knowledge of the Borrower, no ERISA Plan has engaged in, and compliance by the Borrower with the provisions of this Master Loan Agreement will not involve, any non-exempt prohibited transaction that would subject the Borrower to a material tax or penalty on prohibited transactions. No ERISA Plan that is subject to Part 3 of Subtitle B of Title I of ERISA or Section 412 of the Code has had an accumulated funding deficiency, whether or not waived as of the last day of the most recent plan year of such ERISA Plan ended prior to the date hereof. No liability to the Pension Benefit Guaranty Corporation has been, or is expected by the Borrower to be, incurred by the Borrower with respect to any ERISA Plan subject to Title IV of ERISA, other than for premium payments. There has been no material Reportable Event with respect to any ERISA Plan subject to Section 4043 of ERISA since the effective date of said Section 4043 for which the Borrower could have any liability, and since such date no event or condition has occurred that presents a material risk of termination of any such ERISA Plan by the Pension Benefit Guaranty Corporation. As of the most recent valuation date, the present value of all vested accrued benefits under each ERISA Plan subject to Title IV of ERISA as determined by each ERISA Plan’s enrolled actuary within the meaning of Section 103 of ERISA under actuarial assumptions used in connection with the actuarial valuation of each such ERISA Plan did not exceed the value of such ERISA Plan’s assets (less all liabilities other than those attributable to accrued benefits), as determined by each such enrolled actuary, allocable to such vested accrued benefits. Neither the Borrower nor any Common Control Entity has incurred any withdrawal liability in connection with a Multiemployer Plan. As used in this paragraph (l), the terms “ERISA Plan,” “Reportable Event,” “Common Control Entity” and “Multiemployer Plan” shall have the respective meanings ascribed thereto in Section \_\_\_\_ of this Master Loan Agreement [*x-reference to appropriate section in “Covenants”*]].

No representation made, nor any information, exhibit or report furnished to the Authority by the Borrower in connection with the negotiation of this Master Loan Agreement and the Tax Certificate and Agreement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. There is no fact that the Borrower has not disclosed to the Authority in writing that materially and adversely affects or in the future may (so far as the Borrower can now reasonably foresee) materially and adversely affect the properties, business, assets or operations (financial or otherwise) of the Borrower or the ability of the Borrower to perform its obligations under this Master Loan Agreement or any documents or transactions contemplated hereby.

The Borrower has good and marketable title to its facilities/to its ownership in the leasehold of the facilities, free and clear from all encumbrances [other than Permitted Encumbrances].

The Borrower is in compliance in all material respects with all applicable Environmental Laws.

Neither the Borrower nor its facilities are the subject of a federal, state or local investigation evaluating whether any remedial action is needed to respond to any alleged violation or condition regulated by Environmental Laws or to respond to a release of any Hazardous Materials into the environment.

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

Except for such Hazardous Materials, toxic substances or wastes as occur, are handled and are disposed of in the ordinary course of business of the Borrower, no Hazardous Materials, toxic substances or wastes are located at, or have been removed from, the Borrower’s properties.

The Borrower is a “participating private college”/“participating nonprofit entity” as defined in the Act. The Borrower does not restrict the admission of a student based on his or her race or ethnicity, and the financing of the Project/Prior Project from Loan proceeds does not violate Section 5 of Article XVI of the California Constitution or the establishment clause of the First Amendment to the United States Constitution, to the extent such limitations are not prohibited by law. The Borrower is an institution for higher education other than a public college, situated within the state and that, by virtue of law or charter, is a nonprofit private or independent degree-granting educational institution that is regionally accredited and empowered to provide a program of education beyond the high school level. Except as has been disclosed by the Borrower to the Authority in writing, that accrediting body has not issued a warning, imposed a sanction, a show cause order or placed the Borrower on probation in the past ten years.

The Project constitutes a “project” as that term is defined in the Act. To the extent such prohibition is not prohibited by law, no portion of the Project/Prior Project includes any facility, place or building used or to be used for sectarian instruction or as a place for religious worship. No portion of the Project/Prior Project includes any facility, place or building used or to be used primarily in connection with any part of the vocational religious training programs of a school of divinity or department of divinity, in each case through the useful life of the facility, place or building.

The Borrower is and shall be responsible for the direct operation and maintenance costs of the Project/Prior Project and, in addition, is and shall be responsible for the overall supervision of the Project/Prior Project, for the overhead and general administrative costs of the Borrower which are incurred because of the Project/Prior Project and for the integration of the Project/Prior Project operation into the Borrower's educational program.

[The Borrower represents that the portion of the proceeds of the Authority Loan allocable to the cost of financing of the Project does not exceed the total cost allocable to the cost of financing thereof.]

**Authority Fees and Expenses**:

The Authority’s closing fee ($\_\_\_\_\_\_\_\_\_\_) for the Loan will be paid to the Authority on the Closing Date, as described in the invoice of the Authority, from funds provided by the Borrower.

**Security for the Authority Loan**:

As security for the repayment of the Authority Loan, the Authority hereby assigns to Lender all of its right, title and interest in this Master Loan Agreement except for Reserved Authority Rights, including the Authority’s rights to receive Payments with respect to the Borrower Loan (and hereby directs Borrower to make such Payments directly to, or at the direction of, Lender), to collect the Payments and any other payments due to the Authority hereunder the receipt of which is not part of Reserved Authority Rights, and to sue in any court for such Payments or other payments, to exercise all rights hereunder with respect to the facilities, and to withdraw or settle any claims, suits or proceedings pertaining to or arising out of this Master Loan Agreement and the Borrower Loan upon any terms (other than any claims related to Reserved Authority Rights). Such assignment by the Authority to Lender shall be an absolute assignment without recourse to the Authority. Such Payments and other payments the receipt of which is not part of Reserved Authority Rights shall be made by the Borrower directly to Lender, as Authority’s assignee, without the requirement of notice or demand, at such place as Lender may from time to time designate in writing, and shall be credited against Authority’s payment obligations under the Authority Loan. All amounts required to be paid by Borrower hereunder shall be paid in lawful money of the United States of America in immediately available funds.

**Additional Payments**:

In addition to Loan Repayments, the Borrower shall also pay to the Authority “Additional Payments,” as provided in this Section. Such Additional Payments may be discharged in whole or in part by payment actually received from available proceeds of the Loan or may be billed to the Borrower by the Authority from time to time, together with a statement certifying the amount billed has been incurred or paid for one or more of the below items. After such a demand, amounts so billed shall be paid by the Borrower within thirty (30) days after receipt of the bill by the Borrower. The obligations of the Borrower under this Section shall survive the final payment of the Loan and termination of this Master Loan Agreement.

The Additional Payments to the Authority include:

All taxes and assessments of any type or character charged to the Authority affecting the amount available to the Authority from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments); provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Authority, at the Borrower’s expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Authority and the Borrower has provided the Authority with security and indemnification reasonably deemed adequate by the Authority in respect of such affected rights or interests;

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

The annual fee of the Authority, any and all fees and expenses incurred primarily in connection with the authorization, issuance, sale and delivery of this Master Loan Agreement and the reasonable fees and expenses of the Authority or any agency of the State selected by the Authority to act on its behalf in connection with this Master Loan Agreement, including, without limitation, in connection with any litigation, investigation, inquiry or other proceeding which may at any time be instituted involving this Master Loan Agreement or any of the other documents contemplated thereby, or by the Attorney General of the State of California or such other counsel as the Authority may select in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration (both before and after the execution of this Master Loan Agreement) of this Master Loan Agreement;

All amounts payable to the Authority under Section [*Indemnity Section*]; and

All other reasonable and necessary fees and expenses attributable to this Master Loan Agreement, or related documents, including without limitation all payments required pursuant to the Tax Certificate and Agreement.

**Covenants and Agreements**:

***Admissions and Facility Restrictions***

The Borrower covenants and agrees that it will not restrict the admission of a student based on his or her race or ethnicity and that it will not, to the extent such prohibition is not prohibited by law, include in any portion of the Project/Prior Project any facility, place or building used or to be used for sectarian instruction or as a place for religious worship. No portion of the Project/Prior Project includes any facility, place or building used or to be used primarily in connection with any part of the vocational religious training programs of a school of divinity or department of divinity through the useful life of the facility, place or building. The Authority and its designees shall have the right, but shall not be obligated, to inspect the Borrower’s educational facilities at all reasonable times for the purpose of verifying the foregoing and due compliance by the Borrower with its annual certificate of compliance delivered as required by this Master Loan Agreement and with the Constitutions of the United States and of the State. This covenant shall survive the payment in full of the Loan.

***Prohibited Uses***

No portion of the Project/Prior Project will be used (i) by any person that is not an organization described in Section 501(c)(3) of the Code or by a 501(c)(3) organization, including the Borrower, in an “unrelated trade or business” (as such term is defined in Section 513 of the Code), in such manner or to such extent as would result in any of the Authority Loan being treated as an obligation not described in Section 103(a) of the Code.

***Nonliability of Authority***

This Master Loan Agreement and the Authority Loan shall not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the faith and credit of the State or of any political subdivision other than the Authority, but shall be payable solely from the funds therefor provided. Neither the State nor the Authority shall be obligated to pay the principal of the Authority or the premium, if any, or the interest thereon except from Payments made by the Borrower under this Master Loan Agreement, and neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the premium, if any, or the interest on the Authority Loan. The execution and delivery of this Master Loan Agreement and the Authority Loan shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for its payment. The Authority has no taxing power.

The Authority shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind or any conceivable theory, under or by reason of or in connection with this Master Loan Agreement, except only to the extent amounts are received for payment thereof from the Borrower under this Master Loan Agreement.

The Borrower hereby acknowledges that the Authority's sole source of moneys to repay the Authority Loan will be the Payments made by the Borrower hereunder, and hereby agrees that if the Payments to be made by the Borrower hereunder shall ever prove insufficient to pay all principal of, and premium, if any, and interest on the Authority Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Borrower, the Authority or any third party.

No member, officer, official, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of the Authority Loan or the premium, if any, or interest on the Authority Loan or be subject to any personal liability or accountability by reason of the origination thereof; but nothing herein contained shall relieve any such member, officer, official, agent or employee of the Authority from the performance of any official duty provided by law or by this Master Loan Agreement.

***Indemnification***

* + - 1. The Borrower, to the fullest extent permitted by law, shall indemnify, hold harmless the Authority, the State Treasurer and their members, officers, employees and agents (each an “Indemnified Party”) from and against any and all Indemnifiable Losses (defined below) arising out of, resulting from or in any way connected with:

the [facilities, including the Project/facilities comprising any part of the Project] to be financed [or refinanced], or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or from the planning, design, acquisition, installation or construction, of the [Facilities/Project] or any part thereof, including, without limitation, Indemnifiable Losses resulting from or in any way relating to any generation, processing, handling, transportation, storage, treatment or disposal of solid wastes, Hazardous Materials or any other Hazardous Material Activity relating to the [Facilities/Project] including, but not limited to, any of those activities occurring, to occur or having previously occurred on the [Facilities/Project] and any Releases on, under or from the facilities to the extent occurring or existing prior to the execution and delivery of this Master Loan Agreement;

the execution and delivery of this Master Loan Agreement and the Authority Loan or the carrying out of any of the transactions or undertakings contemplated by this Master Loan Agreement, [*list other Borrower agreements – must include Tax Certificate and Agreement*] or any document delivered by the Borrower pursuant to, or in connection with, any of the foregoing;

any declaration of taxability of interest paid or payable on the Authority Loan, or allegations (or regulatory inquiry) that interest paid or payable on the Authority Loan is taxable, for federal or State income tax purposes;

[the refunding, retirement, tender for purchase and/or redemption, in whole or in part, of the Prior Bonds;]

any misrepresentation or breach of warranty by the Borrower of any representation or warranty in this Master Loan Agreement, [*list other Borrower agreements – must include Tax Certificate and Agreement*] or any document delivered by the Borrower pursuant to, or in connection with, any of the foregoing; or

any breach by the Borrower of any covenant or undertaking set forth in this Master Loan Agreement, [*list other Borrower agreements – must include Tax Certificate and Agreement*] or any document delivered by the Borrower pursuant to, or in connection with, any of the foregoing;

provided that such indemnification pursuant to this Section shall not apply to Indemnifiable Losses resulting because of the gross negligence or willful misconduct of any Authority Indemnified Party.

The Authority agrees to notify the Borrower promptly, but in no event later than twenty (20) business days, after written notice to the Authority that any third party has brought any action, suit or proceeding against an Indemnified Party that may result in an Indemnifiable Loss (a “Third Party Action”). Upon such notice or other notice from an Indemnified Party of a Third Party Action, the Borrower shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party and reasonably acceptable to the Borrower (which may be the Attorney General of the State of California), and shall assume the payment of all Litigation Expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove (in its sole and absolute discretion) any such compromise or settlement and the Indemnified Party has no liability with respect to any compromise or settlement of any Third Party Action effected without its written approval. Each Indemnified Party shall have the right to employ separate counsel in any Third Party Action and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and disbursements of such separate counsel. If the Indemnified Party fails to provide such notice to the Borrower, the Borrower is still obligated to indemnify the Indemnified Party for Indemnifiable Losses[, except that the Borrower is not liable for any Litigation Expense the Indemnified Party incurs during the period in which the Indemnified Party failed to give such notice.].

The rights and undertakings set forth in this Section do not terminate and survive the final payment of the Loan and the termination of this Master Loan Agreement.

For purposes of this Section “Indemnifiable Losses” means the aggregate of Losses (defined below) and Litigation Expenses (defined below).

For purposes of this Section “Losses” means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (other than punitive damages to the extent they may not, under law, be indemnified), diminution in value, fine, fee and penalty, and other charge, of every conceivable kind, character and nature whatsoever, contingent or otherwise, known or unknown, except Litigation Expenses. For purposes of this Section “Litigation Expenses” means any court filing fee, court cost, witness fee, and each other fee and cost of investigating and defending or asserting a claim, including, without limitation, in each case, attorneys’ fees, other professionals’ fees and disbursements.

***ERISA*** [*include only if Borrower maintains a defined benefit plan that is subject to ERISA funding requirements. See Borrower Representations.*]

The Borrower shall not, with respect to any ERISA Plan:

incur any “accumulated funding deficiency,” as such term is defined in Section 412 of the Code, whether or not waived, if the amount of such accumulated funding deficiency, plus any accumulated funding deficiencies previously incurred with respect to such ERISA Plan and not eliminated, would aggregate more than $100,000; provided that the incurring of such an accumulated funding deficiency will not be an “event of default” under Section 17 hereof if it is reduced below $100,000 or eliminated within ninety (90) days after the date upon which the Borrower becomes aware of such accumulated funding deficiency; or

terminate any such ERISA Plan in a manner which could result in the imposition of a material lien on the property of the Borrower pursuant to Section 4068 of ERISA and which could materially adversely affect the business, earnings, properties or financial condition of the Borrower; or

withdraw from a Multiemployer Plan in a “complete withdrawal” or a “partial withdrawal” as defined in Sections 4203(a) and 4205(a), respectively, of ERISA, if such withdrawal could materially adversely affect the Borrower’s ability to comply at any time with any of the provisions of this Master Loan Agreement.

The Borrower shall:

fund all current and past service pension liabilities under the provisions of all ERISA Plans such that if all such ERISA Plans were terminated at the same time by the Borrower any liens imposed on the Borrower under Section 4068 of ERISA would not be in an amount in the aggregate which would materially affect the Borrower’s ability to comply at any time with any of the provisions of this Master Loan Agreement; and

otherwise comply in all material respects with the provisions applicable to its ERISA Plans contained in ERISA, the Code and the regulations published thereunder; and

notify the Lender and the Authority promptly after the Borrower knows (i) of the happening of any material Reportable Event with respect to any ERISA Plan and, in any event, at least five (5) days prior to any notification of such material Reportable Event given to the Pension Benefit Guaranty Corporation pursuant to the terms of Section 4043 of ERISA or (ii) of an assessment against the Borrower or any Common Control Entity of any withdrawal liability to a Multiemployer Plan. Notwithstanding anything herein to the contrary, the Borrower need not notify the Lender or the Authority of such material Reportable Event or withdrawal liability unless it might materially adversely affect the business, prospects, earnings, properties or condition (financial or otherwise) of the Borrower.

For purposes of this Section \_\_ and the representations and warranties of the Borrower contained in Section \_\_, the following terms shall have the following meanings. The term “ERISA Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any Common Control Entity. The term “Common Control Entity” means any entity which is a member of a “controlled group of corporations” with, or is under “common control” with, the Borrower as defined in Section 414(b) or (c) of the Code. Multiemployer Plan” has the meaning set forth in Section 4001(a)(3) of ERISA and all rules and regulations promulgated from time to time thereunder. The term “Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

**Reporting Requirements**:

Borrower will deliver, or cause to be delivered, to the Lender, and to the Authority if requested by Authority, each of the following, which shall be in form and detail reasonably acceptable to the Lender and the Authority:

its audited financial statements certified by an independent public accountant selected by the Borrower as of the end of each of its fiscal years, as soon as accepted by its Board of Trustees [or the \_\_\_\_\_\_\_\_\_\_\_\_ Committee thereof] but in any event within 150 days after the end thereof;

promptly upon the request of the Lender or the Authority, such other information regarding the financial position, results of operations, business or prospects of the Borrower as such party may reasonably request from time to time;

In addition to the foregoing, the Borrower shall, at any reasonable time and from time to time, upon prior written notice, permit the Lender and the Authority, and their respective representatives and agents, to (i) inspect the premises and the accounting records and the books of the Borrower for the purpose of verifying compliance by the Borrower with the covenants contained herein and all of the terms of the Act, (ii) examine and make copies of and abstracts from the accounting records and books of account of the Borrower, (iii) discuss the affairs, finances and accounts of the Borrower with any of its officers or directors and (iv) upon notice to the Borrower, communicate with the Borrower’s independent certified public accountants.

**Post-Issuance Compliance**:

Post-Issuance Compliance Undertaking. The Borrower acknowledges that the Internal Revenue Service mandates certain filing requirements with respect to post-issuance tax compliance, private use and/or unrelated trade or business use, including the proper method for computing whether any such use has occurred under Section 145 of the Code. The Borrower covenants that it will undertake to determine (or have determined on its behalf) the information required to be reported on the IRS Form 990 (Schedule K) Supplemental Information on Tax-Exempt Bonds on an annual basis and will undertake to comply with the aforementioned filing requirements and any related requirements that may be applicable to the Loan (collectively, the “Post-Issuance Requirements”). Further, the Borrower covenants that it has adopted, or, if not, will promptly adopt, management practices and procedures to ensure the Borrower complies with the Post-Issuance Requirements with respect to the Loan.

Retention of Post-Issuance Compliance Expert. The Borrower initially [has retained the firm of \_\_\_\_\_\_\_\_\_ to provide] [has designated (insert name of the individual officer/employee of Borrower) to be responsible for providing] certain post-issuance tax compliance services that may be required from time to time with respect to the Loan.

**No Prevailing Party**:

Nothing in this Master Loan Agreement shall be construed to provide for award of attorneys’ fees and costs, as described in Section 1717 of the Civil Code, for the enforcement of this Master Loan Agreement in any action to which the Authority is a party.

**Waiver of Personal Liability**:

No member, officer, official, agent or employee of the Authority or any director, officer, agent or employee of the Borrower shall be individually or personally liable for the payment of any principal of or premium, if any, or interest on the Loan or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Master Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Master Loan Agreement.

**Notices**:

To the Authority at: California Educational Facilities Authority

901 P Street, Room 313

Sacramento, California 95814

Attention: Interim Executive Director

Telephone: (916) 653-2872

Facsimile: (916) 653-2179

**Governing Law; Venue**:

The laws of the State of California govern all matters arising out of or relating to this Master Loan Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Master Loan Agreement shall bring the legal action or proceeding in the Sacramento County Superior Court, Sacramento, California, unless the Authority waives this requirement in writing. Each party agrees that the exclusive (subject to waiver as set forth herein)\_choice of forum set forth in this section does not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum. Each party waives, to the fullest extent permitted by law, (a) any objection which may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this Master Loan Agreement brought in the Sacramento County Superior Court, Sacramento, California, and (b) any claim that any such action or proceeding brought in such court has been brought in an inconvenient forum.

**Rules of Construction**:

The parties hereto acknowledge that each such party and its respective counsel have participated in the drafting and revision of this Master Loan Agreement. Accordingly, the parties agree that the Authority shall not be deemed to be the drafting party of this Master Loan Agreement for purposes of any rule of construction which disfavors the drafting party.

**Successors and Assigns**:

This Master Loan Agreement binds and benefits the parties and their respective [permitted] successors and assigns.

**Complete Agreement**:

This Master Loan Agreement constitutes the entire agreement among the Lender, the Authority, and the Borrower with respect to the subject matter of this Master Loan Agreement and supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter of this Master Loan Agreement.

**Signature Block**:

IN WITNESS WHEREOF, the Lender, the Authority, and the Borrower have caused this Master Loan Agreement to be executed in their respective corporate names as of the date first above written.

LENDER:

[*NAME OF LENDER*]

By:

[*Name and Title of Authorized Representative*]

AUTHORITY:

CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY

By:

Deputy Treasurer  
For Chairperson, State Treasurer [*Treasurer’s Name*]

By:

Interim Executive Director

BORROWER:

[*NAME OF BORROWER*]

By:

[*Name and Title of Authorized Representative*]

The State Treasurer, as agent for sale, hereby

approves this Master Loan Agreement.

TREASURER OF THE STATE OF CALIFORNIA

By:

Deputy Treasurer

For State Treasurer [*Treasurer’s Name*]

**EXHIBIT A**

**Prior Project:**

[*Description should match the description set forth in the CEFA resolution.*]

**New Project:**

[*Description should match the description set forth in the CEFA resolution.*]