

**SUPPLEMENT DATED MAY 15, 2023  
TO PRELIMINARY OFFICIAL STATEMENT DATED MAY 1, 2023**

*relating to*



**\$9,485,000\***  
**UTAH CHARTER SCHOOL FINANCE AUTHORITY**  
**CHARTER SCHOOL REVENUE BONDS**  
**(PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING),**  
**SERIES 2023**

This Supplement, dated May 15, 2023 (the “Supplement”) amends and supplements certain information contained in the Preliminary Official Statement, dated May 1, 2023 (the “Preliminary Official Statement”), relating to the above-referenced bonds. **This Supplement should be read in conjunction with the Preliminary Official Statement.** Terms used in this Supplement have the same meaning as in the Preliminary Official Statement, unless specifically otherwise defined herein. Additions to the original language are indicated by a double underline and deletions are indicated with a strikethrough.

**No Series 2023B Bonds**

1. All references to the Series 2023B Bonds in the Preliminary Official Statement are removed, and all references to Series 2023A Bonds are revised to Series 2023 Bonds.
2. Page 41: The section entitled “TAX MATTERS – Taxable Series 2023B Bonds” is hereby removed in its entirety.

\* \* \* \* \*

**Updated Principal Amounts, Maturity Schedule and Mandatory Sinking Fund Amounts**

3. The principal amount of the Series 2023A Bonds is revised from \$10,310,000\* to \$9,485,000\*.
4. The Maturity Schedule on the inside cover page of the Preliminary Official Statement is hereby deleted in its entirety and replaced with the following:

*[Remainder of page intentionally left blank]*

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\* Preliminary, subject to change.

**MATURITY SCHEDULE\***

**UTAH CHARTER SCHOOL FINANCE AUTHORITY**  
**\$9,485,000\***  
**CHARTER SCHOOL REVENUE BONDS**  
**(PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING),**  
**SERIES 2023**

<b>Maturity Date (October 15)</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield(1)</b>	<b>Price</b>	<b>CUSIP(2)</b>
2023	\$45,000				
2024	115,000				
2025	120,000				
2026	125,000				
2027	135,000				
2028	140,000				
2029	145,000				
2030	155,000				
2031	160,000				
2032	170,000				
2033	180,000				

\$2,245,000\* \_\_\_\_\_ % Term Bond maturing October 15, 2043\* Yield: \_\_\_\_\_(1) CUSIP: \_\_\_\_\_(2)

\$3,395,000\* \_\_\_\_\_ % Term Bond maturing October 15, 2053\* Yield: \_\_\_\_\_(1) CUSIP: \_\_\_\_\_(2)

\$2,355,000\* \_\_\_\_\_ % Term Bond maturing October 15, 2058\* Yield: \_\_\_\_\_(1) CUSIP: \_\_\_\_\_(2)

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\* Preliminary, subject to change.

<sup>(1)</sup> Yield to call at par on October 15, 20\_\_\_. The Series 2023 Bonds are subject to extraordinary redemption prior to their respective maturity dates. Redemption of Series 2023 Bonds that were purchased at a price greater than the applicable redemption price, prior to the first optional redemption date thereof, October 15, 20\_\_\_, could reduce the otherwise expected yield on such Series 2023 Bonds. See “THE SERIES 2023 BONDS – Redemption” and “RISK FACTORS – Redemption Prior to Maturity” herein.

<sup>(2)</sup> CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein are provided by CUSIP Global Services, managed by Factset Research Systems Inc. on behalf of the American Bankers Association. These data are not intended to create a database and do not serve in any way as a substitute for the CUSIP Services. None of the Issuer, Underwriter and the Charter School are responsible for the selection or correctness of the CUSIP numbers set forth herein.

5. Page 6-9: The section entitled “THE SERIES 2023 BONDS – Redemption – Mandatory Sinking Fund Redemption” is hereby deleted in its entirety and replaced with the following:

*Mandatory Sinking Fund Redemption.* The Series 2023 Bonds maturing on October 15, 2043\* are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15 DUE**	PRINCIPAL AMOUNT**
2034	\$185,000
2035	195,000
2036	205,000
2037	210,000
2038	220,000
2039	230,000
2040	235,000
2041	245,000
2042	255,000
2043*	265,000

\* Stated maturity

\*\* Preliminary; subject to change.

The Series 2023 Bonds maturing on October 15, 2053\* are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15 DUE**	PRINCIPAL AMOUNT**
2044	\$275,000
2045	290,000
2046	300,000
2047	315,000
2048	330,000
2049	345,000
2050	360,000
2051	375,000
2052	395,000
2053*	410,000

\* Stated maturity

\*\* Preliminary; subject to change.

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\* Preliminary, subject to change.

The Series 2023 Bonds maturing on October 15, 2058\* are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15 DUE**	PRINCIPAL AMOUNT**
2054	\$430,000
2055	450,000
2056	470,000
2057	490,000
2058*	515,000

\* Stated maturity

\*\* Preliminary; subject to change.

\* \* \* \* \*

#### **Borrower Equity Investment; Sources and Uses of Funds**

6. The forms of Indenture and Loan Agreement set forth in APPENDIX D to the Preliminary Official Statement are revised to reflect the application of Borrower funds deposited with the Trustee to be transferred to the Repair and Replacement Fund, the Costs of Issuance Fund and the Project Fund.
7. Page 23: The section under the heading "SOURCES AND USES OF FUNDS" is hereby deleted in its entirety and replaced with the following:

*[Remainder of page intentionally left blank]*

### Sources and Uses of Funds\*

The following table sets forth the estimated sources and uses of funds from the proceeds of sale of the Series 2023 Bonds and other sources:\*

#### SOURCES:

	Series 2023 Bonds	Borrower Contribution
Principal Amount of Series 2023 Bonds.....	\$9,485,000.00	--
Net Original Issue Discount.....	(165,563.70)	--
Charter School Contribution	--	\$600,000.00
TOTAL.....	<u>9,319,436.30</u>	<u>600,000.00</u>

#### USES:

Refund Refunded Obligations .....	\$5,359,303.86	--
2023 Project .....	3,093,118.72	\$406,964.72
Series 2023 Debt Service Reserve Subaccount.....	538,350.00	--
Repair and Replacement Fund .....	--	100,000
Costs of Issuance* .....	<u>328,663.72</u>	<u>93,035.28</u>
TOTAL.....	<u>\$9,319,436.30</u>	<u>\$600,000.00</u>

\* \* \* \* \*

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\* Preliminary, subject to change.

## Updated Debt Service Schedule

8. Page 23: The section under the heading “DEBT SERVICE REQUIREMENTS” is hereby deleted in its entirety and replaced with the following:

FISCAL YEAR ENDING JUNE 30	PRINCIPAL AMOUNT*	INTEREST	TOTAL
2023	\$ -		\$
2024	\$45,000		
2025	115,000		
2026	120,000		
2027	125,000		
2028	135,000		
2029	140,000		
2030	145,000		
2031	155,000		
2032	160,000		
2033	170,000		
2034	180,000		
2035	185,000		
2036	195,000		
2037	205,000		
2038	210,000		
2039	220,000		
2040	230,000		
2041	235,000		
2042	245,000		
2043	255,000		
2044	265,000		
2045	275,000		
2046	290,000		
2047	300,000		
2048	315,000		
2049	330,000		
2050	345,000		
2051	360,000		
2052	375,000		
2053	395,000		
2054	410,000		
2055	430,000		
2056	450,000		
2057	470,000		
2058	490,000		
2059	<u>515,000</u>		
TOTAL	\$9,485,000		

\* \* \* \* \*

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\* Preliminary, subject to change.

## **Financial Projections**

9. Page B-26: The financial projections set forth in APPENDIX B are hereby deleted in its entirety and replaced with the projections in Exhibit A hereto to reflect the application of \$600,000\* of Charter School equity for the uses described under the heading “SOURCES AND USES OF FUNDS” herein and associated reduction in Charter School cash on hand, as well as reduced estimated debt service, and to include projected net position and cash on hand of the Charter School for each fiscal year.

\* \* \* \* \*

All other provisions of the Preliminary Official Statement not explicitly amended and supplemented hereby remain unchanged.

THE INFORMATION CONTAINED IN THIS SUPPLEMENT IS SUBJECT TO MORE COMPLETE INFORMATION CONTAINED IN THE PRELIMINARY OFFICIAL STATEMENT. THIS SUPPLEMENT IS TO BE READ ONLY IN CONJUNCTION WITH THE PRELIMINARY OFFICIAL STATEMENT. THIS SUPPLEMENT SHOULD NOT BE SEPARATED FROM THE PRELIMINARY OFFICIAL STATEMENT AND NEITHER THIS SUPPLEMENT, NOR THE PRELIMINARY OFFICIAL STATEMENT, MAY BE RELIED UPON IN ANY WAY INDEPENDENT OF EACH OTHER.

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## Exhibit A

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## Promontory School Financial Forecast

	Budget FY23	Forecast FY24	Forecast FY25	Forecast FY26	Forecast FY27	Forecast FY28
<b>Projected Enrollment</b>	449	450	450	450	450	450
<b>Revenues</b>						
Other Local Sources	112,770	114,078	117,500	121,025	124,656	128,396
State Sources	2,968,554	3,274,189	3,372,415	3,473,587	3,577,795	3,685,129
State Local Replacement Fund	1,324,454	1,403,188	1,445,284	1,488,642	1,533,301	1,579,300
Federal Sources	247,048	280,190	288,596	297,254	306,171	315,356
COVID Relief Funds	75,000	100,308				
	4,727,826	5,171,953	5,223,795	5,380,508	5,541,924	5,708,181
<b>Operating Expenses</b>						
100 · Salaries	2,155,348	2,594,800	2,672,644	2,752,823	2,835,408	2,920,470
200 · Employee Benefits	686,800	744,500	751,963	774,521	797,757	821,690
300 · Professional & Technical Services	321,116	334,028	344,049	354,370	365,001	375,951
400 · Purchased Property Services	147,500	163,500	168,405	173,457	178,661	184,021
500 · Other Purchased Services	88,700	93,700	96,511	99,406	102,389	105,460
600 · Supplies & Materials	300,145	312,754	262,137	270,001	278,101	286,444
700 · Property	85,000	65,000	50,000	50,000	50,000	50,000
800 · Misc.	9,534	9,534	9,820	10,115	10,418	10,731
Annual rating and trustee fees.		29,470	29,470	29,470	29,470	29,470
<b>Current Facility Payment</b>	407,583					
<b>New Debt Service Payment</b>		419,919	532,925	532,050	530,925	534,425
	4,201,726	4,767,205	4,917,923	5,046,214	5,178,130	5,318,662
<b>Net Income</b>	526,100	404,748	305,872	334,295	363,794	389,520
<b>Ratio Analysis</b>						
<b>Net Income Available for Debt Service</b>	933,683	824,667	838,797	866,345	894,719	923,945
<b>Debt Service Coverage Ratio</b>	2.29	1.96	1.57	1.63	1.69	1.73
<b>Debt Burden</b>	9%	8%	10%	10%	10%	9%
<b>Cash Balance (Unrestricted)</b>	1,815,686	2,220,434	2,526,306	2,860,601	3,224,395	3,613,914
<b>Days Cash on Hand</b>	158	170	187	207	227	248
<b>Labor/Benefits as % of Revenues</b>	61%	66%	66%	66%	66%	66%

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PRELIMINARY OFFICIAL STATEMENT, DATED MAY 1, 2023

NEW ISSUE  
FULL BOOK ENTRY

RATINGS: CSCE Program Rating: Moody's: "Aa2"  
UNDERLYING RATING: Moody's "Baa3"  
(See: "RATINGS")

Subject to compliance by the Issuer and the Charter School with certain covenants, in the opinion of Chapman and Cutler LLP, Bond Counsel to the Issuer, under present law interest on the Series 2023A Bonds is excludable from gross income of the owners thereof for federal income tax purposes and is not included as an item of tax preference in computing the alternative minimum tax for individuals. For tax years beginning after December 31, 2022, interest on the Series 2023A Bonds may affect the corporate alternative minimum tax for certain corporations. Interest on the Series 2023B Bonds is includable in gross income of the owners thereof for federal income tax purposes. In the opinion of Bond Counsel, under existing laws of the State of Utah, as presently enacted and construed, interest on the Series 2023 Bonds is exempt from taxes imposed by the Utah Individual Income Tax Act. See "TAX MATTERS" herein for a more complete discussion.



UTAH CHARTER SCHOOL FINANCE AUTHORITY

\$10,310,000\*

CHARTER SCHOOL REVENUE BONDS  
(PROMONTORY SCHOOL OF EXPEDITIONARY  
LEARNING), SERIES 2023A

\$90,000\*

TAXABLE CHARTER SCHOOL REVENUE BONDS  
(PROMONTORY SCHOOL OF EXPEDITIONARY  
LEARNING), SERIES 2023B

Dated: Date of Delivery

Due: As shown on inside cover

The Utah Charter School Finance Authority (the "Issuer"), a political subdivision duly organized and existing under the laws of the State of Utah (the "State"), is issuing its \$10,310,000\* Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023A (the "Series 2023A Bonds") and \$90,000\* Taxable Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023B (the "Series 2023B Bonds") and, collectively with the Series 2023A Bonds, the "Series 2023 Bonds", pursuant to an Indenture of Trust, dated as of May 1, 2023 (the "Indenture"), between the Issuer and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"). The Series 2023 Bonds will be dated their date of delivery and will mature as shown on the inside cover. The Series 2023 Bonds will bear interest payable on April 15 and October 15 of each year, commencing October 15, 2023, until maturity or earlier redemption. Capitalized terms used herein and not otherwise defined, have the meanings set forth in "APPENDIX D—FORMS OF BOND DOCUMENTS."

Proceeds from the sale of the Series 2023 Bonds will be loaned by the Issuer to Promontory School of Expeditionary Learning, a Utah nonprofit corporation (the "Charter School" or "Borrower") pursuant to a Loan Agreement, dated as of May 1, 2023, between the Issuer and the Charter School (the "Loan Agreement") for the purpose of (i) refunding certain outstanding obligations of the Borrower (the "Refunded Obligations"), which financed the costs of acquiring the Borrower's charter school facilities (the "Existing Facilities"), (ii) financing the acquisition and construction of improvements to the Existing Facilities (the "2023 Project"), (iii) funding a debt service reserve, and (iv) paying costs of issuance of the Series 2023 Bonds.

The Series 2023 Bonds are subject to optional, mandatory sinking fund, and extraordinary redemption, as described herein.

The Series 2023 Bonds will be issued as fully-registered bonds in minimum denominations of \$5,000 or any integral multiple of \$1,000 in excess thereof.

The Series 2023 Bonds will be issued as registered bonds in book-entry-only form in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York, which will act as securities depository for the Series 2023 Bonds. Purchases of beneficial interests in the Series 2023 Bonds will be made in book-entry-only form and purchasers will not receive physical certificates representing the ownership interest in the Series 2023 Bonds purchased by them. See "THE SERIES 2023 BONDS—Book-Entry-Only System."

The Series 2023 Bonds constitute limited obligations of the Issuer and, except to the extent payable from Series 2023 Bond proceeds, investment income, certain funds held under the Indenture, and amounts that may be appropriated by the State of Utah pursuant to the Act, are payable solely from certain payments, revenues and other amounts derived by the Issuer pursuant to the Loan Agreement. The Series 2023 Bonds are secured solely by the Trust Estate, which is limited to (i) the rights and interests of the Issuer under the Loan Agreement (subject to the retention by the Issuer of the Issuer's Unassigned Rights (as defined herein), (ii) the Facilities and the Issuer's rights and interests in the Facilities; (iii) the Pledged Revenues and the Issuer's rights and interests in the Pledged Revenues; (iv) the rights and interests of the Issuer and the Charter School under the Deed of Trust (defined below), and the promissory note payable to the Issuer and executed by the Charter School (the "Promissory Note"); and (v) all Funds (as defined in the Indenture) other than the Costs of Issuance Fund and the Rebate Fund. Payments to be received by the Issuer from the Charter School will be the Issuer's sole expected source of Pledged Revenues.

Pursuant to the Indenture, the Issuer has covenanted to request appropriations from the State Legislature under the Charter School Credit Enhancement Program. The Issuer has covenanted to certify by December 1 of each year to the Governor of the State the amount, if any, required to restore amounts on deposit in the Debt Service Reserve Subaccount relating to the Series 2023 Bonds to the Debt Service Reserve Requirement relating to the Series 2023 Bonds.

The Series 2023 Bonds are limited obligations of the Issuer payable solely from the Trust Estate, do not give rise to a general obligation or liability of the Issuer or a charge against its general credit, and shall never constitute nor give rise to a pecuniary liability of the Issuer. The Series 2023 Bonds do not constitute a debt, liability or loan of credit or a pledge of the full faith and credit or taxing power of the State or of any political subdivision thereof. The issuance of the Series 2023 Bonds shall not directly, indirectly, or contingently obligate the Issuer, the State or any agency, instrumentality or political subdivision thereof to levy any form of taxation or to make any appropriation for their payment. All State Payments received by the Charter School pursuant to the Charter School Act are subject to annual appropriation. The Charter School has no taxing power. For more information, see "Security for the Series 2023 Bonds" and "Risk Factors."

The Series 2023 Bonds are offered when, as and if issued by the Issuer subject to the approval of legality and certain other matters by Chapman and Cutler LLP, as Bond Counsel to the Issuer. Certain legal matters will be passed upon for the Issuer by its counsel, the Office of the Attorney General of the State of Utah and Dorsey & Whitney LLP; for the Charter School by Farnsworth Johnson PLLC; and for the Underwriter by Ballard Spahr LLP. It is expected that delivery of the Series 2023 Bonds will be available for delivery through the facilities of DTC on or about May 25, 2023\*.

This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read this entire Official Statement to obtain information essential to making an informed investment decision and should give particular attention to the material under the caption "RISK FACTORS."

This Official Statement is dated \_\_\_\_\_, 2023, and the information contained herein speaks only as of such date.

BAIRD

\* Preliminary; subject to change.

**MATURITY SCHEDULE\***

**UTAH CHARTER SCHOOL FINANCE AUTHORITY**

**\$10,310,000\***

**CHARTER SCHOOL REVENUE BONDS  
(PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING),  
SERIES 2023A**

\$1,645,000\* \_\_\_\_\_ % Term Bond maturing October 15, 2033\* Yield: \_\_\_\_\_%(1) CUSIP: \_\_\_\_\_(2)  
\$2,460,000\* \_\_\_\_\_ % Term Bond maturing October 15, 2043\* Yield: \_\_\_\_\_%(1) CUSIP: \_\_\_\_\_(2)  
\$3,690,000\* \_\_\_\_\_ % Term Bond maturing October 15, 2053\* Yield: \_\_\_\_\_%(1) CUSIP: \_\_\_\_\_(2)  
\$2,515,000\* \_\_\_\_\_ % Term Bond maturing October 15, 2058\* Yield: \_\_\_\_\_%(1) CUSIP: \_\_\_\_\_(2)

**\$90,000\***

**TAXABLE CHARTER SCHOOL REVENUE BONDS  
(PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING),  
SERIES 2023B**

\$90,000\* \_\_\_\_\_ % Term Bond maturing October 15, 2024\* Yield: \_\_\_\_\_%(1) CUSIP: \_\_\_\_\_(2)

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\* Preliminary; subject to change.

- (1) Yield to call at par on October 15, 20\_\_\_. The Series 2023 Bonds are subject to extraordinary redemption prior to their respective maturity dates. Redemption of Series 2023 Bonds that were purchased at a price greater than the applicable redemption price, prior to the first optional redemption date thereof, October 15, 20\_\_\_, could reduce the otherwise expected yield on such Series 2023 Bonds. See “THE SERIES 2023 BONDS – Redemption” and “RISK FACTORS – Redemption Prior to Maturity” herein.
- (2) CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein are provided by CUSIP Global Services, managed by Factset Research Systems Inc. on behalf of the American Bankers Association. These data are not intended to create a database and do not serve in any way as a substitute for the CUSIP Services. None of the Issuer, Underwriter and the Charter School are responsible for the selection or correctness of the CUSIP numbers set forth herein.

**UTAH CHARTER SCHOOL FINANCE AUTHORITY**

**\$10,310,000\***  
**CHARTER SCHOOL REVENUE BONDS**  
**(PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING),**  
**SERIES 2023A**

**\$90,000\***  
**TAXABLE CHARTER SCHOOL REVENUE BONDS**  
**(PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING),**  
**SERIES 2023B**

**ISSUER**

Utah Charter School Finance Authority  
Marlo Oaks, Chair  
Sophia DiCaro, Vice-Chair  
Scott Jones, Secretary

**BOARD OF TRUSTEES OF THE CHARTER SCHOOL**

Amber Edelman, Chair  
Michelle Flynn, Vice Chair  
Dorothy Dobson  
Michael Engh  
Becca Ashby  
Josie Beth Archibald  
Karen Braithwaite  
Stephanie Quintero

**ADMINISTRATION OF THE CHARTER SCHOOL**

Jennifer Blaine, Directors

**BOND COUNSEL**

Chapman and Cutler LLP  
Salt Lake City, Utah

**COUNSEL TO THE ISSUER**

Office of the Attorney General of the State of Utah  
Salt Lake City, Utah; and

Dorsey & Whitney LLP  
Salt Lake City, Utah

**FINANCIAL ADVISOR TO THE CHARTER SCHOOL**

RoundTable Funding  
Bountiful, Utah

**INDEPENDENT AUDITOR**

Eide Bailly LLP  
Orem, Utah

**TRUSTEE**

U.S. Bank Trust Company, National Association  
Salt Lake City, Utah

**CHARTER SCHOOL COUNSEL**

Farnsworth Johnson PLLC  
Provo, Utah

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\* Preliminary; subject to change.

No person has been authorized by the Issuer, Robert W. Baird & Co. Incorporated (the “Underwriter”), or the Charter School to give any information regarding the Series 2023 Bonds, the Charter School, the Facilities, the offering contained herein and related matters or to make any representations other than those contained in this Official Statement, and if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy in any state in which it is unlawful for any person to make such offer or solicitation. The information contained in this Official Statement has been furnished by or on behalf of the Charter School and other sources which are believed to be reliable. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the parties referred to above since the date hereof.

The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement at any time nor any sale made hereunder creates any implication that the information herein is correct as of any time subsequent to its date.

The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, the Underwriter’s responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The Issuer assumes no responsibility for this Official Statement, and neither the Issuer nor any of its members, agents, employees or representatives have reviewed this Official Statement or investigated the statements or representations contained herein, except for those statements relating to the Issuer set forth under the captions, “THE ISSUER” and “LEGAL MATTERS—Pending and Threatened Litigation—*No Proceedings Against the Issuer.*” Except with respect to the information contained under such captions, neither the Issuer nor any of its members, agents, employees or representatives makes any representation as to the completeness, sufficiency and truthfulness of the statements set forth in this Official Statement. Members of the governing body of the Issuer and any other person executing the Series 2023 Bonds are not subject to personal liability by reason of the issuance of the Series 2023 Bonds.

References in this Official Statement to Utah law, the Indenture, the Loan Agreement, the Deed of Trust, the Continuing Disclosure Undertaking, and other documents do not purport to be complete. Potential investors should refer to such statutes and documents for full and complete details of their provisions. Copies of such documents are included in the appendices to this Official Statement.

THE SERIES 2023 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS.



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**OFFICIAL STATEMENT  
RELATED TO  
UTAH CHARTER SCHOOL FINANCE AUTHORITY**

**\$10,310,000\***  
**CHARTER SCHOOL REVENUE BONDS  
(PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING),  
SERIES 2023A**

**\$90,000\***  
**TAXABLE CHARTER SCHOOL REVENUE BONDS  
(PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING),  
SERIES 2023B**

**INTRODUCTION**

**GENERAL**

The purpose of this Official Statement is to provide certain information concerning (i) the Utah Charter School Finance Authority's (the "*Issuer*") \$10,310,000\* aggregate principal amount of Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023A (the "*Series 2023A Bonds*") and \$90,000\* aggregate principal amount of Taxable Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023B (the "*Series 2023B Bonds*") and, collectively with the Series 2023A Bonds, the "*Series 2023 Bonds*"), and (ii) Promontory School of Expeditionary Learning (the "*Charter School*" or "*Borrower*").

The Series 2023 Bonds are being issued pursuant to an Indenture of Trust, dated as of May 1, 2023 (the "*Indenture*"), between the Issuer and U.S. Bank Trust Company, National Association, as trustee (the "*Trustee*"). The offering of the Series 2023 Bonds is made only by way of this Official Statement, which supersedes any other information or materials used in connection with the offer or sale of the Series 2023 Bonds. This Official Statement speaks only as of its date and the information contained herein is subject to change. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in "APPENDIX D—FORMS OF BOND DOCUMENTS."

**PURPOSE OF THE SERIES 2023 BONDS**

Proceeds from the sale of the Series 2023 Bonds will be loaned to the Charter School pursuant to a Loan Agreement, dated as of May 1, 2023 (the "*Loan Agreement*"), between the Issuer and the Charter School, and used for the purpose of (i) refunding certain outstanding obligations of the Borrower (the "*Refunded Obligations*"), which financed the costs of acquiring the Borrower's charter school facilities (the "*Existing Facilities*"), (ii) financing the acquisition and construction of improvements to the Existing Facilities (the "*2023 Project*"), (iii) funding a debt service reserve, and (iv) paying costs of issuance of the Series 2023 Bonds.

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\* Preliminary; subject to change.

## SECURITY FOR THE SERIES 2023 BONDS

The Series 2023 Bonds are limited obligations of the Issuer. The Series 2023 Bonds are secured solely by the Trust Estate, which is limited to (i) the rights and interests of the Issuer under the Loan Agreement; (ii) the Facilities and the Issuer's rights and interests in the Facilities; (iii) the Pledged Revenues (as defined below under "SECURITY FOR THE SERIES 2023 BONDS") and the Issuer's rights and interests in the Pledged Revenues; (iv) the rights and interests of the Issuer and the Charter School under the Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing, dated as of May 1, 2023, on the Facilities (the "*Deed of Trust*") made by the Charter School in favor of the Issuer, as beneficiary, and assigned by the Issuer to the Trustee, and the promissory note payable to the Issuer and executed by the Charter School in evidence of its obligation under the Loan Agreement (the "*Promissory Note*"), and (v) all Funds (as defined in the Indenture) other than the Costs of Issuance Fund and the Rebate Fund; *provided, however*, that the Trust Estate shall not include the "*Issuer's Unassigned Rights*," which consist of the Issuer's rights to (i) inspect books and records, (ii) give or receive notices, approvals, consents, requests and other communications, (iii) receive payment or reimbursement for expenses or appropriations under the Credit Enhancement Program, (iv) receive payment of the Issuer's Administration Fee and the Issuer's Annual Fee, (v) immunity from and limitation of liability, (vi) indemnification from liability by the Charter School, (vii) security for the Charter School's indemnification obligation, take any action as provided under the Credit Enhancement Program, and (ix) be reimbursed for expenses described in the Loan Agreement. See "APPENDIX D—FORMS OF BOND DOCUMENTS—The Indenture."

Under the Loan Agreement, the Charter School agrees to make payments to the Trustee which, if fully and promptly paid, will be sufficient to pay when due the scheduled principal of and interest on the Series 2023 Bonds and any Additional Bonds (collectively, the "*Bonds*"). State Payments received by the Charter School pursuant to Title 53G, Chapter 5, Utah Code Annotated 1953, as amended (the "*Charter School Act*"), are the Charter School's principal source of repayment of its obligations under the Loan Agreement. All State Payments are subject to annual appropriation by the legislature of the State of Utah (the "*State*"). The Charter School has no taxing power. See "RISK FACTORS—No Taxing Authority; Dependence on State Payments."

Pursuant to the Deed of Trust, the payment of the principal of and interest on the Series 2023 Bonds will be secured by a mortgage on, and a security interest in, the Facilities, subject to certain "Permitted Encumbrances" (as defined in APPENDIX D). The obligation of the Charter School to make Loan Payments under the Loan Agreement is an absolute and unconditional obligation of the Charter School; *provided, however*, that the ability of the Charter School to generate additional revenues is limited in the event that the State Payments are not sufficient for such purpose.

As required by the Loan Agreement, the Charter School will direct the State to pay all State Payments to the Trustee as long as any of the obligations of the Charter School remain outstanding under the Loan Agreement. See "SECURITY FOR THE SERIES 2023 BONDS."

THE SERIES 2023 BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE, DO NOT GIVE RISE TO A GENERAL OBLIGATION OR LIABILITY OF THE ISSUER OR

A CHARGE AGAINST ITS GENERAL CREDIT, AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER. THE SERIES 2023 BONDS DO NOT CONSTITUTE A DEBT, LIABILITY (OTHER THAN A LIMITED LIABILITY OF THE ISSUER) OR LOAN OF CREDIT OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUANCE OF THE SERIES 2023 BONDS SHALL NOT DIRECTLY, INDIRECTLY, OR CONTINGENTLY OBLIGATE THE ISSUER, THE STATE OR ANY AGENCY, INSTRUMENTALITY OR POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT. ALL STATE PAYMENTS RECEIVED BY THE CHARTER SCHOOL PURSUANT TO THE CHARTER SCHOOL ACT ARE SUBJECT TO ANNUAL APPROPRIATION. THE CHARTER SCHOOL HAS NO TAXING POWER. FOR MORE INFORMATION, SEE “SECURITY FOR THE SERIES 2023 BONDS” AND “RISK FACTORS—No Taxing Authority; Dependence on State Payments” HEREIN.

#### DEBT SERVICE RESERVE SUBACCOUNT

The Indenture creates a Debt Service Reserve Subaccount for the Series 2023 Bond, which will be held by the Trustee. Amounts deposited in the Debt Service Reserve Subaccount from the proceeds of the Series 2023 Bonds will secure the Series 2023 Bonds and may be used by the Trustee to pay principal of and interest on the Series 2023 Bonds in the event sums in the Debt Service Account are insufficient for such purpose.

On the date of issuance of the Series 2023 Bonds, the Charter School will deposit \$ \_\_\_\_\_ from the proceeds of the Series 2023 Bonds into the Debt Service Reserve Subaccount to meet the Debt Service Reserve Requirement with respect to the Series 2023 Bonds, which is equal to the maximum annual debt service on the Series 2023 Bonds. See “SECURITY FOR THE SERIES 2023 BONDS – Debt Service Reserve Account.”

#### CHARTER SCHOOL CREDIT ENHANCEMENT PROGRAM

The Charter School has been designated a “qualifying charter school” by the Issuer pursuant to the Act and the guidelines of the Issuer promulgated thereunder, and accordingly, the Series 2023 Bonds are issued under the Charter School Credit Enhancement Program (the “*CSCE Program*”), codified under Title 53G, Chapter 5, Part 6, Utah Code Annotated 1953, as amended (the “*Utah Code*”).

Pursuant to the Indenture, and in accordance with the CSCE Program, on or before December 1 of each year, the Issuer must certify to the Governor of the State the amount required, if any, to restore amounts on deposit in the debt service reserve funds with respect to all bonds issued under the CSCE Program, including the subaccount in the Debt Service Reserve Account established in connection with the Series 2023 Bonds (the “*Series 2023 Debt Service Reserve Subaccount*”), to the respective debt service reserve requirements, including the Debt Service Reserve Requirement established with respect to the Series 2023 Bonds (the “*Series 2023 Debt Service Reserve Requirement*”). The Governor must then request from the State Legislature an appropriation of the certified amount to restore such debt service reserve funds to the respective debt service reserve requirements. The State Legislature may, but is not required to, appropriate moneys, including from amounts on deposit in the Charter School Reserve Account created pursuant to the Act, to restore amounts on deposit in any such debt service reserve fund to the

respective debt service reserve requirement. See “SECURITY FOR THE SERIES 2023 BONDS—Charter School Credit Enhancement Program” and APPENDIX D.

#### LIMITATION ON INDEBTEDNESS OF THE CHARTER SCHOOL, CERTAIN FINANCIAL COVENANTS

The Indenture and the Loan Agreement place certain restrictions on the incurrence of indebtedness by the Charter School. See “SECURITY FOR THE SERIES 2023 BONDS – Indenture — Additional Bonds” and “SECURITY FOR THE SERIES 2023 BONDS—Loan Agreement—Limitations on Additional Indebtedness.”

#### FORWARD-LOOKING STATEMENTS

This Official Statement contains statements relating to future results that are forward-looking statements of the type defined in the Private Litigation Reform Act of 1995, including certain statements contained in APPENDIX B with respect to projected revenues, expenses, and debt service coverage. When used in this Official Statement, the words “estimate,” “expect,” “project,” “intend,” “anticipate,” “believe,” “may,” “will,” “continue” and similar expressions identify forward-looking statements. Any forward-looking statement is subject to uncertainty and risks that could cause actual results to differ, possibly materially, from those contemplated in such forward-looking statements. Inevitably, some assumptions used to develop forward-looking statements will not be realized or unanticipated events and circumstances may occur. Therefore, investors should be aware that there are likely to be differences between forward-looking statements and actual results and that those differences could be material.

#### RISK FACTORS

There are a number of risks associated with purchasing the Series 2023 Bonds. Certain risk factors are discussed in this Official Statement under the caption, “RISK FACTORS,” below. No person should purchase any Series 2023 Bonds without carefully considering such risk factors.

#### ADDITIONAL INFORMATION

The summaries of, or references to, constitutional provisions, statutes, resolutions, agreements, contracts, financial statements, reports, publications and other documents or compilations of data or information set forth in this Official Statement do not purport to be complete statements of the provisions of the items summarized or referred to and are qualified in their entirety by the actual provision of such items, copies of which are either publicly available or are available upon request from the Borrower or its financial advisor, RoundTable Funding.

#### THE ISSUER

The Utah Charter School Finance Authority (the “*Issuer*”) is a body politic and corporate of the State. Pursuant to the Utah Industrial Facilities and Development Act, Title 11, Chapter 17, Utah Code Annotated 1953, as amended, and Title 53G, Chapter 5, Part 6, Utah Code Annotated 1953, as amended (collectively, the “*Act*”), the Issuer is empowered to issue the Series 2023 Bonds



to provide funds for financing or refinancing of the costs of the acquisition, construction, improvement and equipping of the Facilities.

The Issuer is not pledging its general credit to the Series 2023 Bonds. The Issuer does not and will not in the future monitor the financial condition of the Charter School, the operation of the Facilities or otherwise monitor payment of the Series 2023 Bonds or compliance with the documents relating thereto. The responsibility for the operation of the Facilities rests entirely with the Charter School.

The Series 2023 Bonds are limited obligations of the Issuer. No recourse by any Holder of the Series 2023 Bonds will be had for the payment of the principal of, or interest on any of the Series 2023 Bonds or for any claim based thereon or upon any obligation, covenant, or agreement in the Indenture or the Loan Agreement, against any past, present, or future officer, member, counsel, advisor or agent of the Issuer or any successor thereto, as such, directly or through the Issuer or any successor thereto, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officer, member, counsel, advisor or agent as such has been expressly waived as a condition of and in consideration of the execution of the Indenture, the Loan Agreement and the issuance of the Series 2023 Bonds.

All payments made pursuant to the Loan Agreement will be made directly to the Trustee for payment of, among other things, debt service on the Series 2023 Bonds and disbursement to the Bondholders. None of the revenues to pay debt service on the Series 2023 Bonds will come from the Issuer and therefore the Issuer's financial information and status is irrelevant to any investment decision with respect to the Series 2023 Bonds. As a result, no information regarding the Issuer will be provided in respect of any continuing disclosure requirement relating to the Series 2023 Bonds. The Issuer has not assumed responsibility for any information in this Official Statement, except for the information under this caption and the caption "LEGAL MATTERS—Pending and Threatened Litigation—*No Proceedings against the Issuer.*"

## **THE CHARTER SCHOOL**

Promontory School of Expeditionary Learning is a Utah public charter school and a Utah nonprofit corporation organized under the laws of the State. The Charter School operates school facilities in Perry, Utah, as described in APPENDIX B. The Charter School is organized pursuant to the Charter School Act. The Charter School is a public charter school for students in grades K-8. The Charter School began operating in the fall of 2012.

The Charter School currently operates under a charter agreement (the "*Charter Agreement*") with the Utah State Charter School Board (the "*State Charter School Board*"). Utah charter schools, including the Charter School, have perpetual charter terms. Pursuant to its terms and applicable law, the Charter Agreement will automatically renew at the end of each school year unless terminated by the State Charter School Board under the circumstances described under "APPENDIX A—LAWS RELATING TO UTAH CHARTER SCHOOLS—General Provisions of the Charter School Act—*Noncompliance and Termination.*"

The Charter School is a 501(c)(3) organization and received a determination letter dated December 15, 2011, from the Internal Revenue Service providing such designation.

For more information regarding the Charter School, see “APPENDIX B—THE CHARTER SCHOOL.”

## THE SERIES 2023 BONDS

### GENERAL

The Series 2023 Bonds will be dated as of their date of delivery, will be issued in the aggregate principal amounts, will bear interest at the rates, and will mature on the dates shown on the front inside cover hereof. The Series 2023 Bonds are subject to redemption, as described below. The Series 2023 Bonds will be issued in denominations of \$5,000 or any integral of \$1,000 in excess thereof. Interest on the Series 2023 Bonds will be payable semiannually on April 15 and October 15 of each year, commencing October 15, 2023 (each an “*Interest Payment Date*”), by check or draft mailed to the registered owners of the Series 2023 Bonds as of the Regular Record Date.

The Series 2023 Bonds will bear interest on the basis of a 360-day year, consisting of twelve 30-day months, from their date of issuance until payment of principal has been made or provided for.

Except in the case of overdue interest, the record date for interest due will be the first calendar day of the month of each Interest Payment Date. Interest that is due and payable on any Interest Payment Date, but cannot be paid on such date from available sources, ceases to be payable to the registered owner otherwise entitled thereto as of the close of business on the Regular Record Date. At such time as sufficient funds are available for the payment of such overdue interest, the Trustee is required to establish a special payment date and a Special Record Date in respect thereof. The Trustee is required to mail a notice specifying each date so established to each registered owner of the Series 2023 Bonds, such notice to be mailed at least 10 days prior to the Special Record Date.

### REDEMPTION

*Optional Redemption.* The Series 2023 Bonds maturing on or after October 15, \_\_\_\_\_ are subject to optional redemption by the Issuer, at the written direction of the Charter School, in whole or in part, on any Business Day, on or after October 15, \_\_\_\_\_, at a redemption price equal to 100% of the principal amount thereof, plus accrued interest, if any, to the date fixed for redemption.

*Mandatory Sinking Fund Redemption.* The Series 2023A Bonds maturing on October 15, 2033\* are subject to mandatory sinking fund redemption on the dates and in the amounts set forth

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\* Preliminary; subject to change.

below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15 DUE**	AMOUNT**
2024	\$105,000
2025	145,000
2026	155,000
2027	160,000
2028	165,000
2029	170,000
2030	175,000
2031	185,000
2032	190,000
2033*	195,000

\* Stated maturity

\*\* Preliminary; subject to change.

The Series 2023A Bonds maturing on October 15, 2043\* are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15 DUE**	AMOUNT**
2034	\$205,000
2035	215,000
2036	220,000
2037	230,000
2038	240,000
2039	250,000
2040	260,000
2041	270,000
2042	280,000
2043*	290,000

\* Stated maturity

\*\* Preliminary; subject to change.

\* Preliminary; subject to change.

The Series 2023A Bonds maturing on October 15, 2053\* are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15 DUE**	AMOUNT**
2044	\$305,000
2045	315,000
2046	330,000
2047	345,000
2048	360,000
2049	375,000
2050	390,000
2051	405,000
2052	425,000
2053*	440,000

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\* Stated maturity

\*\* Preliminary; subject to change.

The Series 2023A Bonds maturing on October 15, 2058\* are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15 DUE**	AMOUNT**
2054	\$460,000
2055	480,000
2056	500,000
2057	525,000
2058*	550,000

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\* Stated maturity

\*\* Preliminary; subject to change.

The Series 2023B Bonds maturing on October 15, 2024\* are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

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\* Preliminary; subject to change.

OCTOBER 15 DUE**	AMOUNT**
2023	\$50,000
2024*	40,000

\* Stated maturity

\*\* Preliminary; subject to change.

*Extraordinary Redemption of the Series 2023 Bonds upon Damage, Destruction or Condemnation.* The Series 2023 Bonds are redeemable at the option and upon the direction of the Charter School, in whole or in part on any Business Day from and to the extent of funds on deposit under the Indenture and available for this purpose at a redemption price equal to the principal amount of each Series 2023 Bond to be redeemed plus accrued interest to the redemption date, upon the occurrence of any of the following events:

(i) The Facilities shall have been damaged or destroyed in whole or in part and (A) the Facilities cannot reasonably be restored within a period of 12 consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Charter School is thereby prevented from carrying on its normal operations for a period of 12 consecutive months, (C) the cost of restoration thereof would exceed the Net Proceeds of insurance carried thereon, or (D) the final maturity of the 2023 Bonds is within five years of the date of such damage or destruction; or

(ii) Title to, or the temporary use of, all or any substantial part of the Facilities shall have been taken under the exercise of the power of eminent domain by any governmental issuer, or Person, firm or corporation acting under a governmental issuer or because of a defect in title.

Only Net Proceeds of insurance or a condemnation award shall be used for a partial redemption of Series 2023 Bonds pursuant to clause (i) or (ii).

*Extraordinary Redemption upon Failure to Reimburse the Issuer under the Charter School Credit Enhancement Program.* The Series 2023 Bonds are subject to redemption at par, in whole, from amounts deposited by or on behalf of the Issuer as soon as is practicable following the Trustee's receipt of notice from the Issuer of an uncured default under the Loan Agreement for failure by the Charter School to reimburse the Issuer for any appropriation received on behalf of the Charter School from the State under the CSCE Program. In such event, the Series 2023 Bonds, in an amount equal to the Charter School's loan obligation, shall be called for redemption as set forth in the Indenture.

*Selection for Redemption.* In the event that less than all of the Series 2023 Bonds shall be redeemed, the Series 2023 Bonds will be selected from such maturities as the Charter School shall direct. If less than all of the Series 2023 Bonds of a maturity shall be redeemed, the Series 2023 Bonds or portions thereof to be redeemed shall be selected by the Trustee by lot or by such other method as the Trustee shall deem fair and equitable. In the event of an optional redemption of a

portion of the Series 2023 Bonds maturing on a particular date, the redemption price shall be credited to such sinking fund installments, as applicable, as the Charter School shall direct the Trustee.

*Notice of Redemption.* The Trustee will cause notice of any redemption by mailing by first class mail a copy of the redemption notice to the Registered Owners of the Series 2023 Bonds designated for redemption in whole or in part, at their addresses as the same shall last appear upon the registration records, in each case not more than 60 nor less than 30 days prior to the redemption date.

Each notice of redemption shall specify conditions precedent to redemption, if any (including that such redemption is contingent on the deposit of amounts sufficient to pay the redemption price on or before the redemption date), the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of the Series 2023 Bonds to be redeemed, that interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after such date interest thereon will cease to accrue. If less than all the Outstanding Series 2023 Bonds are to be redeemed, the notice of redemption shall specify the numbers of the Series 2023 Bonds or portions thereof to be redeemed.

See “RISK FACTORS-Redemptions Prior to Maturity”

#### BOOK-ENTRY-ONLY SYSTEM

The Depository Trust Company (“DTC”) will act as securities depository for the Series 2023 Bonds. The Series 2023 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of the Series 2023 Bonds, each in the principal amount of such maturity of the Series 2023 Bonds and deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“*Direct Participants*”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its

regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“*Indirect Participants*”). DTC has a Standard & Poor’s rating of AA+. The DTC rules applicable to its Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of the Series 2023 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2023 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2023 Bond (a “*Beneficial Owner*”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2023 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2023 Bonds, except in the event that use of the book-entry system for the Series 2023 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2023 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2023 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of Series 2023 Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2023 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Series 2023 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2023 Bonds, such as redemptions, defaults and proposed amendments to the Series 2023 Bond documents. For example, Beneficial Owners of the Series 2023 Bonds may wish to ascertain that the nominee holding the Series 2023 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2023 Bonds within a maturity of the Series 2023 Bonds are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Series 2023 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2023 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and other payments on the Series 2023 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or Trustee, on the payment date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds and other payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee and disbursement of such payments to Direct Participants will be the responsibility of DTC and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2023 Bonds at any time by giving reasonable notice to the Issuer or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Series 2023 Bond certificates are required to be printed and delivered.

The Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Series 2023 Bond certificates will be printed and delivered to DTC.

*The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Issuer and the Charter School believe to be reliable, but neither the Issuer nor the Charter School takes any responsibility for the accuracy thereof.*

## **SECURITY FOR THE SERIES 2023 BONDS**

### **INDENTURE**

*Pledge of the Indenture.* The Series 2023 Bonds are limited obligations of the Issuer. The Series 2023 Bonds are secured solely by the Trust Estate, which is limited to (a) the rights and interests of the Issuer under the Loan Agreement, (b) the Facilities and the Issuer's rights and interests in the Facilities, (c) the Pledged Revenues and the Issuer's rights and interests in the Pledged Revenues, (d) the rights and interests of the Issuer and the Charter School under the Deed of Trust and the Promissory Note, (e) all Funds other than the Costs of Issuance Fund and the Rebate Fund (or other moneys required to be rebated to the United States of America pursuant to



Section 148(f) of the Code), except for moneys or obligations deposited with or paid to the Trustee for the payment or redemption of Bonds that are no longer deemed to be Outstanding under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture and (f) any and all other interests in real or personal property of every name and nature from time to time by delivery or by writing of any kind specifically mortgaged, pledged or hypothecated, as and for additional security under the Indenture by the Issuer or by anyone on its behalf or with its written consent in favor of the Trustee; *provided, however*, that the Trust Estate shall not include the “*Issuer’s Unassigned Rights*,” which consist of the Issuer’s rights to (i) inspect books and records, (ii) give or receive notices, approvals, consents, requests and other communications, (iii) receive payment or reimbursement for expenses or appropriations under the Credit Enhancement Program, (iv) receive payment of the Issuer’s Administration Fee and the Issuer’s Annual Fee, (v) immunity from and limitation of liability, (vi) indemnification from liability by the Charter School, (vii) security for the Charter School’s indemnification obligation, (viii) take any action as provided under the Credit Enhancement Program, and (ix) be reimbursed for expenses described in the Loan Agreement..

“*Pledged Revenues*” means all revenues, rentals, fees, third-party payments, receipts, donations, contributions or other income of the Charter School or derived from the Facilities, including the rights to receive such revenues, all as calculated in accordance with sound accounting practices, including, but not limited to, State Payments, proceeds derived from insurance, condemnation proceeds, accounts, contract rights and other rights and assets, whether now or hereafter owned, held or possessed by the Charter School which are derived from the Facilities; including all amounts received by the Trustee, as assignee with respect to the Deed of Trust; and all gifts, grants, bequests and contributions (including income and profits therefrom), to the extent not specifically restricted by the donor or maker thereof to a particular purpose inconsistent with their use for any of the payments required under the Indenture. “*State Payments*” are payments made by the Utah State Treasurer to the Charter School pursuant to the Charter School Act. All State Payments are subject to annual appropriation by the State legislature. State Payments are the primary source of revenues of the Charter School and are the principal and expected source of repayment of the Charter School’s obligations under the Loan Agreement, representing debt service on the Series 2023 Bonds. See “RISK FACTORS—No Taxing Authority; Dependence on State Payments.”

THE SERIES 2023 BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE, DO NOT GIVE RISE TO A GENERAL OBLIGATION OR LIABILITY OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT, AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER. THE SERIES 2023 BONDS DO NOT CONSTITUTE A DEBT, LIABILITY (OTHER THAN A LIMITED LIABILITY OF THE ISSUER) OR LOAN OF CREDIT OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE STATE, THE ISSUER, OR ANY POLITICAL SUBDIVISION OF THE STATE. THE ISSUANCE OF THE SERIES 2023 BONDS SHALL NOT DIRECTLY, INDIRECTLY, OR CONTINGENTLY OBLIGATE THE ISSUER, THE STATE OR ANY AGENCY, INSTRUMENTALITY OR POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT. ALL STATE PAYMENTS RECEIVED BY THE CHARTER SCHOOL PURSUANT TO THE CHARTER SCHOOL ACT ARE SUBJECT TO ANNUAL APPROPRIATION. THE CHARTER SCHOOL HAS NO TAXING POWER.

See “APPENDIX D—FORMS OF BOND DOCUMENTS—Indenture.”

*Flow of Funds.* Under the Loan Agreement, the Charter School covenants that it will direct the Treasurer of the State and the Utah Office of Education to disburse all State Payments directly to the Trustee and that it will not modify or revoke such direction so long as any obligation of the Charter School remains outstanding under the Loan Agreement. Under the Indenture, there shall be deposited in the Revenue Fund as and when received, all Loan Payments and any other amounts to be paid by the Charter School under the Loan Agreement.

Under the Indenture, all monies held on deposit in the Revenue Fund will be disbursed by the Trustee on the following dates in the following order of priority:

FIRST, on or before the 10th day of each month, an amount equal to the Accrued Debt Service on the Bonds shall be deposited into the Debt Service Account;

SECOND, on or before the 10th day of each month, (i) first, to the Debt Service Reserve Account, the amount required to restore the balance in the Debt Service Reserve Account to the Debt Service Reserve Requirement prior to November 1 of each year, in equal installments, and (ii) *second*, to the Issuer, the amount required, if any, to reimburse the State for appropriations made or other amounts paid to or by the Issuer under the Credit Enhancement Program for the benefit of the Borrower with respect to the Bonds;

THIRD, on the last Business Day of every Rebate Year, and continuing until the full amount is so paid, to the Rebate Fund, any amount, as calculated by the Rebate Analyst, required of the Charter School to be deposited in the Rebate Fund;

FOURTH, on or before the 10th day of each month, to the Expense Fund, (i) an amount equal to a fraction of the Trustee’s Fees and Trustee’s Expenses where the numerator is the Trustee’s Fees and Trustee’s Expenses and the denominator is the number of monthly Disbursement Dates that will occur during the period between the last date on which such fees were paid or, if such fees have not yet been paid, the Closing Date and the next Interest Payment Date, plus (ii) an amount equal to one-twelfth of the Issuer’s Annual Fee due on the next invoiced date (or such other fraction, so as to cause the amount of the Issuer’s Annual Fee to be on deposit in the Expense Fund on the next invoiced date), plus (iii) any amount previously due as described under (i) above in this paragraph but that remains unpaid because of an insufficiency in Pledged Revenues available therefore;

FIFTH, on or before the 10th day of each month, the Repair and Replacement Monthly Deposit (defined below under the caption, “*Repair and Replacement Fund*”);

SIXTH, on or before the 10th day of each month to the Expense Fund, an amount equal to a fraction of any amount owed as payment for the services of the Rebate Analyst where the numerator is such amount and the denominator is the number of months that will pass during the period between the last date on which such amounts were paid or, if such fees have not yet been paid, the date of issuance of the Series 2023 Bonds and the next principal payment date;

SEVENTH, on or before the 10th day of each month to any third-party lender, any amount, as directed by Charter School to the Trustee, to make principal and interest payments on any outstanding Short-Term Debt; and

EIGHTH, all amounts remaining on deposit in the Revenue Fund after the Trustee has made the disbursements required in FIRST through SIXTH above, to the Charter School, if not in default under the Agreement.

*Debt Service Reserve Account.* The Indenture provides for the creation of a subaccount in the Debt Service Reserve Account with respect to the Series 2023 Bonds (the “*Series 2023 Debt Service Reserve Subaccount*”) in the custody of the Trustee, which is to be used for the payment of principal of and interest on the Series 2023 Bonds in the event that moneys in the Debt Service Account are insufficient to make such payments when due, whether on an Interest Payment Date, redemption date, mandatory sinking fund redemption date, or maturity date, or otherwise in an amount necessary to cure an Event of Default. The Series 2023 Debt Service Reserve Subaccount shall be maintained in an amount equal to the Debt Service Reserve Requirement for the Series 2023 Bonds.

The Debt Service Reserve Requirement for the Series 2023 Bonds means (a) \$\_\_\_\_\_, which is equal to the maximum annual Debt Service of the Series 2023 Bonds as of the date of issuance of the Series 2023 Bonds, or (b) if less than the amount in (a), the maximum annual Debt Service of the Series 2023 Bonds, calculated from time to time as of any date on which a portion of the Series 2023 Bonds is refunded or defeased and deemed no longer Outstanding, as applicable. Debt Service Reserve Requirement means with respect to a Series of Additional Bonds for which a separate subaccount is established in the Debt Service Reserve Account, the Debt Service Reserve Requirement established for that Series of Bonds in the related Supplemental Indenture.

Upon the issuance of the Series 2023 Bonds, the Debt Service Reserve Requirement for the Series 2023 Bonds will be deposited into the Debt Service Reserve Subaccount for the Series 2023 Bonds.

Under the Loan Agreement, in the event any monies are transferred out of the Debt Service Reserve Account, the Charter School will, commencing on the second Monthly Disbursement Date next succeeding the date of a withdrawal from the Debt Service Reserve Account and on each Monthly Disbursement thereafter, deposit or cause to be deposited equal monthly installments into the Debt Service Reserve Account, which installments together shall equal the amount required to cause the total amount in the Debt Service Reserve Account to equal the Debt Service Reserve Requirement by November 1 of the applicable Fiscal Year; *provided, however*, that if the Issuer or the State has made an appropriation to the Debt Service Reserve Account, the Borrower shall cause such Debt Service Reserve Account to be replenished as follows: The Borrower shall reimburse the Issuer for any appropriation made or any other amounts paid on behalf of the Borrower by the State or the Issuer under the Credit Enhancement Program to restore amounts on deposit in the Debt Service Reserve Account to the Debt Service Reserve Fund Requirement or for any other purpose. Upon such appropriation or payment by the State or Issuer, the Trustee

shall notify the Borrower and the Issuer, and the Borrower shall be required to immediately reimburse the Issuer the amount appropriated or paid on its behalf.

*Repair and Replacement Fund.* The Indenture establishes a Repair and Replacement Fund in the custody of the Trustee. The amounts in the Repair and Replacement Fund will, from time to time, be applied by the Charter School for the purpose of paying (i) the cost of extraordinary maintenance and replacements which may be required to keep the Facilities in sound condition, including but not limited to replacement of equipment, replacement of any roof or other structural component, exterior painting and the replacement of heating, air conditioning, plumbing and electrical equipment, (ii) other capital additions to the Facilities, or (iii) other Operating Expenses with respect to the Facilities.

*“Repair and Replacement Requirement”* means, initially, \$100,000, or such other amount as the Board shall determine from time to time by resolution of the Board.

The initial Repair and Replacement Requirement will be funded on the date of issuance of the Series 2023 Bonds from Charter School funds.

If, after initially funding the Repair and Replacement Fund to an amount equal to the Repair and Replacement Requirement, the Trustee notifies Charter School that the amount on deposit in the Repair and Replacement Fund is less than the Repair and Replacement Requirement, the Charter School shall restore the required balance in not more than 24 equal installments beginning with the next succeeding Monthly Disbursement Date.

*Additional Bonds.* Under the Indenture, Additional Bonds secured by and payable solely from the Trust Estate may be issued in one or more additional series, provided that the Trustee has received, in addition to certain other instruments required by the Indenture, the following instruments required by the Loan Agreement and the Indenture:

(i) A certificate signed by an Authorized Representative of the Charter School stating that no Event of Default is then existing under the Indenture or any debt outstanding or any agreement entered into by the Charter School in conjunction with such debt; and

(ii) A certificate signed by an Authorized Representative of the Charter School described in subsection (A) or (B) below:

(A) *Projected Coverage for Additional Debt.* A certificate signed by an Authorized Representative of the Borrower stating that, for each of the Borrower’s first two full Fiscal Years beginning (i) the first full Fiscal Year following the estimated date of completion and initial use of all revenue producing facilities to be financed with such Long-Term Indebtedness, or (ii) if no new facilities are being financed with the proposed Debt, the first full Fiscal Year following the issuance of the proposed Long-Term Indebtedness investment income thereon or from other appropriated sources (other than Available Revenues), estimated Net Income Available for Debt Service equals at least 1.15 times the Maximum Annual Debt Service on all Indebtedness to be outstanding upon the issuance of the proposed

Long-Term Indebtedness (including the additional annual Debt Service requirements for the Long-Term Indebtedness to be issued); or

(B) *Refunding Debt.* If Long-Term Indebtedness is being issued for the purpose of refunding any outstanding Indebtedness, such Indebtedness may be issued (as an alternative to satisfying the requirements of paragraph (A) above) upon the delivery of a certificate signed by an Authorized Representative of the Charter School stating that the annual Debt Service requirement of the Charter School will be reduced after the refunding of such Indebtedness for each year in which the proposed Long-Term Indebtedness is scheduled to be outstanding.

## LOAN AGREEMENT

*General Obligation of the Charter School; Pledge of State Payments and Other Pledged Revenues.* Under the Loan Agreement, the Issuer agrees to issue the Series 2023 Bonds and to lend the proceeds of the Series 2023 Bonds to the Charter School for the purposes described under “PURPOSE OF THE SERIES 2023 BONDS.” Under the Loan Agreement, the Charter School is unconditionally obligated to repay the loan in amounts sufficient, together with available funds held under the Indenture, to provide for the timely payment of the principal of and interest on the Series 2023 Bonds when due, whether by maturity, mandatory sinking fund redemption or acceleration, and to perform certain other obligations set forth therein.

Under the Loan Agreement, to secure the payment of the Series 2023 Bonds, the Charter School pledges the following to the payment of the Loan and the Promissory Note securing such Loan:

- (a) all of the Charter School’s right, title and interest in and to the Facilities, including all related additions, replacements, substitutions and proceeds for the purposes of securing the Loan;
- (b) all Pledged Revenues; and
- (c) any and all other interests in real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind specifically mortgaged, pledged or hypothecated, as and for additional security for the Loan by the Charter School or by anyone on its behalf.

Under the Loan Agreement, the Charter School covenants that it will direct the Treasurer of the State and the Utah Office of Education to disburse all State Payments directly to the Trustee and that it will not modify or revoke such direction so long as any obligation of the Charter School remains outstanding under the Loan Agreement.

Under the Loan Agreement, the Charter School covenants (i) to manage the Facilities in a manner that permits it to meet its obligations under the Loan Agreement and (ii) not to create, assume, incur or suffer to be created, assumed or incurred any Liens (other than Permitted Encumbrances) on all or any portion of the Facilities or the Pledged Revenues.

The obligation of the Charter School to make Loan Payments under the Loan Agreement sufficient to pay the Series 2023 Bonds is an absolute and unconditional obligation of the Charter School; provided, however, that the ability of the Charter School to generate additional revenues is limited in the event State Payments are insufficient.

Pursuant to the terms of the Loan Agreement, the Deed of Trust, and certain financing statements, the Charter School will (a) grant to the Issuer a deed of trust on the Facilities, subject to Permitted Encumbrances; and (b) grant to the Trustee a security interest, with respect to the Pledged Revenues governed by the Uniform Commercial Code and, to the extent permitted by law, in the Pledged Revenues received by the Trustee. The liens and security interests created by the Indenture, the Loan Agreement, and the Deed of Trust are for the equal and ratable benefit of the Owners of the Bonds. See “RISK FACTORS” for a discussion of certain limitations on the enforceability of the security for the Series 2023 Bonds.

*Limitations on Additional Indebtedness.* Under the Loan Agreement, the Charter School is prohibited from incurring additional Long-Term Indebtedness secured by a Lien on the Facilities or the Pledged Revenues that is senior to the Deed of Trust and the security interest in the Pledged Revenues granted by the Loan Agreement or the Indenture. The Charter School may incur other Long-Term Indebtedness if it furnishes to the Trustee the instruments, or satisfies the requirements, as applicable, described above under the caption, “SECURITY FOR THE SERIES 2023 BONDS—Indenture—Additional Bonds.”

*Covenant as to Cash on Hand.* The Charter School covenants in the Loan Agreement to maintain a cash, liquid investment, or accounts receivable balance (provided such accounts receivable are from the State) sufficient to cover at least 40 days of the sum resulting from the Operating Expenses. This covenant will be tested annually based upon the results included in the annual audited financial statements of the Charter School.

In the event that the Charter School is unable to comply with the requirements of the above covenant within 12 months of the initial non-compliance, then the Beneficial Owners of at least a majority of the Outstanding Bonds or the Issuer have the right to direct the Trustee to require the Charter School to engage, at the Charter School’s expense, a Management Consultant, which shall deliver a written report within 75 days of engagement to the Trustee, the Beneficial Owners, the Issuer and the Charter School containing such recommendations regarding the operation and administration of the Charter School and its facilities as such Management Consultant deems appropriate.

Upon submission of the Management Consultant’s report, the Charter School is required to arrange for payment of the amount owed to the Management Consultant and issue a written certificate to the Trustee and the Issuer indicating its acceptance or rejection of all or any material portion of the recommendations of the consultant within 30 days of receiving the report of the Management Consultant. The Beneficial Owners of 2/3rds of the Outstanding Bonds or the Issuer shall have the right to require the Charter School to comply with any reasonable recommendation of the Management Consultant. The Charter School shall work with the Beneficial Owners or the Issuer to follow the recommendations.

*Repair and Replacement Fund Deposits.* The Charter School covenants in the Loan Agreement that, unless the amount on deposit in the Repair and Replacement Fund equals or exceeds the Repair and Replacement Requirement (in which case no additional deposits are required), the Charter School shall pay or cause to be paid to the Trustee, for deposit to the Repair and Replacement Fund the amounts described above under “Indenture—Repair and Replacement Fund.”

*Coverage Ratio Covenant.* The Charter School covenants in the Loan Agreement to budget and set Operating Expenses and operate its Facilities in such a manner as will enable it to reasonably expect Net Income Available for Debt Service to equal at least 115% of the annual Debt Service for the applicable Fiscal Year on Indebtedness then Outstanding (the “*Debt Service Coverage Requirement*”).

The Charter School is required to deliver to the Trustee and the Issuer, within 180 days after the end of each fiscal year, a certificate of an Authorized Charter School Representative confirming that the Charter School satisfied the Debt Service Coverage Requirement for such fiscal year; *provided, however*, that no Event of Default is required to occur, except as provided below, if the Charter School complies with the following paragraph. In the event the Charter School’s Net Income Available for Debt Service is less than the Debt Service Coverage Requirement for any fiscal year, the Charter School is required to report the Debt Service coverage calculation to the Issuer and the Trustee immediately upon completion of such calculation and, in no event, later than the date by which the certification described above in this paragraph is required.

If the Charter School fails to maintain Net Income Available for Debt Service at least equal to the Debt Service Coverage Requirement for any fiscal year, the Charter School is required to, within 60 days after the date required for the delivery of the certificate in the previous paragraph, (1) obtain recommendations from a Management Consultant as to revisions of the Charter School’s budget for the then-current fiscal year necessary to provide for Net Income Available for Debt Service sufficient to satisfy the Debt Service Coverage Requirement, and (2) on the basis of such recommendations, revise its budget and Operating Expenses for the then-current fiscal year to provide for Net Income Available for Debt Service sufficient to satisfy the Debt Service Coverage Requirement for such year.

Failure to maintain Net Income Available for Debt Service equal to at least 100% of Debt Service for the applicable period shall constitute an Event of Default hereunder.

#### DEED OF TRUST

Pursuant to the Deed of Trust to be executed by the Charter School in favor of the Issuer, as beneficiary, and assigned by the Issuer to the Trustee, the payment of the principal of and interest on the Series 2023 Bonds will be secured by a mortgage on, and security interest in, the Facilities, subject to certain Permitted Encumbrances (as defined in APPENDIX D). See “APPENDIX D—FORMS OF BOND DOCUMENTS—Deed of Trust” for a summary of certain provisions of the Deed of Trust.

## CHARTER SCHOOL CREDIT ENHANCEMENT PROGRAM

*Generally.* The CSCE Program requires that the amount on deposit in the Debt Service Reserve Account be not less than the maximum annual debt service on each applicable Series of Bonds (which amount includes both the principal of and interest on the Bonds due in any calendar year).

Pursuant to the Loan Agreement, the Charter School covenants to make pro rata monthly Loan Payments on the fifth day of each calendar month that are sufficient to pay the interest on the Bonds (due semi-annually on April 15 and October 15 of each year) and the principal of the Bonds (due or subject to sinking fund redemption on October 15 of each applicable year).

In the event that the amount on deposit in the Debt Service Account is not sufficient to pay the interest on and principal of the Bonds when due, the Trustee is required to transfer money from the Debt Service Reserve Account to cover any insufficiency in the Debt Service Account. By November 1 of each year, the Trustee is required to notify the Issuer of the amount, referred to hereafter as the “*Shortfall Replenishment*,” which is necessary to restore the Debt Service Reserve Account to the required amount (which amount is with respect to each Series of Bonds, equal to the maximum annual debt service on such Series of Bonds). The Issuer has covenanted to certify, by December 1, the Shortfall Replenishment amount to the Governor of Utah, and the Governor is required, under the Act, to request from the State Legislature an appropriation of the amount to be deposited into the Debt Service Reserve Account. Under the Act, the State Legislature may, but is not required, to appropriate sufficient moneys for the Shortfall Replenishment.

Annual general sessions of the State Legislature begin on the fourth Monday in January and, with certain exceptions, do not exceed 45 calendar days. The enabling legislation for the CSCE Program created a Charter School Reserve Account and initially funded the account in the amount of \$3 million. Currently, the amount of the Charter School Reserve Account equals approximately \$\_\_\_ million. Moneys in the Charter School Reserve Account are not pledged as security for the Series 2023 Bonds, but are, among other purposes described hereafter, available for appropriation by the State Legislature for the funding of the Shortfall Replenishment.

Upon appropriation by the State Legislature for any Shortfall Replenishment, the Charter School is required to repay the State in the time and manner required by the Issuer. Additionally, until such time as that the obligations of the Charter School owing to the Issuer and the State for any Shortfall Replenishment have been repaid in full, the Issuer may exercise certain rights, including the acceleration and redemption at par, in whole, of the Series 2023 Bonds, but only to the extent that there are sufficient moneys on deposit with the Trustee for such redemption.

*The CSCE Program.* The Charter School has been designated a “qualifying charter school” by the Issuer pursuant to the Act and the guidelines of the Issuer promulgated thereunder, and accordingly, the Series 2023 Bonds are to be issued under the CSCE Program.

As described above, by December 1 of each year, the Issuer is required, pursuant to the Act, to certify to the Governor of the State the amount required, if any, to restore amounts on deposit in the debt service reserve funds with respect to all bonds issued under the CSCE Program,



including the Series 2023 Debt Service Reserve Subaccount established in connection with the Series 2023 Bonds, to the respective debt service reserve requirements. The Governor is then required to request from the State Legislature an appropriation of the certified amount to restore such debt service reserve funds to the respective debt service reserve requirements. The State Legislature may, but is not required to, appropriate moneys, including from amounts on deposit in the Charter School Reserve Account created pursuant to the Act, to restore amounts on deposit in any such debt service reserve fund to the respective debt service reserve requirement. Moneys on deposit in the Charter School Reserve Account may also be appropriated by the State Legislature to pay fees and expenses of the Issuer, pay the principal of and interest on bonds issued under the CSCE Program, or otherwise provide financial assistance to a qualifying charter school participating in the CSCE Program. The Charter School Reserve Account held by the State is funded from a one-time appropriation by the State Legislature in 2012 of \$3,000,000, certain interest earnings, and amounts that have been or will be contributed by the qualifying charter schools that participate in the CSCE Program, in amounts determined by the Issuer. Amounts in the Charter School Reserve Account are available to replenish, at the discretion of the State Legislature, the Series 2023 Debt Service Reserve Subaccount, and any other debt service reserve fund created to secure bonds issued pursuant to the CSCE Program, if depleted and not replenished.

The Series 2023 Bonds are not secured by amounts on deposit in the Charter School Reserve Account, and the State Legislature is not required to appropriate moneys requested by the Governor for Shortfall Replenishment from amounts in the Charter School Reserve Account or from other amounts.

The total par amount of bonds that may be issued by the Issuer under the CSCE Program is limited as set forth in Section 53G-5-609 of the Act. On or before January 1 of each year, the Issuer is required to determine the bond issuance limitation pursuant to Section 53G-5-609, and the Issuer may not issue bonds under the CSCE Program if the total par amount outstanding under the CSCE Program would exceed such limitation. As of January 1, 2023, the total par amount of bonds that could be issued by the Issuer under the CSCE Program was \$549,719,194, and the then-outstanding par amount of bonds issued under the CSCE Program was \$453,950,000.

*Provisions in the Indenture and the Loan Agreement Relating to the Credit Enhancement Program.* Notwithstanding any other provision of the Indenture or Loan Agreement to the contrary, so long as any Bonds remain outstanding and there has not been a Non-Appropriation that is continuing the following provisions shall apply:

(a) The maturity of the Series 2023 Bonds shall not be accelerated or the Series 2023 Bonds redeemed pursuant to the Indenture, nor shall the maturity of the loan with respect to the Series 2023 Bonds be accelerated pursuant to the Loan Agreement, without the prior written consent of the Issuer.

(b) If there has been an appropriation under the CSCE Program for the benefit of the Charter School that has not been reimbursed by the Charter School, the Issuer shall be deemed to be the sole Owner of the Series 2023 Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that

the Owners of the Series 2023 Bonds are entitled to take pursuant to the Loan Agreement, the Deed of Trust, and any other document related thereto.

(c) To the extent not otherwise required, the Charter School shall pay or reimburse the Issuer any and all charges, fees, costs and expenses which the Issuer may reasonably pay or incur in connection with (i) the administration, enforcement, defense, or preservation of any rights or security in the Indenture or Loan Agreement, (ii) the pursuit of any remedies under the Indenture, the Loan Agreement, or any other related document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Indenture, the Loan Agreement or any other related document, whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Indenture, the Loan Agreement or the transactions contemplated thereby.

(d) The Indenture shall not be discharged and the Loan Agreement shall not be terminated until all obligations of the Charter School owing to the Issuer or the State under the CSCE Program or otherwise shall have been paid in full. The Charter School's obligation to pay such amounts shall expressly survive payment in full of the Bonds.

#### **PLAN OF REFUNDING**

The Refunded Obligations are currently outstanding in the aggregate principal amount of \$5,329,281.90. A portion of the proceeds of the Series 2023 Bonds will be used to refund the Refunded Obligations by paying the principal of and accrued interest on the Refunded Obligations on the date of issuance of the Series 2023 Bonds.

## SOURCES AND USES OF FUNDS

The following table sets forth the estimated sources and uses of funds from the proceeds of sale of the Series 2023 Bonds and other sources:

### SOURCES:

	2023A	2023B
Principal Amount of Series 2023 Bonds .....		
[Net] Original Issue [Premium/Discount] .....		
Charter School Contribution to Repair and Replacement Fund.....		
TOTAL.....		

### USES:

Refund Refunded Obligations .....	
2023 Project.....	
Series 2023 Debt Service Reserve Subaccount .....	
Repair and Replacement Fund.....	
Costs of Issuance* .....	
Issuer Fee.....	
TOTAL.....	

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\* Includes Underwriter's discount, financial advisor fees, legal fees, Trustee fees, and printing and other miscellaneous costs of issuance.

## DEBT SERVICE REQUIREMENTS

The following table sets forth the debt service requirements for the Series 2023 Bonds.

FISCAL YEAR ENDING JUNE 30	SERIES 2023A		SERIES 2023B		TOTAL
	PRINCIPAL*	INTEREST	PRINCIPAL*	INTEREST	
2023	\$ -		\$ -	\$	\$
2024	-		50,000		
2025	105,000		40,000		
2026	145,000		-		
2027	155,000		-		
2028	160,000		-		
2029	165,000		-		
2030	170,000		-		
2031	175,000		-		
2032	185,000		-		
2033	190,000		-		
2034	195,000		-		
2035	205,000		-		
2036	215,000		-		
2037	220,000		-		
2038	230,000		-		
2039	240,000		-		
2040	250,000		-		
2041	260,000		-		
2042	270,000		-		
2043	280,000		-		
2044	290,000		-		
2045	305,000		-		
2046	315,000		-		
2047	330,000		-		
2048	345,000		-		
2049	360,000		-		
2050	375,000		-		
2051	390,000		-		
2052	405,000		-		
2053	425,000		-		
2054	440,000		-		
2055	460,000		-		
2056	480,000		-		
2057	500,000		-		
2058	525,000		-		
2059	550,000		-		
TOTAL	\$10,310,000		\$90,000		

\* Preliminary; subject to change.

## **RISK FACTORS**

No person should purchase any Series 2023 Bonds without carefully reviewing the following information, which summarizes some, but not all, factors that should be carefully considered before such purchase.

### **LIMITED OBLIGATIONS**

The Series 2023 Bonds are limited obligations of the Issuer, payable solely from amounts pledged under the Indenture to the payment of principal of and interest on the Series 2023 Bonds, which include Loan Payments made by the Charter School under the Loan Agreement (derived from State Payments and other Pledged Revenues of the Charter School), amounts in the Debt Service Reserve Account, amounts that may be appropriated by the State of Utah, the amounts in the Repair and Replacement Fund, certain other amounts held by the Trustee under the Indenture, and any proceeds realized under the Deed of Trust. The Series 2023 Bonds do not give rise to a general obligation or general liability of the Issuer or a charge against its general credit and shall never constitute nor give rise to a pecuniary liability of the Issuer. The Issuer does not have any taxing power. The Series 2023 Bonds do not constitute a debt, liability or loan of credit or a pledge of the full faith and credit or taxing power of the State or of any political subdivision thereof.

### **DEPENDENCE ON CHARTER SCHOOL'S ABILITY TO PAY LOAN PAYMENTS**

Payment of principal of, premium, if any, and interest on, the Series 2023 Bonds is intended to be made from Loan Payments made by the Charter School under the Loan Agreement, except to the extent payment is intended to be made from other amounts held under the Indenture such as Series 2023 Bond proceeds or investment earnings. The ability of the Charter School to make Loan Payments will depend on the Charter School's ability to generate revenues sufficient to pay the Loan Payments from the operation of the Facilities, which is largely dependent on enrollment and the resulting State Payments.

The Charter School's general revenues are a combination of state payments provided under certain State and federal programs, including the State Payments. "APPENDIX A—STATE LAWS RELATING TO CHARTER SCHOOLS – Funding for Charter Schools."

Future revenues and expenditures of the Charter School will be subject to conditions in the future which cannot be determined. Prior revenues and expenditures of the Charter School are no guaranty as to future revenues and expenditures of the Charter School. Any event that would cause a delay, reduction or elimination of State Payments would have a material adverse effect on the ability of the Charter School to make payments under the Loan Agreement representing debt service on the Series 2023 Bonds.

### **NO TAXING AUTHORITY; DEPENDENCE ON STATE PAYMENTS**

The Charter School does not possess any taxing authority and is substantially dependent upon the State to continue to provide funding for public charter schools. The obligation of the State under the Charter Agreement and State law to fund the Charter School is conditioned upon

the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the Charter Agreement, such Charter Agreement may be terminated by the State Charter School Board at the end of the period for which funds are available. No liability accrues to the State Charter School Board in such event, and the State shall not be obligated or liable for any future payments or any damages as a result of such termination. In the event the State were to withhold the payment of money from the Charter School for any reason, even a reason that is ultimately determined to be invalid or unlawful, it is likely that the Charter School would be forced to cease operations.

## FINANCIAL FORECASTS

The financial forecasts set forth in APPENDIX B (the “*Forecasts*”) and prepared by the Charter School are based on assumptions made by the Charter School and have not been independently verified by any other party. No assurance can be given that the results described in the Forecasts will be achieved. The Charter School does not intend to issue additional Forecasts to update the Forecasts in APPENDIX B, and, accordingly, there are risks inherent in using the Forecasts in the future as the Forecasts become outdated. The Forecasts are only for the fiscal years shown and do not cover the entire period during which the Series 2023 Bonds may be outstanding.

No guaranty can be made that the Forecasts will correspond with the results actually achieved in the future by the Charter School because there is no assurance that actual events will correspond with the assumptions made by the Charter School. For example, the Forecasts make certain assumptions as to continued demand for educational facilities such as the Facilities and future enrollment at the Charter School.

Actual operating results of the Charter School may be affected by many factors, including, but not limited to, increased costs, lower than anticipated enrollment, reduced State funding, changes in demographic trends, and local and general economic conditions. The Forecasts, which appear in APPENDIX B in this Official Statement, should be read in their entirety.

## IMPACT OF THE SPREAD OF COVID-19

The Novel Coronavirus 2019 (“*COVID-19*”) pandemic, along with various governmental measures taken to protect public health in connection with the pandemic, has had an adverse impact on global economies, including economic conditions in the United States. The impact of the COVID-19 pandemic on the U.S. economy was broad based and negatively impacted national, state and local economies.

On March 6, 2020, Governor Gary R. Herbert issued an executive order declaring a state of emergency to facilitate the State’s response to COVID-19. A statewide “Stay Safe, Stay Home” directive was issued by the Governor for the entire State of Utah on March 27, 2020. The Governor of the State temporarily ordered all schools in the State to be closed to on-campus education, commencing March 13, 2020, and extending through the end of the 2019-20 school year (the “*FY 2020 Closure*”). During the FY 2020 Closure, Teachers at the Charter School provided

virtual/online instruction, as further described under “IMPACT OF THE SPREAD OF COVID-19” in APPENDIX B.

The extent to which COVID-19 or future outbreaks impact the Charter School and its financial condition, operations, and facilities will depend on future developments, which are highly uncertain, can change rapidly, are not within the control of the Charter School, and cannot be predicted by the Charter School. These factors include the duration and severity of an outbreak, measures taken to address the outbreak, and whether, and to what extent, such matters lead to economic disruptions, market volatility, and school closures. The State’s finances may be materially adversely affected by the spread and economic impact of outbreaks, which could affect the amount or timing of State aid appropriated to Utah schools, including the Charter School.

See “IMPACT OF THE SPREAD OF COVID-19” in APPENDIX B for additional information regarding the impact of the COVID-19 pandemic on the Charter School.

#### TERMINATION OR REVOCATION OF CHARTER AGREEMENT

Pursuant to its terms, the Charter Agreement remains in effect unless terminated by either the Charter School’s Board of Trustees (the “*Board*”) or the State Charter School Board on the grounds set forth in the Charter Agreement or the Charter School Act. Under Section 53G-5-503, Utah Code Annotated 1953, as amended, grounds for termination under the Charter Agreement include failure to meet the requirements stated in the Charter Agreement; failure to meet generally accepted standards of fiscal management; designation as a “springboard school” under Title 53E, Chapter 5, Part 3 of Utah Code Annotated and failure to improve the school’s performance under the conditions described in such statute\*; violation of the requirements under the Charter School Act or another law; or other good cause shown. The State Charter School Board must notify the governing body of the school of the proposed termination in writing, stating the grounds for the termination. For more information regarding conditions under which the Charter Agreement may be revoked, the revocation procedure, and other information regarding the Charter Agreement and the Charter School Act, see “APPENDIX A—LAWS RELATING TO UTAH CHARTER SCHOOLS” in this Official Statement.

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\* Title 53E, Chapter 5, Part 3, Utah Code Annotated 1953, as amended (the “*School Improvement and Leadership Development Act*”), defines “springboard school” as “a district school or charter school that has been designated a springboard school by the state board because the school (a) is not a Title I school; and (b) when ranked according to the percentage of possible points the state board awards under Title 53E, Chapter 5, Part 2, School Accountability System, averaged over three school years is: (i) one of the five lowest performing elementary, middle, or junior high schools statewide; or (ii) one of the two lowest performing high schools statewide.” The academic proficiency testing results of the Charter School’s students have generally been substantially lower than Box Elder School District results and statewide results. The Charter School received a “D” grade for the 2021-2022 school year under the School Accountability System established under Title 53E, Chapter 5, Part 2 of the Utah Code. See “ACADEMIC ACHIEVEMENT INDICATORS” in APPENDIX B. The Charter School has never been designated as a “springboard” school” under the School Improvement and Leadership Development Act or as a “low-performing” school or “turnaround” school under the predecessor to the current version of such act. Nothing in the School Improvement and Leadership Development Act (including provisions for designating charter schools as springboard schools and establishing improvement plans and exit criteria with respect to improvement plans) modifies or limits a charter school authorizer’s authority to, at any time, terminate a charter school’s charter agreement for failure to meet the requirements stated in the charter agreement or otherwise pursuant to Section 53G-5-503.

While the Charter School believes that it enjoys a good relationship with the State Charter School Board and is in material compliance with the Charter Agreement, no assurance can be given that the Charter School will be able to maintain such relationship in the future. In addition, even though the Charter School does not anticipate any non-renewal or revocation of its Charter Agreement, there can be no assurance that the State Charter School Board will not revoke the Charter Agreement in the future.

#### FACTORS ASSOCIATED WITH EDUCATION

There are a number of factors affecting schools in general, including the Charter School, that could have an adverse effect on the Charter School's financial position and its ability to make the payments required under the Loan Agreement. These factors include, but are not limited to (i) the ability to attract a sufficient number of students; (ii) future legislation and regulations affecting charter schools and the educational system in general; (iii) increasing costs of compliance with federal or State regulatory laws or regulations, including, without limitation, laws or regulations concerning environmental quality, work safety and accommodating persons with disabilities; (iv) increased costs of attracting and retaining, or a decreased availability of, a sufficient number of teachers, including as related to any unionization of the Charter School's work force with consequent impact on wage scales and operating costs of the Charter School; (v) cost and availability of insurance for charter schools in the State; and (vi) changes in existing statutes pertaining to the powers of the Charter School and legislation or regulations which may affect program funding. The Charter School cannot assess or predict the ultimate effect of these factors on its operations or the financial results of operations.

#### COMPETITION FOR STUDENTS

The Charter School competes for students primarily within the geographic area of the Box Elder County School District and with other public charter schools and private schools within or near Perry, Utah, as described in APPENDIX B under the caption, "Service Area and Competing Schools." Such schools have grade offerings and class sizes roughly similar to those of the Charter School, and, in the view of the Charter School, are representative of the schools with which the Charter School competes for students. No assurance can be given that the Charter School will attract and retain the number of students that is needed to produce the Pledged Revenues that are necessary to pay the principal of and interest on the Series 2023 Bonds, or that additional schools will not be created in or near the Charter School's service area.

#### SCHOOL CHOICE INITIATIVES

States are increasingly considering and, in some states, enacting legislation that would expand the educational choices for its student residents beyond the traditional public school system. Charter schools are one such example. As charter schools become more commonplace, and as existing charter schools demonstrate a track record of providing an attractive educational choice, the number of charter schools may increase, which could lead to increased competition for existing charter schools such as the Charter School. In addition, other education choice initiatives, including but not limited to a voucher system, whereby the state or local school district provides a



voucher (typically for a fixed dollar amount) which a student's parents can use to pay tuition at private, independent (including faith-based) schools have been implemented or are being considered in a number of states. A voucher program could provide significant competition to charter schools because parents who may not have previously been able to afford private tuition at a private, independent school would, under a voucher system, have financial resources available to cover all or a significant portion of the tuition cost at such private, independent schools. This is likely to increase demand for enrollment in private, independent schools and could adversely affect enrollment at other schools, including charter schools and traditional public schools.

On January 28, 2023, the Utah governor signed into law House Bill 215 ("*HB 215*") which establishes the Utah Fits All Scholarship Program (the "*Scholarship Program*"). Beginning in the 2024-25 school year, the Scholarship Program will provide up to \$8,000 per year to students to apply towards private school tuition, with the maximum scholarship amount subject to annual increase based on inflation. HB 215 appropriates \$42.5 million to initially fund the Scholarship Program. Based on the initial funding level, up to approximately 5,300 students could be eligible to receive full scholarships during the initial 2024-25 school year. The Charter School cannot predict what impact the Scholarship Program will have on demand for its services and future enrollment.

#### MAINTENANCE OF CREDIT RATING

Moody's Investors Service ("*Moody's*" or the "*Rating Agency*") has assigned the Series 2023 Bonds a rating of "Aa2", reflective of the CSCE Program, and an underlying rating of "Baa3". Certain information was supplied by the Charter School to the Rating Agency to be considered in evaluating the Series 2023 Bonds, including information regarding State and federal funding sources and the operations of the Charter School, which are subject to change. See "RATINGS" herein. Such ratings express only the views of the Rating Agency. There is no assurance that such ratings will continue for any given period of time or will not be revised or withdrawn entirely by the Rating Agency if, in its judgement, circumstances so warrant. Any such downward revision in or withdrawal of such ratings may have an adverse effect on the market price of the Series 2023 Bonds. See "RATINGS" herein.

#### EFFECT OF FEDERAL BANKRUPTCY LAWS ON SECURITY FOR THE SERIES 2023 BONDS

Bankruptcy proceedings and equity principles may delay or otherwise adversely affect the enforcement of Bondholders' rights in the property granted as security for the Series 2023 Bonds. Furthermore, if the security for the Series 2023 Bonds is inadequate for payment in full of the Series 2023 Bonds, bankruptcy proceedings and equity principles may also limit any attempt by the Trustee to seek payment from other property of the Charter School, if any. Also, federal bankruptcy law permits adoption of a reorganization plan, even though it has not been accepted by the holders of a majority in the aggregate principal amount of the Series 2023 Bonds, if the Bondholders are provided with the benefit of their original lien or the "indubitable equivalent." In addition, if the bankruptcy court concludes that the Bondholders have "adequate protection," it may (i) substitute other security subject to the lien of the Bondholders, and (ii) subordinate the lien of the Bondholders (a) to claims by persons supplying goods and services to the Charter School after bankruptcy and (b) to the administrative expenses of the bankruptcy proceeding. The

bankruptcy court may also have the power to invalidate certain provisions of the Deed of Trust that make bankruptcy and related proceedings by the Charter School an event of default thereunder.

#### ADDITIONAL INDEBTEDNESS AND ADDITIONAL BONDS

The Loan Agreement places certain restrictions on the incurrence of indebtedness by the Charter School, and the Indenture places certain restrictions on the issuance of Additional Bonds. The Charter School has covenanted that it will only incur Long-Term Indebtedness and Short-Term Debt in accordance with the restrictions imposed by the Loan Agreement. See “Security for the Series 2023 Bonds–Indenture–Additional Bonds” and “Security for the Series 2023 Bonds–Loan Agreement–Limitations on Additional Indebtedness.”

#### FORWARD-LOOKING STATEMENTS

This Official Statement contains certain statements that are “forward-looking” statements within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical facts included in this Official Statement, including without limitation statements that use terminology such as “estimate,” “plan,” “budget,” “expect,” “intend,” “anticipate,” “believe,” “may,” “will,” “continue,” and similar expressions, are forward-looking statements. These forward-looking statements include, among other things, the discussions related to the Charter School’s operations and expectations regarding student enrollment, future operations, revenues, capital resources, and expenditures for capital projects. Although the Charter School believes that the assumptions upon which the forward-looking statements contained in this Official Statement are reasonable, any of the assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions also could be incorrect. All phases of the operations of the Charter School involve risks and uncertainties, many of which are outside the control of the Charter School and any one of which, or a combination of which, could materially affect the results of the Charter School’s operations and whether the forward-looking statements ultimately prove to be correct. Factors that could cause actual results to differ from those expected include, but are not limited to, general economic conditions such as inflation and interest rates, both nationally and in Utah where the Facilities are located; the willingness of the State to fund charter school operations at present or increased levels; competitive conditions within the Charter School’s market, including the acceptance of the education services offered by the Charter School; lower enrollments than projected; unanticipated expenses; the capabilities of the Charter School’s management; changes in government regulation of the education industry or in the Charter School Act; future claims for accidents at the Facilities site and the extent of insurance coverage for such claims; and other risks discussed in this Official Statement.

No representation or assurance can be given that the Charter School will realize revenues in amounts sufficient to make the required payments under the Loan Agreement. No market study or demand analysis has been prepared for the Charter School to analyze the existing or future demand for the Charter School’s educational services. The realization of future Pledged Revenues is dependent upon, among other things, the matters described in the foregoing paragraphs and future changes in economic and other conditions that are unpredictable and cannot be determined

at this time. The Underwriter makes no representation as to the accuracy of the projections contained herein or as to the assumptions on which the Forecasts are based.

#### PROPERTY TAX EXEMPTION

Under present State law and rulings, property used for charter school purposes is exempt from property taxes levied by political subdivisions of the State so long as such property is used for charter school purposes and is owned directly by a nonprofit corporation that holds a Charter Agreement (although such property is subject to special assessments for local improvements to the property). Therefore, the Charter School is currently exempt from property taxes with respect to the Property and the Facilities. Nevertheless, such laws, regulations and rulings are subject to change, and no assurance can be given that any future change in exempt status would not have a material adverse effect on the Charter School. If the Charter School is required to pay property taxes with respect to the Facilities in the future, it would have a negative impact on the cashflow of the Charter School.

#### TAX-EXEMPT STATUS OF THE CHARTER SCHOOL

The tax-exempt status of the Series 2023A Bonds presently depends upon the maintenance by the Charter School of its status as an organization described in Section 501(c)(3) of the Code. The maintenance of such status is contingent on compliance with general rules promulgated in the Code and related regulations regarding the organization and operation of tax-exempt entities, including the operation for charitable and educational purposes and avoidance of transactions which may cause the assets of either to inure to the benefit of private individuals,

The Charter School is currently exempt from federal income tax. The Charter School is a public charter school and a Utah nonprofit corporation. The Charter School is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). Under present federal law, regulations and rulings, the income and revenue of nonprofit, 501(c)(3) qualified exempt organizations are exempt from federal income tax, except for any unrelated business income as defined in the Code, and their revenues are exempt from the State sales tax except for certain services. If the Charter School fails to continue to meet the requirements necessary to preserve its status as a nonprofit corporation and a tax-exempt charitable organization under Section 501(c)(3) of the Code, the Charter School could experience expenses which are greater than those projected in APPENDIX B and revenues which are lower than those projected in APPENDIX B, which would adversely affect the Charter School’s ability in the future to pay the amount due under the Loan Agreement with respect to Series 2023 Bonds.

In recent years, the IRS and state, county and local taxing authorities have been undertaking audits and reviews of the operations of tax-exempt organizations with respect to their exempt activities and the generation of unrelated business taxable income (“UBTI”). To the extent the Charter School does not properly account for and report UBTI, if any, an investigation or audit could lead to a challenge which could result in taxes, interest and penalties with respect to unreported UBTI and in some cases could ultimately affect the tax-exempt status of the Charter School, as well as the exclusion from gross income for federal income tax purposes of the interest on the Series 2023A Bonds.

The Code imposes a number of requirements that must be satisfied for interest on state and local obligations, such as the Series 2023A Bonds, to be excludable from gross income for federal income tax purposes. These requirements include limitations on the use of Series 2023A Bond proceeds, limitations on the investment earnings of Series 2023A Bond proceeds prior to expenditure, a requirement that certain investment earnings on Series 2023A Bond proceeds be paid periodically to the United States and a requirement that the issuers file an information report with the Internal Revenue Service (the “IRS”). The Issuer and the Charter School have covenanted in certain of the documents referred to herein that they will comply with such requirements. Failure by any of the foregoing to comply with the requirements stated in the Code and related regulations, rulings and policies may result in the treatment of interest on the Series 2023A Bonds as taxable, retroactively to the date of issuance of the Series 2023A Bonds

If the Charter School were to lose its status as a nonprofit corporation and a tax-exempt organization, the tax-exempt status of the Series 2023A Bonds for federal tax purposes could also be adversely affected.

#### CHANGES IN LAW; ANNUAL APPROPRIATION; INADEQUATE STATE PAYMENTS

Future changes to the Charter School Act by the State legislature could be adverse to the financial interests of the Charter School and could adversely affect the security for the Series 2023 Bonds. There can be no assurance given that the State legislature will not in the future amend the Charter School Act in a manner which is adverse to the interests of the registered owners of the Series 2023 Bonds.

As occurs in other states, lawsuits are occasionally filed in Utah challenging the State’s system of funding public schools. The outcome of any such public-school funding cases in the State in the future cannot be known.

Utah may experience downturns in its economy and tax revenues in the future. The provisions of the Charter School Act are subject to amendment by the State legislature, including the reduction of State funding, which could adversely affect the Charter School. State budget considerations may also adversely affect appropriations for charter school funding.

#### KEY PERSONNEL

The Charter School’s creation, curriculum, educational philosophy, and day-to-day operations reflect the vision and commitment of the individuals who serve on the Charter School’s Board of Trustees and as the Charter School’s administrators (the “*Key Personnel*”). The loss of any Key Personnel could adversely affect the Charter School’s operations, its ability to attract and retain students and ultimately its financial results. For more information regarding the Charter School’s Key Personnel, see APPENDIX B.

## LIMITED NATURE OF REAL ESTATE APPRAISALS

On April 12, 2023, a real estate appraisal was completed with respect to the Facilities by Rigby & Company (the “*Appraiser*”). In the appraisal, the Appraiser determined that the as-completed condition, as of a valuation date of October 30, 2023, and assuming the completion of the 2023 Project, will be \$13,650,000 (the “*Appraised Value*”). In determining the Appraised Value, the Appraiser determined (i) the income approach value of the Facilities to be \$13,640,000 and (ii) the sales comparison approach value of the Facilities to be \$13,725,000. A copy of the Appraisal is on file with the Charter School and is available for review.

The value of the Facilities, as indicated in the Appraisal is only the opinion of the Appraiser at the time that the Appraisal was completed. The Appraised Value assumes the completion of the 2023 Project according to the plans, specifications and costs presented to the Appraiser. The actual value of the Facilities will vary from conclusions in the Appraisal, which variance may be material and adverse.

In the event of a foreclosure of the Deed of Trust, the value of the Facilities in such event cannot be determined and may be substantially less than the value indicated in the Appraisal.

## MAINTENANCE OF THE FACILITIES

The Facilities, like other such buildings, require ongoing capital repairs and improvements to maintain their value and, although the Charter School intends to maintain the Facilities in good condition, no assurance can be given that the Charter School will have sufficient revenue to be able to maintain a regular capital improvements program for the Facilities in the future.

## GENERAL REAL-ESTATE-RELATED RISKS

There are many risks attending any investment in real estate not within the Charter School’s control, which may have a substantial impact on the profitability and financial feasibility of the Charter School. Such risks include, but are not limited to, the specific-use character of the Facilities, possible adverse use of adjoining land, fire or other casualty, condemnation, changes in demand for the Facilities, decline in the neighborhood and local or general economic conditions, and changing governmental regulations.

## DEED OF TRUST

Security for the Series 2023 Bonds includes a lien on the Facilities evidenced by the Deed of Trust in favor of the Trustee. Attempts to exercise remedies under the Deed of Trust may be met with protracted litigation and/or bankruptcy proceedings, which proceedings may cause delays. Thus, there can be no assurance that, upon the occurrence of an Event of Default, the Trustee will be able to obtain possession of the Facilities and generate revenue therefrom in a timely fashion. Because of the special nature, location, regulatory restrictions and other factors relating to the Facilities, there can be no assurance that proceeds derived from the sale of the Facilities upon default and the exercise of remedies under the Deed of Trust would be sufficient

to pay all amounts due in respect of the Series 2023 Bonds. Furthermore, the Facilities are subject to various Permitted Encumbrances as described in the Deed of Trust.

#### FORECLOSURE DELAYS AND DEFICIENCY

Should Pledged Revenues be insufficient to pay the principal of and interest on the Series 2023 Bonds, the Trustee may seek to foreclose on or sell the property securing the Series 2023 Bonds. However, no assurance can be given that the value of the Facilities at the time of such foreclosure or sale would be sufficient to meet all remaining principal and interest payments on the Series 2023 Bonds. In addition, the time necessary to institute and complete such proceedings could substantially delay receipt of funds from a foreclosure or sale. There could also be delays in regaining possession of the Facilities from the Charter School in the event of any default or dispute under the Loan Agreement. Further, the Facilities owned by the Charter School are composed of special-purpose facilities which are not suitable for industrial or commercial use; consequently, it may be difficult to find a buyer or lessee for such facilities if it were necessary for the Charter School to raise funds by selling any of its assets in order to repay its indebtedness.

#### CSCE PROGRAM; DEBT SERVICE RESERVE SUBACCOUNT; RISK OF NON-APPROPRIATION

Under the Indenture, the Trustee has established a Debt Service Reserve Subaccount for the Series 2023 Bonds which may be used for payment of principal and interest due with respect to the Series 2023 Bonds to the extent Pledged Revenues are insufficient to pay debt service on the Series 2023 Bonds. Although the Charter Schools believes such reserve to be reasonable, and anticipates that Pledged Revenues will be sufficient to cover the debt service on the Series 2023 Bonds, there is no assurance that funds reserved and future Pledged Revenues will be sufficient to cover debt service on the Series 2023 Bonds.

The Charter School has been designated a “qualifying charter school” by the Issuer pursuant to the Act and the guidelines of the Issuer promulgated thereunder, and accordingly, the Series 2023 Bonds are to be issued under the CSCE Program. Pursuant to the CSCE Program, the State Legislature may, but is not required to, appropriate moneys, including from amounts on deposit in the Charter School Reserve Account created pursuant to the Act to restore amounts on deposit in any such debt service reserve fund, including the Debt Service Reserve Subaccount for the Series 2023 Bonds, to the respective debt service reserve requirement.

An event of Non-Appropriation by the State would cause a delay, reduction or termination of amounts received by the Issuer under the CSCE Program. For additional information regarding the CSCE Program, see “SECURITY FOR THE SERIES 2023 BONDS—Charter School Credit Enhancement Program.” Such an event of Non-Appropriation could result in an inability to pay debt service on the Series 2023 Bonds.

As defined in the Indenture, “Non-Appropriation” means (i) the Issuer does not timely certify to the Governor of the State the amount, if any, required to restore amounts on deposit in the Debt Service Reserve Account to the Debt Service Reserve Requirement, (ii) the Governor does not timely request from the State Legislature an appropriation at least equal to the certified amount, or (iii) the State Legislature does not appropriate money to the Issuer under the CSCE

Program to restore amounts on deposit in the Debt Service Reserve Account to the Debt Service Reserve Requirement.

Additionally, if there has been an appropriation under the CSCE Program with respect to the Series 2023 Bonds that has not been reimbursed by the Borrower, the Issuer will be deemed to be the sole Owner of all Series 2023 Bonds for the purpose of exercising any voting right or privilege, giving any consent or direction or taking any other action that the Owners of the Bonds are entitled to take pursuant to the Loan Agreement, the Deed of Trust, and any other document related thereto. This may substantially decrease Bondholders' ability to control proceedings and remedies in the event the Charter School defaults on its obligations under the Loan Agreement.

#### CONSTRUCTION COSTS; COMPLETION OF THE EXPANSION

A portion of the proceeds of the Series 2023 Bonds will be used to finance the costs of constructing the 2023 Project. Construction of the 2023 Project is generally subject to all typical construction related risks. Such risks include, among others, labor disputes, defective building materials, schedule delays, unavailability or delays in obtaining permits or inspection approvals, shortages in various labor trades or materials, work stoppages, bad weather, unforeseen engineering, environmental or geological problems, unidentified hazardous materials, unidentified utilities, third-party litigation, unanticipated cost overruns, fire or other property or casualty damage, unanticipated subsoil conditions and financial difficulties on the part of or disputes with a construction manager, key suppliers, contractors or subcontractors. There can be no assurance that construction problems or delays of the types described above, or other problems, will not frustrate the planned completion of any part of the construction of the 2023 Project.

The Charter has entered into a construction contract (the "*Construction Contract*") relating to the construction of the Expansion with a "guaranteed maximum price" not to exceed \$2,931,211, representing the maximum cost to the Charter School for completion of the 2023 Project, subject to certain weather-related cost adjustments and adjustments to such guaranteed maximum price relating to changes to the 2023 Project directed by the Charter School.

No assurance can be given that the 2023 Project will be completed on time or for the amount deposited into the Project Fund for such purpose. Construction delays could interrupt the Charter School's occupancy of the school facilities or adversely impact the amount of Pledged Revenues projected to be available to pay principal of and interest on the Series 2023 Bonds.

#### DAMAGE OR DESTRUCTION

The Loan Agreement requires that the Facilities be insured against certain risks. There can be no assurance that the amount of insurance required to be obtained with respect to the Facilities will be adequate or that the cause of any damage or destruction to the Facilities will be as a result of a risk which is insured. Further, there can be no assurance of the ongoing creditworthiness of the insurance companies from which the Charter School obtains insurance policies or the interest of the state to allow charter schools such as the Charter School to continue to participate in the property and casualty pool of the State.

The Charter School believes that the risks associated with its properties and its operations are adequately provided for through the insurance policies it maintains. The Charter School will provide property insurance on the Facilities through a standard commercial insurance policy or the State property and casualty pool for governmental entities, including charter schools, as currently contemplated.

#### ENVIRONMENTAL REGULATIONS

The Facilities are subject to various federal, State and local laws and regulations governing health and the environment. In general, these laws and regulations could result in liability to the owner of the Facilities (and to any beneficiary of a deed of trust on the Facilities, particularly following any sale or foreclosure proceeding) for remediating adverse environmental conditions on or relating to the Facilities, whether arising from preexisting conditions or conditions arising as a result of the activities conducted in connection with the ownership and operation of the Facilities. Costs incurred by the Charter School with respect to environmental remediation or liability could adversely affect its financial condition and its ability to own and operate the Facilities.

Bymaster Consulting International conducted a Phase I Environmental Site Assessment, dated April 3, 2023, in connection with the Facilities (the “*Phase I*”). The Phase I indicated that there was no evidence of any recognized environmental conditions in connection with the Facilities. The Phase I did not recommend any further assessment of the Facilities.

Even though the Phase I did not show any evidence that further investigation or remedial action would be required, owners of real estate may, in the future, be adversely affected by legislative, regulatory, administrative and enforcement actions involving environmental controls.

#### CYBERSECURITY RISKS

The services and systems of the Charter School may be critical to operations or involve the storage, processing and transmission of sensitive data, including valuable intellectual property, other proprietary or confidential data, regulated data, and personal information of employees, students and others. Successful breaches, employee malfeasance, or human or technological error could result in, for example, unauthorized access to, disclosure, modification, misuse, loss, or destruction of the Charter School’s or other third party data or systems; theft of sensitive, regulated, or confidential data including personal information and intellectual property; the loss of access to critical data or systems; service or system disruptions or denials of service.

#### LITIGATION

Charter schools and other K-12 schools, such as the Charter School, are often the subject of litigation. Educator’s professional liability and other actions alleging wrongful conduct and seeking punitive damages often are filed against education providers such as the Charter School. Litigation may also arise from the corporate and business activities of the Charter School, such as employee-related matters. As with educator’s professional liability, many of these risks are covered by insurance, but some are not. For example, some business disputes and workers’



compensation claims are not covered by insurance or other sources and, in whole or in part, may be a liability of the Charter School if determined or settled adversely. Although the Charter School maintains insurance policies covering educator's professional and general liability, management of the Charter School is unable to predict the availability, cost or adequacy of such insurance in the future.

#### ENFORCEMENT OF REMEDIES

The remedies available to the Trustee or the registered owners of the Series 2023 Bonds upon an Event of Default under the Indenture or the Loan Agreement are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, the remedies provided in the Indenture and the Loan Agreement may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2023 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by the valid exercise of the sovereign powers of the State and the constitutional powers of the United States of America, bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

#### FAILURE TO PROVIDE ONGOING DISCLOSURE

The Charter School will enter into the Continuing Disclosure Undertaking pursuant to Rule 15c2-12, promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended ("*Rule 15c2-12*"). Any failure by the Charter School to comply with the Continuing Disclosure Undertaking and Rule 15c2-12 may adversely affect the liquidity of the Series 2023 Bonds and their market price in the secondary market. See "CONTINUING DISCLOSURE" and APPENDIX F—FORM OF CONTINUING DISCLOSURE UNDERTAKING."

#### REDEMPTION PRIOR TO MATURITY

The Series 2023 Bonds are subject to redemption at the option of the Borrower and in the event of certain occurrences. See "THE SERIES 2023 BONDS – Redemption" in this Official Statement.

#### SUMMARY

The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Series 2023 Bonds. In order for potential investors to identify risk factors and make an informed decision, potential investors should be thoroughly familiar with this entire Official Statement, including the appendices hereto.

## LEGAL MATTERS

### GENERAL

Certain legal matters incident to the authorization, issuance, sale and delivery of the Series 2023 Bonds by the Issuer are subject to the approving opinion of Chapman and Cutler LLP, who has been retained by and acts as Bond Counsel to the Issuer and whose approving opinion will be delivered with the Series 2023 Bonds in substantially the form set forth in “APPENDIX E—FORM OF OPINION OF BOND COUNSEL.” Certain legal matters will be passed upon for the Issuer by its counsel, the Office of the Attorney General of the State of Utah and Dorsey & Whitney LLP; for the Charter School by Farnsworth Johnson PLLC, and for the Underwriter by Ballard Spahr LLP.

The various legal opinions to be delivered concurrently with the delivery of the Series 2023 Bonds will speak only as of their dates of delivery and will be qualified in certain customary respects, including as to the enforceability of the various legal instruments by limitations imposed by state and federal law affecting remedies and by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, the application of equitable principles and the exercise of judicial discretion in appropriate cases. The legal opinions express the professional judgment of counsel rendering them, but are not binding on any court or other governmental agency and are not guarantees of a particular result.

The form of the proposed opinion of Bond Counsel to the Issuer is attached as “APPENDIX E—FORM OF OPINION OF BOND COUNSEL.”

### PENDING AND THREATENED LITIGATION

*No Proceedings against the Charter School.* In connection with the issuance of the Series 2023 Bonds, the Charter School will deliver a certificate which will state that, as of the date of issuance of the Series 2023 Bonds, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, public board or body pending, or to the best of its knowledge, threatened against or affecting the Charter School, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Indenture, the Loan Agreement, the Deed of Trust, or this Official Statement; the validity and enforceability of the Indenture, the Loan Agreement, the Deed of Trust, the Continuing Disclosure Undertaking, or the Series 2023 Bonds; or the operations (financial or otherwise) of the Charter School.

*No Proceedings against the Issuer.* There is not now pending or, to the knowledge of the Issuer, threatened, any litigation restraining or enjoining the issuance or delivery of the Series 2023 Bonds or questioning or affecting the validity of the resolutions or the proceedings or authority under which they are to be issued. There is no litigation pending or, to the Issuer’s knowledge, threatened which in any manner questions the right of the Issuer to enter into the Loan Agreement with the Charter School or to issue and secure the Series 2023 Bonds in the manner provided in the Indenture.

## TAX MATTERS

### FEDERAL TAX EXEMPTION OF SERIES 2023A BONDS

Federal tax law contains a number of requirements and restrictions which apply to the Series 2023A Bonds, including investment restrictions, periodic payments of arbitrage profits to the United States, requirements regarding the proper use of bond proceeds and the facilities financed therewith and certain other matters. The Issuer and the Charter School have covenanted to comply with all requirements that must be satisfied in order for the interest on the Series 2023A Bonds to be excludable from gross income for federal income tax purposes. Failure to comply with certain of such covenants could cause interest on the Series 2023A Bonds to become includible in gross income for federal income tax purposes retroactively to the date of issuance of the Series 2023A Bonds.

Subject to compliance by the Issuer and the Charter School with the above-referenced covenants, under present law, in the opinion of Bond Counsel, interest on the Series 2023A Bonds is excludable from the gross income of the owners thereof for federal income tax purposes and is not included as an item of tax preference in computing the federal alternative minimum tax for individuals. For tax years beginning after December 31, 2022, interest on the Series 2023A Bonds may affect the corporate alternative minimum tax for certain corporations.

In rendering its opinion, Bond Counsel will rely upon certifications of the Issuer and the Charter School with respect to certain material facts within the Issuer's or the Charter School's knowledge and will rely on an opinion of Farnsworth Johnson PLLC, counsel to the Charter School, that the Charter School is a 501(c)(3) organization and certain other matters. Bond Counsel's opinion represents its legal judgment based upon its review of the law and the facts that it deems relevant to render such opinion and is not a guarantee of a result.

Ownership of the Series 2023A Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, corporations subject to the alternative minimum tax, corporations subject to the branch profits tax, financial institutions, certain insurance companies, certain S corporations, individual recipients of Social Security or Railroad Retirement benefits and taxpayers who may be deemed to have incurred (or continued) indebtedness to purchase or carry tax-exempt obligations. Prospective purchasers of the Series 2023A Bonds should consult their tax advisors as to applicability of any such collateral consequences.

The issue price for original issue discount (as further discussed below) and market discount purposes (the "*OID Issue Price*") for each maturity of the Series 2023A Bonds is the price at which a substantial amount of such maturity of the Series 2023A Bonds is first sold to the public (excluding bond houses and brokers and similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The OID Issue Price of a maturity of the Series 2023A Bonds may be different from the price set forth, or the price corresponding to the yield set forth, on the cover page hereof.

For an investor who purchases an OID Bond in the initial public offering at the OID Issue Price for such maturity and who holds such OID Bond to its stated maturity, subject to the

condition that the Issuer and the Charter School comply with the covenants discussed above, (a) the full amount of original issue discount with respect to such OID Bond constitutes interest which is excludable from the gross income of the owner thereof for federal income tax purposes; (b) such owner will not realize taxable capital gain or market discount upon payment of such OID Bond at its stated maturity; (c) such original issue discount is not included as an item of tax preference in computing the alternative minimum tax for individuals under the Code; and (d) the accretion of original issue discount in each year may result in certain collateral federal income tax consequences in each year even though a corresponding cash payment may not be received until a later year. Owners of OID Bonds should consult their own tax advisors with respect to the state and local tax consequences of original issue discount on such OID Bonds.

Owners of Bonds who dispose of Series 2023A Bonds prior to the stated maturity (whether by sale, redemption or otherwise), purchase such Bonds in the public offering, but at a price different from the OID Issue Price or purchase Series 2023A Bonds subsequent to the initial public offering should consult their own tax advisors.

If a Series 2023A Bond is purchased at any time for a price that is less than the Series 2023A Bond's stated redemption price at maturity or, in the case of an OID Bond, its OID Issue Price plus accreted original issue discount (the "*Revised Issue Price*"), the purchaser will be treated as having purchased a Series 2023A Bond with market discount subject to the market discount rules of the Code (unless a statutory *de minimis* rule applies). Accrued market discount is treated as taxable ordinary income and is recognized when a Series 2023A Bond is disposed of (to the extent such accrued discount does not exceed gain realized) or, at the purchaser's election, as it accrues. Such treatment would apply to any purchaser who purchases an OID Bond for a price that is less than its Revised Issue Price. The applicability of the market discount rules may adversely affect the liquidity or secondary market price of such Series 2023A Bond. Purchasers should consult their own tax advisors regarding the potential implications of market discount with respect to the Series 2023A Bonds.

An investor may purchase a Series 2023A Bond at a price in excess of its stated principal amount. Such excess is characterized for federal income tax purposes as "bond premium" and must be amortized by an investor on a constant yield basis over the remaining term of such Bond in a manner that takes into account potential call dates and call prices. An investor cannot deduct amortized bond premium relating to a tax-exempt bond. The amortized bond premium is treated as a reduction in the tax-exempt interest received. As bond premium is amortized, it reduces the investor's basis in the Series 2023A Bond. Investors who purchase a Series 2023A Bond at a premium should consult their own tax advisors regarding the amortization of bond premium and its effect on such Bond's basis for purposes of computing gain or loss in connection with the sale, exchange, redemption or early retirement of such Series 2023A Bond.

There are or may be pending in the Congress of the United States legislative proposals, including some that carry retroactive effective dates, that, if enacted, could alter or amend the federal tax matters referred to above or affect the market value of the Series 2023A Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, it would apply to bonds issued prior to enactment. Prospective purchasers of the Series 2023A Bonds should consult their own tax advisors regarding any pending or proposed federal tax

legislation. Bond Counsel expresses no opinion regarding any pending or proposed federal tax legislation.

The Internal Revenue Service (the “*Service*”) has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the Service, interest on such tax-exempt obligations is includible in the gross income of the owners thereof for federal income tax purposes. It cannot be predicted whether or not the Service will commence an audit of the Series 2023A Bonds. If an audit is commenced, under current procedures the Service may treat the Issuer or the Charter School as a taxpayer and the Bondholders may have no right to participate in such procedure. The commencement of an audit could adversely affect the market value and liquidity of the Series 2023A Bonds until the audit is concluded, regardless of the ultimate outcome.

Payments of interest on and proceeds of the sale, redemption or maturity of, tax-exempt obligations, including the Series 2023A Bonds, are in certain cases required to be reported to the Service. Additionally, backup withholding may apply to any such payments to any Series 2023A Bond owner and any Series 2023A Bond owner who fails to provide an accurate Form W-9 Request for Taxpayer Identification Number and Certification, or a substantially identical form, or to any Series 2023A Bond owner who is notified by the Service of a failure to report any interest or dividends required to be shown on federal income tax returns. The reporting and backup withholding requirements do not affect the excludability of such interest from gross income for federal tax purposes.

#### TAXABLE SERIES 2023B BONDS

Interest on the Series 2023B Bonds is includible in gross income for federal income purposes. Ownership of the Series 2023B Bonds may result in other federal income tax consequences to certain taxpayers. Bondholders should consult their tax advisors with respect to the inclusion of interest on the Series 2023B Bonds in gross income for federal income tax purposes and any collateral tax consequences.

The Issuer may deposit moneys or securities with the Trustee in escrow in such amount and manner as to cause the Series 2023B Bonds to be deemed to be no longer outstanding under the Indenture (a “*defeasance*”). A defeasance of the Series 2023B Bonds may be treated as an exchange of the Series 2023B Bonds by the holders thereof and may therefore result in gain or loss to the holders. Bondholders should consult their own tax advisors about the consequences if any of such a defeasance.

#### STATE TAX EXEMPTION

In the opinion of Bond Counsel, under the existing laws of the State, as presently enacted and construed, interest on the Series 2023 Bonds is exempt from taxes imposed by the Utah Individual Income Tax Act. Bond Counsel expresses no opinion with respect to any other taxes imposed by the State or any political subdivision thereof. Ownership of the Series 2023 Bonds may result in other state and local tax consequences to certain taxpayers. Bond Counsel expresses no opinion regarding any such collateral consequences arising with respect to the Series 2023

Bonds. Prospective purchasers of the Series 2023 Bonds should consult their tax advisors regarding the applicability of any such state and local taxes.

### **CONTINUING DISCLOSURE**

The Charter School will execute and deliver a Continuing Disclosure Undertaking (the “*Continuing Disclosure Undertaking*”) for the benefit of the beneficial owners of the Series 2023 Bonds to send certain information annually and to provide notice of certain events to the Municipal Securities Rulemaking Board (the “*MSRB*”) pursuant to the requirements of Section (b)(5) of Rule 15c2-12 (“*Rule 15c2-12*”) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. The information to be provided on an annual basis, the events which will be noticed on an occurrence basis, and a summary of other terms of the Continuing Disclosure Undertaking, including termination, amendment and remedies, are set forth in “APPENDIX F—FORM OF CONTINUING DISCLOSURE UNDERTAKING.”

The Charter School must report any failure to comply with the Continuing Disclosure Undertaking in accordance with Rule 15c2-12. Any broker, dealer or municipal securities dealer must consider such report before recommending the purchase or sale of the Series 2023 Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds and their market price.

The Charter School has not been subject to any prior disclosure undertakings under Rule 15c2-12.

See “APPENDIX F—FORM OF CONTINUING DISCLOSURE UNDERTAKING.”

### **FINANCIAL STATEMENTS OF THE CHARTER SCHOOL**

The financial statements of the Charter School, as of and for the fiscal year ended June 30, 2022, included in this Official Statement in “APPENDIX C—FINANCIAL STATEMENTS OF THE CHARTER SCHOOL AS OF AND FOR THE FISCAL YEAR ENDED JUNE 30, 2022,” have been audited by Eide Bailly LLP, independent certified public accountants, as indicated in their report thereon.

### **UNDERWRITING**

The Series 2023 Bonds are being sold to Robert W. Baird & Co. Incorporated (the “*Underwriter*”) at an aggregate price of (a) with respect to the Series 2023A Bonds, \$\_\_\_\_\_ (representing the principal amount of the Series 2023A Bonds, [plus/less] a [net] original issue [premium/discount] of \$\_\_\_\_\_, less an underwriting discount of \$\_\_\_\_\_), and (b) with respect to the Series 2023B Bonds, \$\_\_\_\_\_ (representing the principal amount of the Series 2023B Bonds, less an underwriting discount of \$\_\_\_\_\_). Expenses associated with the issuance of the Series 2023 Bonds are being paid from proceeds of the Series 2023 Bonds. The right of the Underwriter to receive compensation in connection with the Series 2023 Bonds is contingent upon the actual sale and delivery of the Series 2023 Bonds. The Bond Purchase Agreement (“*Bond Purchase Agreement*”) pursuant to which the Series 2023 Bonds are being

purchased by the Underwriter provides that the Underwriter will purchase all of the Series 2023 Bonds if any are purchased. The obligation of the Underwriter to make such purchase is subject to certain terms and conditions set forth in the Bond Purchase Agreement. The Underwriter has initially offered the Series 2023 Bonds to the public at the prices or yields set forth on the inside cover page of this Official Statement. Such prices or yields may subsequently change without any requirement of prior notice. The Underwriter reserves the right to join with dealers and other investment banking firms in offering the Series 2023 Bonds to the public. The Underwriter is not obligated to create a secondary market for the purchase or sale of the Series 2023 Bonds and there may, in fact, be no market for the Series 2023 Bonds depending upon prevailing market conditions, the financial condition or market position of firms who make up the secondary market and the financial position and results of operations of the Borrower. The Charter School has agreed under the Bond Purchase Agreement to indemnify the Underwriter and the Issuer against certain liabilities, including certain liabilities under federal and state securities laws.

### **MISCELLANEOUS**

All references to any document herein are qualified in their entirety by reference to each such document. All references to the Series 2023 Bonds are qualified in their entirety by reference to the forms thereof and the information with respect thereto included in the aforesaid documents. Copies of these documents are available for inspection at the principal corporate trust office of the Trustee.

The fees to be paid to Bond Counsel, counsel to the Charter School, the Trustee, the Underwriter, and the Financial Advisor are contingent upon the sale and delivery of the Series 2023 Bonds.

### **RATINGS**

Moody's Investors Service ("*Moody's*") has assigned the Series 2023 Bonds a rating of "Aa2", reflective of the CSCE Program. Moody's has also assigned the Series 2023 Bonds an underlying rating of "Baa3".

The ratings reflect only the view of the rating agency and any desired explanation of the significance of such ratings should be obtained from the rating agency. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. There is no assurance that such ratings will continue for any given period of time or that such ratings will not be revised downward or withdrawn entirely by the rating agency, if, in the judgment of such agency, circumstances so warrant. Any such downward revision or withdrawal of the ratings may have an adverse effect on the market price of the Series 2023 Bonds.

### **FINANCIAL ADVISOR TO THE CHARTER SCHOOL**

RoundTable Funding is acting as financial advisor to the Charter School in connection with the issuance of the Series 2023 Bonds. RoundTable Funding is not obligated, nor has undertaken,

to make an independent verification or to assume responsibility for the accuracy or completeness of the information contained in this Official Statement.

#### **TRUSTEE**

The Trustee did not participate in the preparation of this Official Statement and makes no representations concerning the notes, the collateral or any other matter stated in this Official Statement. The Trustee has no duty or obligation to pay the Series 2023 Bonds from its own funds, assets or corporate capital or to make inquiry regarding, or investigate the use of, amounts disbursed from the Trust Estate.

#### **ADDITIONAL INFORMATION**

Copies of constitutional provisions, statutes, resolutions, agreements, contracts, financial statements, reports, publications and other documents or compilations of data or information summarized or referred to herein are available as described in “INTRODUCTION–Additional Information.”

#### **OFFICIAL STATEMENT CERTIFICATION**

The preparation of this Official Statement and its distribution have been authorized by the Charter School. This Official Statement is not to be construed as an agreement or contract between the Charter School and any purchaser, owner or holder of any Series 2023 Bond.

PROMONTORY SCHOOL OF EXPEDITIONARY  
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## APPENDIX A

### STATE LAWS RELATING TO CHARTER SCHOOLS

This APPENDIX A summarizes certain provisions of State of Utah (the “*State*”) charter school laws. This Appendix provides only a summary for informational purposes. Reference is hereby made to the Utah Code Annotated 1953, as amended (the “*Utah Code*”), and the Utah State Board of Education Rules found in the Utah Administrative Code, Title R277, as amended (the “*Utah Administrative Code*”), for a complete description of State charter school law. Potential investors should refer to and independently evaluate such provisions in their entirety, with assistance from counsel, for a complete understanding of their terms. Further, potential investors should note that the provisions summarized below are subject to change, and this summary only pertains to certain aspects of currently existing law. See “RISK FACTORS – Changes in Charter School Law” in the Limited Offering Memorandum.

#### Introduction

The State Legislature first established charter schools in 1998. State charter schools are public schools established by contract with a district governing board, a higher-education institution, or the Utah State Charter School Board (the “*State Charter School Board*”). The State Charter School Board members are appointed by the State governor with consent of the State senate. Per State statute, the seven State Charter School Board members represent specific bodies or constituencies. The State Charter School Board is one of the approved entities that may authorize a State charter school (an “*Authorizer*”) and, pursuant to that authorization and rules of the Utah State Board of Education (the “*State Board of Education*”), continually monitors and reviews those schools which it has acted as Authorizer. The State Charter School Board may also contract, sue, and be sued and provide administrative services to, or perform other school functions for, charter schools and charge fees for the provision of services or functions.

Various statutory provisions govern the creation, operation and financing of State charter schools. These provisions, which are described further below, derive from the following authorities:

- *Charter Schools Act*, Utah Code, Title 53G, Chapter 5 (the “*Charter Schools Act*”), which includes provisions governing the authority of the State Charter School Board, the legal status and organization of charter schools, the charter application process, requirements for charter schools, termination of a charter, and charter school funding.
- *State Board of Education Rules*: The State Board of Education has promulgated rules regarding pupil accounting, a charter school revolving loan fund, and charter school accountability and assistance.
- *Charter School Credit Enhancement Program*, Utah Code, Title 53G, Chapter 5, Part 6 (the “*Charter School Credit Enhancement Program*”), which creates a State-wide entity that may issue debt for charter schools in the State, among other provisions.

The sections that follow provide additional information relating to (a) the Charter Schools Act generally, (b) provisions of the Charter Schools Act and related rules governing State charter school financing, and (c) additional rules pertaining to the operation and administration of State charter schools.

## **General Provisions of the Charter Schools Act (Utah Code §§ 53G-5-101 through 104)**

### *Status and Purpose of Charter Schools in the State (Utah Code §§ 53G-5-101 to 104)*

Charter schools in the State are public schools. A charter school may be established through the creation of a new school or by converting an existing public school to a charter school. Charter schools are intended to: (a) improve student learning; (b) encourage the use of different and innovative teaching methods; (c) create new professional opportunities for educators that will allow them to actively participate in designing and implementing learning programs; (d) increase choice of learning opportunities for students; (e) establish new public school models and new forms of accountability for schools that emphasizes the measurement of learning outcomes and the creation of innovative measurement tools; (f) provide opportunities for greater parental involvement in school management decisions; and (g) expand public school choice in areas where schools have been identified for school improvement, corrective action, or restructuring under the No Child Left Behind Act of 2001, 20 U.S.C. Sec. 6301 et seq.<sup>1</sup>

### *Charter Application Process (Utah Code §§ 53G-5-205, 302-06)*

An applicant seeking to establish a new charter school (or to convert an existing public school into charter school status) must submit an application that contains certain information as required by the Charter Schools Act to a State charter school Authorizer, which may be the State Charter School Board, a local school board, or a board of trustees of an institution in the State system of higher education. The Authorizer will evaluate the charter application according to rules created by the State Board of Education, which rules include a process by which the Authorizer must evaluate the skill of the proposed charter school's governing board, the functional operation of the board and the financial viability of the proposed charter school. An applicant seeking the authorization of a charter school from the State Charter School Board must first provide a copy of the application to the local school board of the school district in which the proposed charter school will be located, either before or at the time the application is filed with the State Charter School Board. The local board may then review the application and provide recommendations to the applicant or to the State Charter School Board. After approval of an application, the applicant and its Authorizer set forth the terms and conditions for the operation of the charter school in a written contractual agreement. A charter agreement may be modified only by mutual agreement of the governing body of the charter school and its Authorizer.

### *Requirements for Charter Schools (Utah Code § 53G-5-404)*

Charter schools must meet certain requirements set forth in the Charter Schools Act. Charter schools must be nonsectarian in their programs, admission policies, employment practices and operations. Charter schools may not charge tuition or fees except those fees normally charged by other public schools. Charter schools must meet all applicable federal, State, and local health, safety and civil rights requirements and are required to submit the same annual reports required by other public schools including an annual financial audit report filed with the Office of the State Auditor within six months of the end of the charter school's fiscal year. Charter schools are accountable to their Authorizers for performance as provided in the school's charter agreement and according to rules established by the State Board of Education that require an Authorizer to follow minimum standards and a certain procedure in its ongoing oversight of any charter school it has authorized. The charter school may not advocate unlawful behavior, shall provide sufficient liability and other insurance and shall submit any contract or lease relating to facilities to its Authorizer for review and advice prior to entering into such contract or lease. The charter school cannot

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<sup>1</sup> The No Child Left Behind Act has been repealed and has largely been replaced with the Every Student Succeeds Act of 2015; however, this change has not been reflected in all sections of the Utah Code.

hire a teacher with a suspended or revoked teaching license. Unless authorized by the local school board, charter schools shall be organized and managed under the Utah Revised Nonprofit Corporation Act, Utah Code, Title 16 Chapter 6a.

*Eligible Students (Utah Code §§ 53G-6-501 through 504)*

Charter schools must enroll all eligible students who submit a timely application, unless the number of applications exceeds the capacity of a charter school's open enrollment threshold for a class, program or grade level. The open enrollment threshold is defined as 90% of the charter school's maximum capacity or its maximum capacity minus forty. If the number of applicants exceeds the open enrollment threshold, a charter school must select students on a random basis except that enrollment preference may be given to (a) a child or grandchild of an individual who has actively participated in the development of the charter school, (b) a child or grandchild of a member of the charter school's governing board, (c) siblings of students presently or previously enrolled in the charter school, (d) a child of an employee of the charter school, (e) a student transferring between charter schools offering similar programs that are governed by the same governing body, (f) a student transferring from one charter school to another pursuant to an agreement between the charter schools that is approved by the State Charter School Board, and (g) a student who resides within up to a two-mile radius of the charter school. Charter schools approved after May 13, 2014 and located within a high-growth area must give enrollment preference to students residing within a two-mile radius. If a district school converts to a charter school, such charter school must give enrollment preference to district students who would have otherwise been assigned to the school if it had remained a district school. A charter school may also weigh its lottery to give a better chance of admissions to students defined as educationally disadvantaged under the Charter Schools Act. A charter school may not discriminate in its admission policies or practices on the same basis as other public schools may not discriminate in their admission policies and practices.

*Noncompliance and Termination (Utah Code §§ 53G-5-501 through 505)*

If a charter school is found to be noncompliant with the requirements for charter schools (Section 53G-5-404 of the Charter Schools Act) or the school's charter, the Authorizer shall notify the school's governing board and, if the charter school has outstanding bonds issued pursuant to the Charter School Credit Enhancement Program, the Utah Charter School Finance Authority and provide the charter school with a reasonable amount of time to remedy the problem; provided, however, if good cause has been shown or if the health, safety or welfare of the students at the school is threatened, the Authorizer may terminate a charter immediately. If the school does not remedy the noncompliance, the Authorizer may take any of the following actions: remove the school director or finance officer, remove governing board members, appoint an interim director or mentor to work with the charter school, or terminate the school's charter. An interim director or mentor will be paid by the charter school for which the director or mentor is working.

An Authorizer may terminate a school's charter for any of the following reasons: failure to meet the requirements stated in the school's charter; failure to meet generally accepted standards of fiscal management; designation as a low performing school under State law and failure to improve the school's performance under the conditions outlined in Utah Code, Title 53E, Chapter 5, Part 3<sup>\*</sup>; violation of the requirements under the Charter Schools Act or another law; or other good cause shown. The Authorizer must notify the governing body of the school of the proposed termination in writing, and if the charter school has outstanding bonds under the Charter School Credit Enhancement Program, then the Authorizer shall notify the Utah Charter School Finance Authority of the proposed termination too. The notification shall state the grounds for the termination, and state that the governing body may request an informal hearing before the Authorizer. Such hearing shall be conducted within thirty days of a charter school's written request and in accordance with the State Administrative Procedures Act. If the charter school has outstanding bonds under the Charter School Credit Enhancement Program, then the Authorizer shall conduct the hearing and shall do so within 120 days of sending the notice of proposed termination to the Utah Charter School Finance Authority and the charter school's board.

When the decision to close a charter school is made, the charter school shall send written notice to the following parties within ten days: (a) if the charter school made the decision to close, the charter school's Authorizer; (b) the State Charter School Board; (c) if the State Board of Education did not make the decision to close, the State Board of Education; (d) parents of students enrolled at the charter school; (e) the charter school's creditors; (f) the charter school's lease holders; (g) the charter school's bond issuers; (h) other entities that may have a claim to the charter school's assets; (i) the school district in which the charter school is located and other charter schools located in that school district; (j) any other person that the charter school determines to be appropriate; and (k) the Utah Public Notice Website for public notification.

Within 10 days of the decision to close, the charter school shall appoint a custodian for the protection of student files and business records and establish a base of operations with an office and set hours of operation. The charter school shall maintain its insurance coverage, complete a financial audit for the year, complete all required federal and State paperwork, inventory its assets and list all of its creditors, including secured creditors. Such charter school's Authorizer shall oversee the termination process, including the liquidation of the charter school's assets and the charter school's final audit.

### **Other Provisions of the Utah Code (Utah Code §§ 53E-5-302 through 311)**

#### *Termination or Improvement of "Springboard" Charter School (Utah Code § 53E-5-304)*

If a charter school is designated as a "springboard" school under Title 53E, Chapter 5, Part 3 of the Utah Code (the "*School Improvement and Leadership Development Act*"), a charter school Authorizer will initiate a review to determine if the charter school is in compliance with its charter agreement. If the charter

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\* Currently, Title 53E, Chapter 5, Part 3, Utah Code Annotated 1953, as amended (the "School Improvement and Leadership Development Act"), includes provisions that address the performance of "springboard schools" (which, among other changes to the predecessor statute, replaces the "low performing school" term in the predecessor statute). A springboard school is defined by the School Improvement and Leadership Development Act as "a district school or charter school that has been designated a springboard school by the state board because the school (a) is not a Title I school; and (b) when ranked according to the percentage of possible points the state board awards under Title 53E, Chapter 5, Part 2, School Accountability System, averaged over three school years is: (i) one of the five lowest performing elementary, middle, or junior high schools statewide; or (ii) one of the two lowest performing high schools statewide." Nothing in the School Improvement and Leadership Development Act (including provisions for designating charter schools as springboard schools and establishing improvement plans and exit criteria with respect to improvement plans) modifies or limits a charter school authorizer's authority to, at any time, terminate a charter school's charter agreement for failure to meet the requirements stated in the charter agreement or otherwise pursuant to Section 53G-5-503.

school is out of compliance with the charter agreement, the Authorizer may terminate the charter school's charter pursuant to Section 53G-5-501 of the Charter Schools Act. If the charter school's charter is not terminated, the governing board of the charter school will need to create a school improvement committee and engage an independent "continuous improvement expert" to develop a school improvement plan. The springboard school is required to submit the improvement plan to the State Charter School Board for approval by July 1 of the initial remedial year. Once approved, the State Charter School Board monitors the charter school's compliance with the improvement plan.

*Consequences for Failing to Improve a Springboard Charter School (Utah Code § 53E-5-306, Utah Administrative Code R277-920)*

The School Improvement and Leadership Development Act provides for the establishment of criteria and deadlines for a springboard school to exit a school improvement plan. A springboard charter school that fails to meet such criteria within the applicable deadline may petition the State Board of Education for an extension to continue school improvement efforts for up to two years. If the charter school does not meet the exit criteria by the school's final remedial year or the last school year of the extension period, the State Board of Education may establish rules for restructuring the charter school, which restructuring may include termination of a school's charter, closure of the school, or transferring operation and control of the school to a high-performing charter school or the school district in which the charter school is located.

## **Funding for Charter Schools**

### *Sources of Funds*

The primary source of funds for the operation of State charter schools is State funding. State revenue is distributed through the State Uniform School Fund (the "*Uniform School Fund*").

### *Education Monitoring and Funds Management (Utah Code §§ 53F-1-104)*

The State Board of Education monitors State funded education programs and the expenditure of State funds. Except as otherwise authorized by statute, the State Board of Education will not allow a cost under a "State Award," which includes money that the State Legislature appropriates to State education programs for use by a local education agency ("*LEA*"), including local school boards/public school districts and charter schools, or a grant that the State Board of Education awards to an LEA as part of a State education program, unless the cost is necessary and reasonable for, and allocable to, the performance of the State Award, the cost conforms to any limitations or exclusions that apply uniformly to the LEA's other activities, the LEA accorded the cost consistent treatment among programs, the LEA determined the cost in accordance with generally accepted accounting principles, the LEA adequately documented the cost, and the LEA incurred the cost during the approved budget period.

In determining whether a cost is a reasonable cost, the State Board of Education will consider whether the cost is of a type generally recognized as ordinary for the operation of the LEA or the proper and efficient performance of the State Award; the restraints or requirements imposed by sound business practices, arm's length bargaining, federal, State, local, tribal, or other laws and regulations, and the State Award's restrictions and conditions; market prices for comparable goods or services in the geographic area; whether an individual involved in a decision to incur the cost acted with prudence in the circumstances considering the individual's responsibilities to the LEA, the LEA's employees,

the LEA's students, the public, and the State government; and whether the LEA significantly deviated from the LEA's established practices and policies concerning incurring costs so that the costs the LEA incurs for the performance of the State Award are unjustifiably increased.

The State Board of Education will determine that a cost is an allocable cost if the LEA incurred the cost specifically for the State Award, the cost benefits both the State Award and the LEA's other work and can be distributed in proportions that may be approximated using reasonable methods, and the cost is necessary to the overall operation of the LEA and is assignable in part to the State Award.

*Uniform School Fund (Utah Code §§ 53F-2-201 through 207)*

The Uniform School Fund derives its distributable income from interest and dividends from the State School Fund (which fund consists of proceeds of the sale of all lands granted to the State by the United States for the support of public elementary and secondary schools, 5% of the net proceeds from the sale of federally owned land lying within the State, all revenues derived from nonrenewable resources on certain State lands, all revenues derived from the use of school trust lands, other revenues appropriated by the State Legislature and other revenues and assets received by the fund under any provision of law or by bequest or donation), revenues appropriated by the State Legislature and other revenues received under any other provision of law or by donation.

Under the Charter Schools Act, charter schools like the Charter School are funded in the same way that traditional public-school districts are funded. Funds are electronically transferred directly from the State treasurer to each charter school monthly using statutory and administrative rule set formulae. The formulae calculate proper funding levels using a system of weighted pupil units ("WPUs"), the value of which is determined by the Minimum School Program Act, Utah Code, Title 53F, Chapter 2 (the "*Minimum School Program*") each year in the State's Minimum School Program and Public Education Budget Amendments Bill. WPUs for charter schools are allocated as follows: 0.55 for kindergarten pupils; 0.9 for pupils in grades 1-6; 0.99 for pupils in grades 7-8; and 1.2 for pupils in grades 9-12 (Utah Code 53F-2-302(4)). Funding is allocated by adding the average daily membership (ADM) for all students attending the charter school (other than kindergarten students) and the product of the total ADM of all kindergarten students attending the charter school times .55. The number of WPUs is then multiplied by the value of the WPU for kindergarten through twelfth grade funding. Charter schools may, like all public schools, be eligible for additional funding for administering programs such as special education, interventions for at-risk students and accelerated learning programs.

To determine membership, charter schools must ensure that attendance records are kept which clearly and accurately show the entry date, exit date and attendance record of each student, and must employ an independent auditor to audit student accounting records annually. Reporting due dates and auditing procedures are summarized in the State of Utah Legal Compliance Audit Guide SOE-1, Minimum School Program as well as the agreed upon procedures in Appendix C-5, School District Fall Enrollment and Student Membership Reporting, provided to school districts and charter schools by the State Board of Education. The State Board of Education reviews student membership and fall enrollment audits as they relate to the allocation of State funds.

For purposes of funding for the regular basic school program, a student can only be a pupil in average daily membership once on any day. A student may be counted in full-time membership in the regular school program, or full-time membership in some other program. A student may not be funded for more than one regular WPU for any school year. If a student is enrolled part-time in a regular school

program and part-time in some other program (such as Adult Basic Education or Youth in Custody), the student's membership is reported on a pro-rated basis for each program.

The membership of students enrolled part-time in public schools is determined by the ratio of the number of hours or periods that the student is in membership per day or week to the total number of hours or period in the school day or week. Subject to certain exceptions, a student enrolled in a public school and a private school or home school shall only be credited for membership for State funding purpose for the public school portion of the day.

#### *Minimum School Program*

The Minimum School Program governs the use of State funds in the Uniform School Fund and distributes regular basic program funding through the WPU formula described above. Pursuant to House Bill 5012 signed into State law on June 29, 2020, the level of WPU basic program funding provided by the State was \$3,596 per student for the 2021 fiscal year. Pursuant to Senate Bill 1 signed into State law on February 4, 2021, the level of WPU basic program funding provided by the State is \$3,809 per student for the 2022 fiscal year. Pursuant to Senate Bill 2 signed into State law on March 24, 2022, the level of WPU basic program funding provided by the State is \$4,038 per student for the 2023 fiscal year.

#### *In Lieu of Local Funding Appropriation (Utah Code §§ 53F-2-703)*

The Charter Schools Act provides that the State Legislature shall provide for an appropriation for charter school students to replace some of the district and voter mandated property tax revenues allocated to traditional public schools within a district. The State Board of Education will distribute charter school levy per pupil revenues to charter schools in accordance with the formula set forth in Section 53F-2-703(2) of the Utah Code. The State Legislature provides for this appropriation for charter schools for each charter school student enrolled on the first school day of October to supplement the allocation by the State Board of Education of charter school levy per pupil revenues. The amount of money provided by the State for a charter school student will be the sum of (a) the charter school students' average local revenues minus the charter school levy per pupil revenues and (b) the statewide average debt services revenues. If, however, the total of charter school levy per pupil revenues and the amount provided by the State is less than \$1,427, the State will provide an additional supplement so that a charter school receives at least \$1,427 per student, up to the maximum number of students the charter school stated it would serve in its charter agreement. For any students enrolled in a charter school above the maximum number stated in the school's charter agreement, the charter school may receive only a prorated distribution of remaining funds allocated based upon its share of all the students enrolled in charter schools who exceed the number of maximum students stated in each charter school's charter agreement. Ten percent of monies received from the above calculation by charter schools are required to be expended for school facilities only.

#### *State Grants and Contributions (Utah Code §§ 53F-5-201 through 208; §§ 53F-5-301 through 310)*

In addition to the WPU and per pupil student levy, funds are available through the State to charter schools through various grants, appropriations and other contributions. These State contributions include miscellaneous grant programs to enable and incentivize charter schools to create an online system for tracking summative test data or tracking student progress, implement evidence-based literacy intervention programs, provide a Strengthening College and Career Readiness Program, create a suicide prevention program, and address academic achievement for students affected by intergenerational poverty. In addition, there is a Student Access to High Quality School Readiness Programs Grant and appropriations for, among other things, accelerated learning programs, adult education, at-risk programs, concurrent enrollment

programs and high-ability student initiative programs. Distributions under the grants, appropriations and contributions are based on statutory formulas and administrative policy.

#### *Additional Revenues*

The governing body of a charter school is authorized to accept gifts, donations or grants of any kind made to the charter school and to expend or use said gifts, donations or grants in accordance with the conditions prescribed by the donor; however, no gift, donation or grant can be accepted by the governing body if it is subject to any condition contrary to law or contrary to the charter school's charter agreement. Charter schools may, in addition, borrow funds for capital facilities through private market lenders and investors. Charter schools in the State utilize such funding avenues similarly to the way in which traditional school districts borrow funds against tax receipts so far as facilities development is concerned.

#### *Charter School Closure Reserve Account (Utah Code §§ 53F-9-307)*

Pursuant to House Bill 425 signed into State law on March 17, 2021, the State Legislature created within the Education Fund a special revenue fund known as the "Charter School Closure Reserve Account." Amounts on deposit in the Charter School Closure Reserve Account consist of appropriations by the State Legislature, annual contributions by charter schools, and interest earnings. The State Legislature initially appropriated an amount equal to \$1,000,000 for the Charter School Closure Reserve Account for the 2021-22 fiscal year. For the fiscal year beginning on or after July 1, 2021, charter schools are required to annually contribute to the Charter School Closure Reserve Account \$2.00 per student enrolled in the charter school until the balance of the Charter School Closure Reserve Account reaches \$3,000,000. Charter schools are then required to contribute prorated amounts (but never in excess of \$2.00 per student enrolled in the charter school) to ensure that the Charter School Closure Reserve Account maintains a balance of \$3,000,000 through the 2023-24 fiscal year, \$2,500,000 through the 2025-26 fiscal year, and \$2,000,000 thereafter, subject to the conditions set forth in the Charter Schools Act.

Amounts on deposit in the Charter School Closure Reserve Account are to be used by a charter school that closes on or after January 1, 2021 to pay debts that a charter school owes to the State Board of Education, the State or federal government, and other debts permitted by the Charter Schools Act, but are not allowed to be used to pay bond debt.

#### **Additional State Board of Education Rules**

The State Board of Education has promulgated rules regarding the operation and administration of charter schools, certain of which are described below.

#### *Minimum School Days, LEA Records, and Audits (Utah Administrative Code §§ R277-419-4 and 8)*

School districts and charter schools must conduct a minimum of 990 instructional hours and 180 school days each school year; however, under special circumstances discussed in R277-419-4(1)(b), variances may be granted. The days or hours may be offered at any time during the school year. A school day is defined for kindergarten as a minimum of two hours of instruction per day and for grades one through twelve a minimum of four hours of instruction per day. All school day calculations exclude lunch periods and pass time between classes.

To ensure student membership, daily student attendance records shall be taken and maintained that include entry date, exit date, high school completion status, excused and unexcused absences, disability



status, and Youth in Custody status. Each charter school must employ an independent auditor, under contract, to provide an annual audit of student attendance records and report such findings to the charter school's board and the Financial Operations Section of the State Board of Education.

*Eligibility (Utah Administrative Code §§ R277-419-5 through 6)*

In order to generate membership for funding through the Minimum School Program for any clock hour of instruction on any school day, a student shall: (a) not have previously earned a basic high school diploma or certificate of completion; (b) not be enrolled in certain Youth in Custody programs; (c) not have unexcused absences on all of the prior ten consecutive school days; (d) be a resident of the State as defined under Section 53G-6-302 of the Utah Code; (e) be of qualifying school age or a retained senior; and (f) (i) be expected to attend a regular learning facility operated or recognized by the LEA on each regularly scheduled school day, if enrolled in a face-to-face learning program, or (ii) have direct instructional contact with a licensed educator provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to: injury, illness, surgery, suspension, pregnancy, pending court investigation or action, or an LEA determination that home instruction is necessary.

If a student was enrolled for only part of the school day or only part of the school year, the student's membership shall be prorated according to the number of hours, periods or credits for which the student was actually enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

- (a) If the student was enrolled for four periods each day in a seven-period school day for all 180 school days, the student's aggregate membership would be  $\frac{4}{7}$  of 180 days, or 103 days.
- (b) If the student was enrolled for seven periods each day in a seven-period school day for 103 school days, the student's membership would also be 103 days.

For students in grades 2 through 12, days in membership shall be calculated using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be  $(900/990)180$ , and the LEA would report 164 days. For students in grade 1, the first term of the formula shall be adjusted to use 810 hours as the denominator. For students in kindergarten, the first term of the formula shall be adjusted to use 450 hours as the denominator.

The sum of regular and self-contained special education and Youth in Custody membership days may not exceed 180, and the sum of regular and resource special education membership days may not exceed 360. LEAs can count a student in membership for equivalent in hours up to: (a) one period each school day if the student has been released during the day for religious instruction or individual learning activity or exempted from school attendance for home schooling and participated in at least one extracurricular activity; (b) two periods each day for time spent in bus travel during the regular school day to and from another State-funded institution, if the student is enrolled in CTE instruction consistent with the student's SEOP/Plan for College and Career Readiness; and (c) all periods each day if the student is enrolled in a concurrent enrollment program, private school without a religious affiliation, a foreign exchange student program, or the Utah Schools for the Deaf and the Blind.

### *Fiscal and Auditing Policies (Utah Administrative Code § R277-113)*

Charter schools in the State are required to develop a fiscal policy that aligns and implements State law and State Board of Education rules. The board of each charter school is charged with approving the fiscal policy, ensuring that the school operates under a system of internal controls, regularly reviewing the school's budget and financial system and making monthly reports on the school's finances. As required by Section 53G-7-303 of the Utah Code, by June 30 of each year, a charter school's governing board must adopt a budget for the following operating year and file such budget with the state auditor and the State Board of Education. A charter school's governing board also must create an audit committee and appoint board members to serve on the committee. The audit committee shall monitor the external audit report, and, if the school serves over 10,000 students, create and oversee an internal audit program. In addition, each charter school's fiscal policy shall include a cash handling policy; an expenditure policy; a method for recording expenditures that includes a designation of the fund, function, location, program and object or revenue code of each expenditure; a fundraising policy; a donation and gift policy; and a financial reporting policy, a policy governing construction contracts and multi-year contracts. The financial reporting policy shall require that the charter school ensure financial reporting in accordance with GAAP and audits of the school's financial reporting in accordance with GAAS; that the financial reporting shall be in accordance with the basis of accounting as required by GAAP; and a requirement that the charter school conduct its budgeting and accounting in accordance with the uniform chart of accounts and auditing standards provided online annually by the Utah State Superintendent of Public Instruction (the "*State Superintendent*").

### *Enrollment Expansion for Approved Charter Schools (Utah Administrative Code §§ R277-552-2 and 5)*

An Authorizer shall maintain the final, official and complete charter agreement. A charter school may request approval for an expansion if: (a) the charter school satisfies the requirements of federal and state law, regulations, rule and the charter agreement; and (b)(i) the charter school's charter agreement provides for an expansion consistent with the request; or (ii) the charter school governing board has submitted a formal amendment request to the Authorizer consistent with the Authorizer's requirements. If the Authorizer approves a charter school expansion, the expansion shall be approved before October 1 of the State fiscal year prior to the school's intended expansion date. An Authorizer that authorizes an expansion of the Authorizer's charter school shall provide the total number of students by grade that the charter school is authorized to enroll to the State Superintendent on or before October 1 of the State fiscal year prior to the charter school's intended expansion date.

### *Charter School Financial Practices and Training (Utah Administrative Code § R277-553-5)*

A charter school shall hire or contract with a business administrator to perform the duties described in Section 53G-4-303 of the Utah Code, which include the duties to: (a) attend all meetings of the charter school, keep an accurate record of its proceedings, and have custody of the seal and records; (b) be custodian of all charter school funds, be responsible and accountable for all money received and disbursed, and keep accurate records of all revenues received and their sources; (c) countersign with the chair of the board of the charter school all warrants and claims against the charter school as well as other legal documents approved by the charter school; (d) prepare and submit to the charter school each month a written report of the charter school's receipts and expenditures; (e) use uniform budgeting, accounting, and auditing procedures and forms approved by the State Board of Education, which shall be in accordance with generally accepted accounting principles or auditing standards and Utah Code, Title 63J, Chapter 1, Budgetary Procedures Act; (f) prepare and submit to the charter school a detailed annual statement for the period ending June 30, of the revenue and expenditures, including beginning and ending fund balances; (g) assist the charter school in the preparation and submission of budget documents and statistical and fiscal

reports required by law or the State Board of Education; (h) ensure that adequate internal controls are in place to safeguard the charter school's funds; and (i) perform other duties as the board of the charter school may require. A charter school business administrator shall attend business meetings required by the State Superintendent or the charter school's Authorizer.

A charter school board shall regularly monitor the charter school's business administrator described and ensure that the business administrator fulfills the duties outlined above. The State Board of Education may impose corrective action against a charter school for failure to provide financial and statistical information required by law or State Board of Education rules in accordance with Rule R277-114. A charter school shall comply with the Utah State Procurement Code, Title 63G, Chapter 6. A charter school may not receive necessarily existent small schools funding under Subsection 53F-2-304(2) and Rule R277-445.

#### *Charter School Oversight, Monitoring and Appeals (Utah Administrative Code § R277-553-2)*

Each Authorizer is required to: (a) review and evaluate annually the performance of charter schools for which it is an Authorizer, including requiring charter schools to comply with their charter agreements and comply with statute and board rule; (b) visit a charter school at least once during its first year of operation in order to ensure adherence to and implementation of approved charter and to finalize a review process; (c) visit a charter school as determined in the review process; (d) provide written reports to a charter school after the visits that set forth strengths, deficiencies, and proposed corrective actions, if applicable; (e) notify the Superintendent of a claim of fraud or misuse of public assets or funds by a charter school; (f) coordinate the investigation of any claims reported to the Superintendent with the Superintendent; (g) annually review, and document matters specific to effective charter school operations, including financial performance, academic performance, enrollment, and governing board performance; (h) conduct and document a comprehensive review of governing board performance and review the charter agreement at least once every five years; and (i) coordinate with the Superintendent to regularly review its charter schools as described in Section 53G-5-205(2) of the Charter Schools Act.

#### *Remedying Charter School Financial Deficiencies (Utah Administrative Code § R277-553-6)*

In the event that a charter school is suffering deficiencies including but not limited to deficiencies in the charter school's financial, academic or operational obligations as required in its charter agreement, the State Charter School Board shall, upon receiving credible information of charter school financial mismanagement or fraud, or a threat to the health, safety, or welfare of students, in coordination with the Superintendent, an Authorizer shall direct an independent review or monitoring, as appropriate. An Authorizer may direct a charter school governing board or the charter school administration to take reasonable action to protect students or State or federal funds consistent with Section 53G-5-503 of the Charter Schools Act.

Upon receipt of findings documenting a threat to the health, welfare, or safety of a school, an Authorizer may: (a) recommend that the Superintendent impose corrective action against the school in accordance with § R277-114 of the Utah Administrative Code; (b) take immediate or subsequent corrective action with charter school governing board members or employees who are responsible for deficiencies consistent with Section 53G-5-501 of the Charter Schools Act; (c) identify a remediation team to work with the school; or (d) immediately terminate the school's charter in accordance with Subsection 53G-5-503(5) of the Charter Schools Act. Upon receipt of findings documenting financial mismanagement or fraud by a charter school, an Authorizer shall coordinate appropriate corrective

action with the Superintendent. An Authorizer may exercise flexibility for good cause in making a recommendation regarding an identified deficiency.

*Remediation and Probation (Utah Administrative Code § R277-553-3)*

An Authorizer shall develop a written policy documenting the process for remediation of any deficiencies identified through the processes outlined in Section R277-553-2 of the Utah Administrative Code described above. An Authorizer shall submit a copy of its remediation policy to the State Board of Education for approval along with its policy for approving new charters under Section R277-552-3 of the Utah Administrative Code. If a school fails to remedy deficiencies through the remediation process, an Authorizer may place the school on probation for no longer than one calendar year. Upon placing a school on probation, an Authorizer shall set forth a written plan outlining those provisions in the charter agreement, applicable laws, rules, and regulations with which the school is not in compliance. The written plan shall: (a) set forth the terms, conditions, and timeline that the school shall follow in order to be removed from probation; and (b) a plan for further remedial action if the school fails to comply with probationary terms. If a school complies with the terms of the written plan within the timeline prescribed, the Authorizer shall remove the school from probation. A school may request a single extension of no more than six months from an Authorizer to comply with the terms of the written plan. If a school fails to satisfy the terms of the written plan within the established timeline, the Authorizer shall propose to terminate the school's charter. While a school is on probation, the school may seek technical assistance from the Authorizer to remedy any deficiencies. An Authorizer may, for good cause, or if the health, safety, or welfare of the students at the school is threatened at any time during the probationary period, terminate the charter immediately. An Authorizer shall notify the Superintendent in writing within 30 days of any probationary terms imposed as set forth herein. An Authorizer shall comply with the notification requirements in Section 53G-5-504 of the Charter Schools Act if the Authorizer approves a motion to terminate a charter.

*Charter School Governing Board Compliance with Law (Utah Administrative Code § R277-553-4)*

A charter school governing board may amend the charter school's charter agreement by receiving approval from its Authorizer consistent with Section 53G-5-303 of the Charter Schools Act. A charter school governing board shall comply with its Authorizer's processes and timelines for all reviews, amendments, expansion requests, and satellite applications. A charter school shall notify the Superintendent and its Authorizer of lawsuits filed against the charter school within 30 days of the school being served with the complaint.

## **APPENDIX B**

### **THE CHARTER SCHOOL**

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## GENERAL

Promontory School of Expeditionary Learning (the “*Charter School*”) is a Utah (the “*State*”) public charter school and a nonprofit corporation organized under the laws of the State. The Charter School received a 501(c)(3) determination letter from the Internal Revenue Service on December 15, 2011, classifying the Charter School as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “*Code*”), which is exempt from federal income taxation under Section 501(a) of the Code (except with respect to “unrelated business taxable income” within the meaning of Section 512(a) of the Code). The Charter School was incorporated in 2010 and is organized pursuant to Utah Code Annotated Title 53G, Chapter 5, as amended (the “*Charter Schools Act*”). Capitalized terms not otherwise defined in this Appendix B shall have the same meanings as set forth in the body of this Official Statement.

The Charter School currently operates under a Charter School Agreement dated May 16, 2011 (as amended, the “*Charter Contract*”) with the Utah State Charter School Board (the “*State Charter School Board*”), and pursuant to a Charter (the “*Charter*”) that is the application ultimately approved by the State Charter School Board and the Utah State Board of Education (the “*State Board of Education*”). The Charter School began school operations in the 2012-13 school year. As of October 1, 2022, the Charter School had an enrollment of 449 in grades K-8. The Charter School is authorized to enroll up to 500 students.

State charter schools, including the Charter School, have perpetual charter terms. Therefore, pursuant to its terms and applicable law, the Charter Contract’s term will continue unless terminated by the State Charter School Board pursuant to §53G-5-503 of the Charter Schools Act. See “Charter Contract,” below.

Under the Charter Schools Act, the Charter School is subject to regulation and ongoing oversight by the State Charter School Board. This oversight operates through an initial visit and ongoing visits to the Charter School by officials and staff of the State Charter School Board. The State Charter School Board provides written reports to the Charter School that communicate its strengths and areas in need of improvement. In addition, the State Charter School Board oversees the Charter School to ensure that the school complies with its Charter Contract and that the Charter School’s operations and governance meet minimum State requirements and best practices. See “APPENDIX A – CHARTER SCHOOLS IN UTAH – Additional State Board of Education Rules – *Charter School Oversight, Monitoring and Appeals*” and “– *Remediation and Probation*” in this Official Statement. The Charter School is in good standing with the State Charter School Board and the State Board of Education.

## FACILITIES

The Charter School facilities (the “*Existing Facilities*”) are located at 1051 West 2700 South in Perry, Utah, approximately 54 miles north of Salt Lake City in the eastern section of Box Elder County. The Existing Facilities are located in a county in which approximately 23% of the population are school-aged children (ages 5-18). The target area for student recruitment is the Box Elder School District boundaries; however, the Charter School is also accessible to residents in the northern end of Weber County, as well.

The following is a map showing the location of the Existing Facilities and the surrounding cities.



The Charter School will use a portion of the proceeds of the Series 2023A and Series 2023B Bonds (collectively, the “Series 2023 Bonds”) to finance the acquisition and construction of improvements to the Existing Facilities described below. The Existing Facilities include a single building of approximately 42,963 square feet on approximately 10.78 acres of land. Construction of the Existing Facilities was completed in 2011. The Existing Facilities have adequate capacity to accommodate 500 students under the Charter School’s current enrollment cap in grades K-8. The school building includes classrooms, breakout rooms, kivas, office space, a teacher work room and faculty lounge, administrative offices, student restrooms, faculty restrooms, storage rooms, a library, a special education room, a teacher specialist room, a sick room, a conference room, a multipurpose room, a commercial grade kitchen and storage rooms, a technology/server room, and a front office. The exterior of the Existing Facilities also includes a large play structure, a soccer field, and an asphalt play area with two basketball courts and room for other games. The building is fully constructed. The building is a single story with masonry and steel construction, has been inspected by the Utah State Fire Marshall, and has an “E” occupancy classification. The building is in material compliance with all applicable zoning, building code and land use regulations.

A portion of the proceeds of the Series 2023 Bonds will finance the costs of certain improvements to the Existing Facilities (the “*Improvements*” and, together with the Existing Facilities, the “*Facilities*”). The Improvements consist of approximately 7,867 square feet and will add additional classroom learning space. In connection with the Improvements, the Charter School and One West Construction, LLC, as contractor (the “*Contractor*”) have entered into an AIA Document A101-2017 Standard Form of Agreement Between Owner and Contractor, as amended, where the basis of payment is a Guaranteed Maximum Price, dated as of April 21, 2023 (the “*Construction Contract*”), between the Borrower and the Contractor. Pursuant to the Construction Contract, the cost of the Improvements will not exceed \$2,931,211 for labor and materials (the “*GMP Price*”). The GMP Price includes \$183,790 of contingency for the Charter School.

The Charter School expects to have received a construction permit prior to the issuance of the Series 2023 Bonds, and completion of the Improvements is expected in March 2024. The Construction Contract provides a substantial completion date (the “*Substantial Completion Date*”) of not later than December 15, 2023. The Construction Contract requires the Contractor to provide a performance and payment bond in such amount, and sets a 5% retainage.

The following are pictures of the Existing Facilities.



On April 12, 2023, a real estate appraisal was completed with respect to the Facilities by Rigby & Company (the “*Appraiser*”). In the appraisal, the Appraiser determined that the as-completed condition, as of a valuation date of October 30, 2023, and assuming the completion of the 2023 Project, will be \$13,650,000 (the “*Appraised Value*”). In determining the Appraised Value, the Appraiser determined (i) the income approach value of the Facilities to be \$13,640,000 and (ii) the sales comparison approach value of the Facilities to be \$13,725,000. A copy of the Appraisal is on file with the Charter School and is available for review.

The value of the Facilities, as indicated in the Appraisal is only the opinion of the Appraiser at the time that the Appraisal was completed. The actual value of the Facilities at present and in the future will vary from conclusions in the Appraisal, which variance may be material and adverse. The Appraised Value assumes the completion of the Improvements according to plans and specifications as well as costs, as presented to the Appraiser, in a timely manner. In the event of a foreclosure of the Deed of Trust, the value of the Facilities in such event cannot be determined and may be substantially less than the value indicated in the Appraisal.

Bymaster Consulting International conducted a Phase I Environmental Site Assessment, dated April 3, 2023, in connection with the Facilities (the “*Phase I*”). The Phase I indicated that there was no evidence of any recognized environmental conditions in connection with the Facilities. The Phase I did not recommend any further assessment of the Facilities.

The Phase I speaks only as of its date, and Bymaster Consulting International has not been asked to perform any additional assessment since the time of the Phase I. Further, the Phase I is subject to the limitations specified in such report. More generally, no environmental assessment can completely eliminate uncertainty regarding the potential for recognized environmental conditions in connection with a subject property. Potential investors must refer to the complete Phase I for a full understanding of such limitations, and for additional information pertinent to the assessment. Copies of the Phase I are available upon request from the Charter School. Costs incurred by the Charter School with respect to environmental remediation or liability could adversely affect its financial condition. See “RISK FACTORS – Environmental Regulations” in the forepart of this Official Statement.

## **MISSION**

The mission of the Charter School is to provide a rich educational environment that views learning as an expedition and uses the study of “Great Thinkers” to cultivate the value of excellence and the love of knowledge. Using investigation and discovery to make connections to ideas and our community, the Charter School empowers children to embrace challenge, act with humanity, and become the great thinkers of the 21<sup>st</sup> century.

## **VISION**

The following is the vision of the Charter School:

“Promontory provides a rich and active, yet fundamental, educational program to children in grades kindergarten through eight. We believe that all children can and want to learn, and we prepare our students to become knowing

inquirers and participants in their own learning in. In meeting our mission, we set high expectations for student achievement and provide the necessary support to enable each student to achieve these expectations. Promontory School of Expeditionary Learning emphasizes active learning, literacy, character growth, and teamwork through:

- Learning Expeditions—in-depth investigations of important subjects that mirror real life challenges, and
- Studying Great Thinkers—significant experts, both living and historical.”

## **CORE VALUES AND FOCUS**

The following are the values that govern the Board and Charter School administration, staff, students and school community: respect, integrity, service, excellence, family, adventure and responsibility.

## **CURRICULUM**

The Charter School offers Expeditionary Learning. Expeditionary Learning focuses teaching and learning toward enabling all students to meet rigorous academic standards and character goals. Curriculum, instruction, assessment, school culture and school structures are organized around producing high quality student work (*“Learning Expeditions”*) in long term, in-depth investigations of themes or topics that engage students in the classroom and in the wider world through authentic projects, fieldwork and service. Learning Expeditions are designed with clear learning goals that are aligned with the State’s Common Core. On-going assessment is woven throughout each learning expedition, pushing students to high levels of performance.

Expeditionary Learning emphasizes five core practices within the school:

(i) Learning Expeditions: These challenging, interdisciplinary, real-world projects and in-depth studies act as the primary curriculum units in Expeditionary Learning schools. Learning Expeditions support critical literacy and address central academic standards of content, while promoting character development and fostering a service ethic.

(ii) Active Pedagogy: In Expeditionary Learning schools, teachers use active pedagogy to help students become active and collaborative learners: to make connections, to find patterns, to see events from different perspectives, to experiment, to go beyond the information given, and to develop empathy and compassion for events, people and subjects.

(iii) School Culture and Character: Expeditionary Learning builds shared beliefs, traditions, and rituals in order to create a school culture which is characterized by a climate of physical and emotional safety, a sense of adventure, an ethic of service and responsibility and a commitment to high quality work.

(iv) Leadership and School Improvement: Leaders in Expeditionary Learning schools create a professional community that focuses on curriculum and instruction as the primary vehicles for improving student achievement and school culture.

(v) School Structures: Expeditionary Learning schools use longer and more flexible schedule blocks, common planning time, heterogenous groupings, and/or looping to ensure student success.

## **CHARTER CONTRACT**

The Charter School operates under the Charter Contract pursuant to the requirements of Section 53G-5-303 of the Charter Schools Act. Under State law, the Charter Contract may be modified only by mutual agreement between the charter school authorizer and the charter school governing board.

The Charter Contract's term will continue unless it is terminated by either the Charter School or the State Charter School Board. See "APPENDIX A – CHARTER SCHOOLS IN UTAH – General Provisions of the Charter Schools Act – *Noncompliance and Termination*."

The Charter School believes that it is substantially in compliance with all contractual provisions and requirements of the Charter Contract, as well as all applicable laws, ordinances, and regulations. The Charter School has not received any notice of noncompliance, notice of concern, or similar notice from the State Charter School Board, the State Board of Education, or any other State or federal agency.

## **GOVERNANCE AND ADMINISTRATION**

### ***Board of Trustees***

The Charter School is incorporated as a State nonprofit corporation and operates in accordance with its Articles of Incorporation filed with the State on March 29, 2010 (the "Articles") and its Bylaws (the "Bylaws"). Under the Bylaws, the Board has the power to manage the business and affairs of the corporation including but not limited to the business affairs of the Charter School. Board members shall serve without compensation. However, the Board may approve reimbursement of actual and necessary expenses while conducting corporation business in accord with the set budget and imposed limits for such activities.

The Charter School has adopted a financial and risk management plan that guides all aspects of financial and risk management including policies dictating minimum reserve and coverage levels and post issuance compliance requirements. The Bylaws include conflicts of interest provisions.

The Board consists of no fewer than five and no more than nine members that are appointed consistent with the provisions of the Articles of Incorporation and the Bylaws. Board members may not serve more than two consecutive three-year terms, after which they may be re-elected to the Board after at least a one-year sabbatical. At least two members of the Board must be a parent of a current student. The following individuals constitute the current eight members of the Board (the "*Board*");

**TABLE B-1**

<b>BOARD MEMBER</b>	<b>YEARS ON BOARD</b>	<b>BOARD RESPONSIBILITIES</b>	<b>PROFESSIONAL EXPERIENCE</b>
Amber Edelman	4	Board Chair	B.S. in Respiratory Therapy from Weber State University and board-certified behavior analyst; professional roles from autism behavior specialist to child behavior specialist
Michelle Flynn	4	Board Vice-Chair	Majored in music business management in college; professional roles in retail management
Dorothy Dobson	4	Trustee	Bachelor's degree from Utah State University; professional roles from teacher to college lecturer
Michael Engh	5	Trustee	B.S. in Electrical and Computer Engineering from Utah State University and an M.B.A. from Weber State University; professional roles in software development
Becca Ashby	1	Trustee	Professional roles from early childhood education to sales
Josie Beth Archibald	1	Trustee	B.S. in Public Relations from Southern Utah University; professional roles in management
Karen Braithwaite	2	Trustee	B.A. in Elementary Education from BYU-Idaho; professional roles in teaching
Stephanie Quintero	2	Trustee	B.S. in Criminal Justice from Weber State University; professional roles from paralegal supervision to software administration

### ***Administration***

The Administration at the Charter School oversees all aspects of school operations. The Administration is charged with implementing and developing the vision of the Charter School. It ensures that the Charter School is in compliance with State regulations. The Administration ensures that students are physically safe and progressing educationally. They also ensure teachers are meeting the needs of students, that the curriculum is effective, and that the Charter School is continually improving. The Administration sees that the needs of teachers are being met through regular trainings as well as professional development opportunities. The Administration is on campus to build positive relationships with the students, families and staff. The Administration strives to promote a community of educational excellence at the Charter School.

Listed below are key administrators of the Charter School, along with brief biographical information pertaining to each. Both of these administrators are employees of the Charter School.

*Jennifer Blaine, Director.* Jennifer Blaine graduated from Brigham Young University in 1999 with a bachelor's degree in elementary education and a minor in zoology. She has been a part of the Promontory community since the beginning. All five of her children either attend or attended the Charter School. She has volunteered as a parent helper at the Charter School. She served on the Board for five years. She has been employed at the Charter School as an aide, a substitute teacher, an intervention specialist, and now as director.



*Gwen Andrus, Instructional Coach.* Gwen Andrus graduated from Brigham Young University in 1981 with a bachelor's degree in elementary education and early childhood education. She started her teaching career in Provo, Utah. She also taught elementary school and served as an elementary school principal in California and helped found a private school based on children's developmental processes, hands-on learning, multiple intelligences, and cultural literacy. Gwen started working at the Charter School in 2020.

### ***Management Agreement***

Since 2016, the Charter School has contracted with Red Apple Financial (the “Business Manager”) to provide certain management and support services, including record keeping, bookkeeping, financial projections, human resources assistance and consulting, reporting requirements, systems development and a wide variety of other business services to help the Charter School most effectively accomplish its mission.

The Charter School and the Business Manager have entered into a Charter School Business Services Agreement (the “Management Agreement”). The Management Agreement gives the Charter School and the Business Manager the ability to terminate the Management Agreement with 60 days’ written notice, or with no notice in the event of breach of the Management Agreement by the Business Manager. Under the Management Agreement, the Business Manager has one full-time employee at the Charter School, who receives support and additional services from the other employees of the Business Manager.

The Business Manager provides similar services to 25 other charter schools in Utah. The Business Manager employs 20 full-time employees, including financial analysts, senior accountants, development directors, business managers, staff accountants and other professional support staff.

### **CHARTER SCHOOL STAFF AND FACULTY**

The Charter School currently employs 104 employees, as shown below.

**TABLE B-2**  
**Employees**

	<b>Full-Time</b>	<b>Part-Time</b>	<b>Total</b>
Teachers	22	4	26
Teaching Aides	0	30	30
Administrators	2	0	2
Support Staff	<u>3</u>	<u>43</u>	<u>46</u>
Total	27	77	104

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*Source: The Charter School.*

The Charter School’s current retention rates for its teachers and staff are set forth below as the number of employees who were employed in June of 2022 and returned in August of 2022:

**TABLE B-3**  
**Employee Retention**

	<b>Employed in June 2022/Returning in August 2022</b>	<b>Dismissals</b>	<b>Voluntary Leaves</b>
Teachers	22	0	1
Teaching Aides	33	1	7
Administrators	2	0	0
Support Staff	<u>40</u>	<u>0</u>	<u>5</u>
Total	97	1	13

*Source: The Charter School.*

The Charter School’s current student-teacher ratio is approximately 22:1.

### ***Employee Salary and Benefits***

For the 2022-23 school year, the average teacher salary at the Charter School is \$51,510, compared to an average salary of \$57,418 for Box Elder School District.

### ***Retirement Matters***

The Charter School participates in a deferred compensation retirement plan (the “Employee Retirement Plan”) under Internal Revenue Code Section 401(k) that covers all full-time employees. Assets in the Employee Retirement Plan are held by a third-party administrator. See “APPENDIX A — ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2022 — Notes to Financial Statements — Note 6.” The Charter School does not participate in the State’s retirement system.

### ***Labor Relations***

Teachers are employed on an at-will basis pursuant to annually renewable contracts initiated by the administration and approved by the Board. The Charter School considers its relations with the teachers to be excellent and does not anticipate any complications in renewing individual teacher contracts going forward. The Charter School’s employees are not represented by any unions, and to the Charter School’s knowledge, there have been no efforts to date by the teachers at the Charter School to organize into a union.

## **CHARTER SCHOOL ENROLLMENT AND WAITLIST**

### ***Enrollment***

It is the policy of the Charter School to follow all State and federal laws governing the recruitment, selection and enrollment of eligible students. In the event the number of students applying to attend the Charter School exceeds the Charter School enrollment cap or designated cap for a certain grade level, such students are entered into a lottery to determine which students may enroll in the Charter School. Once a

student is enrolled by the Charter School, the student does not need to reapply for admission unless the student leaves the school and subsequently wishes to reenroll.

The Charter School’s enrollment is limited to 500 students. As of October 1, 2022, the Charter School had an enrollment of 449 in grades K-8. Enrollment in the Charter School is open to all students who are residents of the State. Students are accepted into the Charter School by lottery. Enrollment applications are accepted on a continual basis and all applications are held in a general application pool. A lottery drawing is held from the general application pool when there is a vacancy. See “APPENDIX A – CHARTER SCHOOLS IN UTAH – General Provisions of the Charter Schools Act – *Eligible Students*” in this Official Statement.

The following table sets forth the Charter School’s historical enrollment by grade level as of October 1 of each year.

**TABLE B-4**  
**Historical Enrollment by Grade**

<b>GRADE</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
<b>K</b>	52	52	52
<b>1</b>	52	51	50
<b>2</b>	52	52	52
<b>3</b>	53	50	52
<b>4</b>	40	54	50
<b>5</b>	54	39	54
<b>6</b>	54	54	45
<b>7</b>	49	52	53
<b>8</b>	42	44	41
<b>Total</b>	448	448	449

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*Source: The Charter School.*

The following table sets forth the Charter School's projected enrollment by grade level.

**TABLE B-5**  
**Projected Enrollment by Grade**

GRADE	2023-24	2024-25	2025-26	2026-27
<b>K</b>	52	52	52	52
<b>1</b>	52	52	52	52
<b>2</b>	52	52	52	52
<b>3</b>	50	50	51	51
<b>4</b>	52	50	50	51
<b>5</b>	50	52	50	50
<b>6</b>	54	50	52	52
<b>7</b>	45	54	50	50
<b>8</b>	48	45	45	45
<b>Total</b>	455	457	454	454

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*Source: The Charter School*

***Re-enrollment Rate.***

The following table shows the Charter School's historical student retention rate.

**TABLE B-6**  
**Student Retention Rates**

	2019-20	2020-21	2021-22
The Charter School	91.1%	84.2%	87.5%
Utah Charter Median	80.7%	80.3%	82.3%

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*Source: Utah State Board of Education.*

***Wait List***

The following table illustrates the Charter School's waiting list by grade. This list is maintained electronically and updated annually.

**TABLE B-7**

	2022-23
<b>K</b>	1
<b>1</b>	13
<b>2</b>	29
<b>3</b>	15
<b>4</b>	0
<b>5</b>	24
<b>6</b>	0
<b>7</b>	0
<b>8</b>	0
<b>Totals</b>	82

*Source: The Charter School.*

The historical Average Daily Membership (“ADM”) rate for the Charter School, calculated as the total regular membership plus self-contained ADM for the year divided by the October 1 enrollment count for that year, is shown in the table below.

**TABLE B-8**

<b>Year</b>	<b>Average Daily Membership</b>
2021-22	98.0%
2020-21	98.7%
2019-20	97.7%

*Source: Utah State Board of Education.*

## **COMMUNITY DEMOGRAPHIC INFORMATION**

The following table outlines the estimated population for the years 2010 and 2020 for Box Elder County, Utah (the “County”), which is the county in which the Charter School is located.

**TABLE B-9**  
**ESTIMATED POPULATION FOR BOX ELDER COUNTY**

<u>2010</u>	<u>2020</u>	<u>% CHANGE</u>
49,975	57,666	15.4%

*Source: U.S. Census Bureau.*

The following table outlines the County’s estimated fair market value of property and unemployment rate for the following years. The information was obtained from the Utah State Tax Commission and Perry.

**TABLE B-10**  
**ESTIMATED FAIR MARKET VALUE AND UNEMPLOYMENT RATE FOR BOX ELDER COUNTY**

<u>Calendar Year</u>	<u>Estimated Fair Market Property Value</u>	<u>County Unemployment Rate</u>
2022	\$10,470,837,252	1.9%
2021	\$8,514,921,038	2.4%
2020	\$7,728,819,877	4.4%
2019	\$6,976,621,421	2.6%
2018	\$6,230,528,993	2.9%

*Source: Utah State Tax Commission.*

The following table outlines the number of residential and nonresidential units completed and the estimated value of such units for the following years.

**TABLE B-11**  
**ESTIMATED CONSTRUCTION IN BOX ELDER COUNTY**

<u>CALENDAR YEAR JUNE 30</u>	<u>RESIDENTIAL UNITS</u>	<u>VALUE OF RESIDENTIAL UNITS</u>	<u>NONRESIDENTIAL UNITS</u>	<u>VALUE OF NONRESIDENTIAL UNITS</u>
2022	265	\$66,188,305	251	\$15,337,172
2021	567	\$107,054,176	212	\$9,866,492
2020	380	\$84,020,629	240	12,562,536
2019	250	\$45,696,415	166	6,936,741
2018	270	\$54,393,037	195	18,773,675

*Source: Utah Department of Workforce Services*

The following table outlines Box Elder County's principal employers for 2021.

**TABLE B-12**

<b>Major Employers in Box Elder County</b>		
<b>Employer</b>	<b>Business Industry</b>	<b>Employees</b>
Northrop Grumman Corp	Aerospace	2000-2999
Box Elder School District	Public Education	1000-1999
Autoliv	Motor Vehicle Parts	1000-1999
Wal-Mart Associates	General Warehousing	1000-1999
Nucor Corporation	Iron/Steel Manufacturing	1000-1999
West Liberty Foods	Poultry Processing	500-999
Whitaker Construction Co	Construction	250-499
Associated Brigham Contractors	Specialty Trade Contractors	250-499
Procter & Gamble Paper Products	Paper Manufacturing	250-499
Brigham City Corporation	Local Government	250-499
Maddox Ranch House	Restaurant	250-499
Jeranbi	Restaurant	250-499

*Source: Utah Department of Workforce Services*

#### **SERVICE AREA AND COMPETING SCHOOLS**

The Charter School serves students residing primarily within the boundaries of the Box Elder School District. For the 2022-2023 school year, the Box Elder School District served approximately 12,000 total students, in 24 schools consisting of 14 elementary schools, 7 middle schools, and 3 high schools. The following chart shows information from schools serving the same grade levels within a 5-mile radius of the Facilities.

**TABLE B-13**

<b>DISTRICT SCHOOLS</b>				
<b>(WITHIN 5 MILES OF THE CHARTER SCHOOL, TEACHING GRADES K-8)</b>				
<b>SCHOOL</b>	<b>DISTANCE (IN MILES)</b>	<b>TYPE/GRADE</b>	<b>DISTRICT</b>	<b>APPROXIMATE ENROLLMENT</b>
Three Mile Creek Elementary	0	2-5	Box Elder	563
Lake View Elementary	3	K-5	Box Elder	557
Willard Elementary	4	PK-1	Box Elder	303
Young Intermediate	4	6-7	Box Elder	796
Box Elder Middle	4	8-9	Box Elder	1,116
Dale Young Community High	4	7-12	Box Elder	122

*Source: The Charter School.*

*Charter and Private Schools.* There are no charter and private schools serving the same grades levels within a 5-mile radius of the Campus of the Charter School.

There is nothing to prevent additional charter schools, public schools, or private schools from being created in or near the service area. See “RISK FACTORS-Competition for Students.”

## **ACADEMIC ACHIEVEMENT INDICATORS**

The Charter School participates in all standardized testing required by the State Board of Education. In addition, the federal government requires each state, as a condition of receiving funds under the Title I program and the Every Student Succeeds Act, to implement a single, statewide accountability system applicable to all public schools, including charter schools. The State has enacted legislation to determine the effectiveness of school districts and schools in assisting students to master the fundamental education skills toward which instruction is directed. The State Board of Education supports such legislation through the administration of statewide assessments which provide evaluative information regarding various levels of proficiency and identify any need to reallocate resources to improve existing programs.

***State Mandated Testing.*** According to State Board of Education rules, State charter schools, including the Charter School, are required to administer State required assessments. Pursuant to authority granted them by State statute, the State Board of Education has adopted a comprehensive system of assessment for all students in grades K-12, including students at the Charter School. The State’s assessments include (1) Readiness, Improvement, Success, Empowerment exam (“RISE”); (2) pre- and post-kindergarten assessments for Kindergarten students (KEEP); (3) a State Board of Education approved literacy and math assessment administered to students in grades 1-3 at the beginning, middle and end of the school year; (4) a State alternate assessment for students with disabilities; (5) the World-class Instructional Design and Assessment (WIDA) and the Assessing Comprehension in English State-to-State (ACCESS) for English learner students; and (6) the National Assessment of Educational Progress.

The State Board of Education’s current requirement for grades 3 through 8 includes RISE, a computer adaptive assessment. For grades 3 through 8, RISE includes tests on English language arts and math. RISE includes a science test for students in grades 4 through 8 and a writing test section for grades 5 and 8.

Because of COVID-19, the State Board of Education did not conduct standardized testing for the 2019-20 school year.

***Proficiency Test Results.*** The tables below demonstrate the percentage of Charter School students who were proficient in a particular subject based upon the RISE testing, as applicable, for the years shown, as compared to nearby schools in Alpine School District and the State as a whole.



**TABLE B-14**  
**COMPARATIVE RESULTS FOR STATE TESTING BY GRADE**

<b>GRADE/ SUBJECT</b>	<b>THE CHARTER SCHOOL 2020-21</b>	<b>BOX ELDER SCHOOL DISTRICT 2020-21</b>	<b>STATE 2020-21</b>	<b>THE CHARTER SCHOOL 2021-22</b>	<b>BOX ELDER SCHOOL DISTRICT 2021-22</b>	<b>STATE 2021-22</b>
<b>Grade 4</b>						
Language Arts	30-39% <sup>1</sup>	31%	38%	31%	41%	43%
Mathematics	11-19% <sup>1</sup>	42%	45%	25%	50%	49%
Science	30-39% <sup>1</sup>	39%	43%	20%	44%	46%
<b>Grade 5</b>						
Language Arts	18%	41%	44%	30-39% <sup>1</sup>	44%	47%
Mathematics	18%	42%	42%	20-29% <sup>1</sup>	45%	44%
Science	20%	44%	45%	40-49% <sup>1</sup>	44%	48%
<b>Grade 6</b>						
Language Arts	36%	39%	44%	20%	42%	46%
Mathematics	23%	33%	32%	17%	32%	35%
Science	40%	53%	52%	28%	55%	54%
<b>Grade 7</b>						
Language Arts	44%	46%	41%	30%	43%	41%
Mathematics	33%	46%	42%	32%	46%	45%
Science	43%	51%	44%	34%	50%	44%
<b>Grade 8</b>						
Language Arts	27%	46%	43%	20-29% <sup>1</sup>	45%	42%
Mathematics	17%	49%	37%	11-19% <sup>1</sup>	47%	38%
Science	35%	56%	48%	20-29% <sup>1</sup>	51%	48%

<sup>1</sup> In compliance with the Family Educational Rights and Privacy Act (“FERPA”) regulations and the Utah State Board of Education policy for protecting students’ personally identifiable, for groups with fewer than forty students, counts are not shown and percentages are obscured by providing a range within which the actual percentage falls.

*Source: Utah State Board of Education.*

**TABLE B-15**  
**COMPARATIVE OVERALL RESULTS (GRADES 3-8) FOR TESTING**  
**(% OF STUDENTS PROFICIENT)**

GRADE/ SUBJECT	THE CHARTER SCHOOL 2020-21	BOX ELDER SCHOOL DISTRICT 2020-21	STATE 2020-21	THE CHARTER SCHOOL 2021-22	BOX ELDER SCHOOL DISTRICT 2021-22	STATE 2021-22
<b>Language Arts</b>	33%	41%	42%	29%	43%	44%
<b>Mathematics</b>	22%	42%	40%	23%	44%	42%
<b>Science</b>	35%	49%	47%	31%	49%	48%

*Source: Utah State Board of Education.*

***Additional Academic Data.*** The State Board of Education provides a school report card for each public school in the State that shows how each school is performing in three indicators: achievement, growth in academic proficiency from one school year to the next, and early literacy. Each school's letter grade is intended to communicate how well a school is performing across all accountability indicators. It is calculated based on the achievement, growth and English learner progress. School report cards are intended to inform parents, educators, and community stakeholders as they work collaboratively to achieve student success. In February 2023 the Utah State Legislature passed a bill to eliminate the use of school report cards for public schools after the 2022-23 school year.

The tables below show the Charter School's school report card for the 2021-22 school year.

**TABLE B-16**  
**SCHOOL REPORT CARD FOR THE CHARTER SCHOOL**

**ACHIEVEMENT %**

Category	Charter School 2021-22	State 2021-22
Language Arts	28.7%	44.3%
Mathematics	22.2%	32.5%
Science	31.6%	34.1%

**GROWTH %**

Category	Charter School 2021-22	State 2021-22
Language Arts	53.3%	60.5%
Mathematics	48.6%	59.6%
Science	50.2%	60.4%
Growth of lowest 25%	48.2%	59.2%

**EARLY LITERACY%**

Category	Charter School 2021-22	State 2021-22
Students Reading on Grade Level	35.6%	36.2%
Students Making Typical or Better Progress	59.1%	2.9%

**CHARTER SCHOOL OVERALL LETTER GRADE**

Score %	Grade	Category
40.7%	D	Developing

**BUDGETING AND ACCOUNTING PRINCIPLES**

With respect to budgeting, the Charter School's Director and the Charter School's business administrator work together to prepare a budget that is presented to and approved by the Board by June 20 annually.

The Charter School is required to conduct an annual financial audit in accordance with GAAP which include GAAS. The financial reporting is provided in a manner consistent with either GASB or FASB. In addition, the Charter School provides its data and information in a manner consistent with school finance budgeting, accounting and auditing standards set by the State Board of Education. According to

State law, the Charter School’s undistributed reserve is not to exceed 5% of its general fund budgeted expenditures. See “APPENDIX A –CHARTER SCHOOLS IN UTAH – Additional State Board of Education Rules – *Fiscal and Auditing Policies*” in this Official Statement.

The Charter School presently employs Eide Bailly LLP as its auditor, and the Charter School’s audited financial statements as of June 30, 2022, are included in APPENDIX C.

The Charter School has demonstrated proficiency in forecasting revenues and expenditures as shown by the comparison of budgeted to actual revenues and expenditures for the last year.

	<b>TABLE B-16</b>		
	<b><u>2019-20</u></b>	<b><u>2020-21</u></b>	<b><u>2021-22</u></b>
Final Budgeted Revenues	\$3,626,465	\$4,080,086	\$4,696,979
Actual Revenues	\$3,616,085	\$4,098,259	\$4,721,781
<i>Deviation</i>	0.3%	-0.4%	0.5%
Final Budgeted Expenditures	\$3,556,642	\$3,807,416	\$2,116,785
Actual Expenditures	\$3,564,384	\$3,832,237	\$2,144,384
<i>Deviation</i>	-0.2%	-0.7%	-1.3%

The Charter School’s audited 2022 financial statements showed a \$1,986,038 General Fund Balance with approximately 186 days of cash on hand, a proforma maximum annual debt service coverage of 2.64, and an operating cashflow margin of 12%.

The following table outlines the Charter School's Statement of Financial Position for the fiscal years ended June 30, 2020, June 30, 2021, and June 30, 2022.

**TABLE B-17**

Fiscal year ended June 30

	2020	2021	2022
<b>ASSETS</b>			
Cash	\$ 1,438,380	\$1,573,773	\$ 1,986,038
State receivables	-	8,600	34,637
Federal receivables	-	104,175	251,256
Other receivables	61,078	3,565	16,423
Prepaid expenses	19,066	103,462	20,551
Capital assets (not subject to depreciation)	-	393,338	394,338
Capital assets (net of accumulated depreciation)	<u>5,585,547</u>	<u>5,144,242</u>	<u>5,269,950</u>
<b>TOTAL ASSETS</b>	\$7,104,071	\$7,332,155	\$7,973,193
<b>LIABILITIES</b>			
Accounts payable	\$ 61,910	\$70,790	\$ 40,373
Accrued liabilities	200,902	201,052	191,498
Accrued interest	14,413	14,034	13,639
Long-term liabilities			
Due within one year – note payable	-	158,021	165,469
Due in more than one year - note payable	<u>5,625,697</u>	<u>5,459,809</u>	<u>5,298,100</u>
<b>Total Liabilities</b>	\$5,902,922	\$5,903,886	\$5,709,079
<b>NET POSITION</b>			
Net investment in capital assets	-	(79,430)	200,719
Restricted for			
Food service	-	57,136	108,799
Math and science teacher recruitment	-	-	947
Unrestricted	<u>1,201,149</u>	<u>1,450,563</u>	<u>1,953,649</u>
<b>TOTAL NET POSITION</b>	<u>\$1,201,149</u>	<u>\$1,428,269</u>	<u>\$2,264,114</u>

The following table outlines the Charter School's Statement of Financial Activities for the fiscal years ended June 30, 2020, June 30, 2021, and June 30, 2022.

**TABLE B-18**

Fiscal year ended June 30

	<b>2020</b>	<b>2021</b>	<b>2022</b>
Revenue:			
State aid	\$3,284,350	\$3,542,513	\$3,879,716
Federal aid	249,546	512,483	794,216
Earnings on investments	19,239	4,872	4,975
School fees and activities	7,766	16,824	20,823
School lunch sales	41,108	7,192	5,562
Local contributions	12,259	7,301	9,487
Other local sources	<u>1,819</u>	<u>7,071</u>	<u>7,002</u>
Total Revenues	\$3,616,087	\$4,098,256	\$4,721,781
Expenses			
Instructional	\$1,848,781	\$2,158,143	\$2,144,384
Employee benefits	597,905	-	-
Professional and technical services	244,537	-	-
Support services			
Students	120,449	126,621	176,674
Staff assistance	-	129,798	169,892
General	-	44,038	49,416
School administration	-	285,813	287,543
Central services	-	132,368	129,775
Operation and maintenance of facilities	155,870	139,076	207,638
Non instructional			
School food services program	-	223,986	201,548
Capital outlay	-	184,809	392,027
Travel	28,176	-	-
Property expense	38,757	-	-
Other expenses	10,536	-	-
Interest	291,492	-	-
Depreciation	216,486	-	-
Debt service			
Principal	-	147,566	154,441
Interest	-	<u>260,017</u>	<u>253,142</u>
Total Expenses	\$3,594,386	\$3,832,235	\$4,166,480
Change in Net Position	76,264	266,021	555,301
Net Position – Beginning	1,179,448	1,255,712	1,521,733
Net Position – Ending	<u>1,255,712</u>	<u>1,521,733</u>	<u>2,077,034</u>

## **CARES ACT FUNDING**

In response to the COVID-19 pandemic, the federal government passed the CARES Act (the “*CARES Act*”) which provided funding for many different types of businesses and units of government. The CARES Act also established the Elementary and Secondary School Emergency Relief Fund (the “ESSER Fund”), whereby the U.S. Department of Education awards grants to state education agencies (SEAs), who in turn award sub-grants to schools that apply for funding. Lastly, the CARES Act established the Coronavirus Relief Fund (the “CRF”), which provides payments to State, Local, and Tribal Governments navigating the impact of the COVID-19 outbreak. The Charter School has been allocated \$38,669 of ESSER I funds, \$149,799 of ESSER II funds, and \$336,649 of ESSER III (ARP) funds as part of the COVID Relief Aid packages. ESSER I funds must be spent by September 30, 2022, ESSER II funds must be spent by September 30, 2023, and ESSER III (ARP) funds must be spent by September 30, 2024. The Charter School did not receive any funds from the Paycheck Protection Program (PPP).

## **DEBT**

The Charter School uses best practices as recommended by the State Board of Education for all financial practices. As required by State law, all indebtedness is approved and voted on in a public board meeting. Any additional indebtedness will be constituted by additional covenants.

After the issuance of the Series 2023 Bonds and the refunding of the Refunded Obligations, the only outstanding debt obligations of the Charter School will be the Series 2023 Bonds. The Charter School has no immediate plans for any additional indebtedness (other than the Series 2023 Bonds).

See “RISK FACTORS – Additional Indebtedness and Additional Bonds” and “SECURITY FOR THE SERIES 2023 BONDS – Loan Agreement – Limitations on Additional Indebtedness” in the forepart of this Official Statement.

## **INVESTMENT POLICY**

The Charter School transfers its excess revenue to the Utah Public Treasurer’s Investment Fund (the “PTIF”). The PTIF is managed directly by the Utah State Treasurer to ensure the safety of principal, liquidity and high current income on short term investments. Eligible investors in the PTIF include State local governments, school districts and charter schools. More information on the PTIF is available at <http://www.treasurer.utah.gov/ptif.html>. Information on the PTIF website is not incorporated into this Official Statement by such reference and is not a part hereof.

The Charter School uses best practices as recommended by the State Board of Education for all financial practices. All indebtedness is approved and voted on in a public board meeting. Any additional indebtedness will be constituted by additional covenants.

## **POST ISSUANCE COMPLIANCE**

The Charter School will adhere to the continuing disclosure and other reporting covenants as outlined in the debt related documentation. As necessary, it will also disseminate its annual audit and other

reports to the proper parties as outlined with each requesting party. The Charter School has adopted tax and disclosure compliance procedures.

## **RISK MANAGEMENT**

Pursuant to its risk management policies, as a nonprofit corporation and public school, the Charter School actively seeks to avoid unnecessary risks to the greatest extent possible. The Charter School maintains insurance at the highest amount that is either a) required by law, b) required by existing debt covenants, c) is reasonable and customary for a State charter school, and d) is considered prudent by the Board after consulting with qualified professionals. In the event any material risk is identified by the Board or administration that is not covered by existing insurance, it is the Charter School's policy to promptly engage a qualified professional to evaluate such risk and recommend the appropriate action.

## **SUCCESSION PLAN**

Pursuant to its policies, Board members or key management personnel wanting to resign their position will do so in a way that provides adequate time for training of new individuals and the continuing governance of the Charter School.

Pursuant to the Charter School's bylaws the number of Board members will be at least five, with a stated desire to have seven.

## **INSURANCE**

The Charter School is exposed to various risks of loss related to torts, errors and omissions, property, employee health, workers' compensation, and unemployment for which the Charter School carries commercial insurance. There have been no significant reductions in insurance coverage. Settlement amounts have not exceeded insurance coverage for each of the past three fiscal years. The Charter School's administration believes the present insurance coverage to be adequate and in compliance with the Charter Contract. However, there can be no assurance that the Charter School will continue to maintain this level of coverage.

## **CYBERSECURITY**

The risk of cyberattacks against commercial enterprises, including educational institutions, has become more prevalent in recent years. A cyberattack could cause the informational systems of the Charter School to be compromised and could limit operational capacity, for short or extended lengths of time and could bring about the release of sensitive and private information. Additionally, other potential negative consequences include data loss or compromise, diversion of resources to prevent future incidences and reputational damage. To date, the Charter School has not experienced a successful cyberattack. The Charter School believes it has made all reasonable efforts to ensure that any such attack is not successful and that the Charter School's information systems are secure. However, there can be no assurance that a cyberattack will not occur in a manner resulting in damage to the Charter School's information systems or other challenges.



## **NO LITIGATION**

No action, suit, proceeding or investigation, at law or in equity, before or by any court, governmental agency or public board or body is pending or, to the best of the Charter School's knowledge, threatened that would affect the validity of the Indenture, the Loan Agreement, the Continuing Disclosure Agreement, the Mortgage or the Series 2023 Bonds or to fulfill the obligations imposed upon the Charter School thereby, or that would contest the corporate existence or powers of the Charter School.

The Charter School may be from time to time involved in various legal actions consistent with the general experience of entities of similar nature and size. The ultimate outcome of any such proceeding cannot be predicted with certainty. There is presently no material litigation pending or, to the best of its officers' knowledge, overtly threatened against the Charter School.

## **FINANCIAL PROJECTIONS**

The Charter School has prepared the following financial projections for each of the Fiscal Years ending June 30, 2023, through 2027 (the "*Forecasts*") based on the assumptions of the Charter School. The Forecasts constitute "forward-looking" statements of the type described in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. See "INTRODUCTION – Forward-Looking Statements" and "RISK FACTORS – Forward-Looking Statements" in this Official Statement. Although the Charter School believes that the assumptions upon which the Forecasts are based are reasonable, any of the assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions could also be incorrect. All phases of the operations of the Charter School involve risks and uncertainties, many of which are outside of the Charter School's control and any one of which, or a combination of which, could materially affect the Charter School's results with respect to its operations.

Factors that could cause actual results to differ from those expected include, but are not limited to, general economic conditions; the willingness of the State to fund public schools, including charter schools, at present or increased levels; competitive conditions within the Charter School's service area; lower-than-projected enrollment; unanticipated expenses; mandated closures due to the COVID-19 pandemic; changes in government regulation including changes in the law governing charter schools in the State; future claims for accidents against the Charter School and the extent of insurance coverage for such claims; and other risks discussed in this Official Statement. See "RISK FACTORS" in the forepart of this Official Statement.

The Forecasts have not been independently verified by any party other than the Charter School. No feasibility studies have been conducted with respect to operations of the Charter School pertinent to the Forecasts or the Series 2023 Bonds. The Underwriter has not independently verified the Forecasts and makes no representations nor gives any assurances that the Forecasts, or the assumptions underlying them, are complete or correct. See "RISK FACTORS – Financial Forecasts" in the forepart of this Official Statement.

NO REPRESENTATION OR ASSURANCE CAN BE GIVEN THAT THE CHARTER SCHOOL WILL REALIZE REVENUES IN AMOUNTS SUFFICIENT TO MAKE ALL REQUIRED DEBT SERVICE PAYMENTS ON THE SERIES 2023 BONDS. THE REALIZATION OF FUTURE REVENUES DEPENDS ON, AMONG OTHER THINGS, THE MATTERS DESCRIBED IN "RISK FACTORS," AND FUTURE CHANGES IN ECONOMIC AND OTHER CONDITIONS THAT ARE

UNPREDICTABLE AND CANNOT BE DETERMINED AT THIS TIME. THE UNDERWRITER MAKES NO REPRESENTATION AS TO THE ACCURACY OF THE FORECASTS CONTAINED HEREIN, NOR AS TO THE ASSUMPTIONS ON WHICH THE FORECASTS ARE BASED.

	Fiscal Year Ending June 30				
	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
Projected Enrollment*	449	450	450	450	450
Revenue	\$4,727,826	\$4,883,195	\$5,029,391	\$5,179,972	\$53,35,072
Expenses	\$4,201,726	\$4,534,322	\$4,651,107	\$4,771,396	\$4,895,293
Revenues available for debt service	\$933,683	\$938,872	\$968,283	\$988,577	\$1,029,779
Estimated debt service	\$590,000	\$590,000	\$590,000	\$590,000	\$590,000
Debt service coverage	2.29	1.59	1.64	1.69	1.75

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\* For purposes of this table, projected enrollment is rounded downward and is slightly lower than the actual enrollment projections in Table B-5.

**APPENDIX C**

**FINANCIAL STATEMENTS OF THE CHARTER SCHOOL AS OF AND  
FOR THE FISCAL YEAR ENDED JUNE 30, 2022**

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Financial Statements  
June 30, 2022

# Promontory School of Expeditionary Learning

# Promontory School of Expeditionary Learning

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June 30, 2022

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## **Independent Auditor's Report**

The Board of Directors  
Promontory School of Expeditionary Learning  
Perry, Utah

### **Report on the Audit of the Financial Statements**

#### ***Opinions***

We have audited the financial statements of the governmental activities and the major fund of Promontory School of Expeditionary Learning (the School) as of and for the year ended June 30, 2022, and the related notes to the financial statements, which collectively comprise the School's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the major fund of the School, as of June 30, 2022, and the respective changes in financial position for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### ***Basis for Opinions***

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States (*Government Auditing Standards*). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the School, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

#### ***Responsibilities of Management for the Financial Statements***

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the School's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### ***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the School's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the School's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

### ***Required Supplementary Information***

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and schedule of revenue, expenditures, and changes in fund balance – budget and actual – general fund and notes to the required supplementary information, as listed in the table of contents, be presented to supplement the basic financial statements. Such information is the responsibility of management and although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or



historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

**Other Reporting Required by *Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated November 22, 2022, on our consideration of the School's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the School's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the School's internal control over financial reporting and compliance.

A handwritten signature in black ink that reads "Eide Bailly LLP". The signature is written in a cursive, flowing style.

Ogden, Utah  
November 22, 2022

The discussion and analysis of Promontory School of Expeditionary Learning's (the School) financial performance provides an overall review of financial activities for the fiscal year.

## **FINANCIAL HIGHLIGHTS**

Over the course of the year, revenue increased by 15% while expenses increased by 4%. The increased revenue was largely due to COVID relief packages provided by the government along with the state's legislation putting an emphasis on increased funding for schools. Creating a conservative budget was an emphasis going into the year with the uncertainty surrounding state and federal funding. The School was able to implement a plan to allow both remote learning and in-class learning while only increasing total expenses by 4% from the prior year.

## **OVERVIEW OF THE FINANCIAL STATEMENTS**

This discussion and analysis serve as an introduction to the School's basic financial statements. These financial statements include three primary components:

- Government-wide financial statements
- Fund financial statements
- Notes to the financial statements

The basic financial statements consist of two kinds of statements that present different views of the School's financial activities.

### **Government-Wide Financial Statements (GWFS)**

The GWFS (i.e., Statement of Net Position and Statement of Activities) provide readers with a broad overview of the School's finances. The government-wide statements report information about the School as a whole using accounting methods similar to those used by private-sector companies.

*The Statement of Net Position* provides information on all of the assets and liabilities of the School, with the difference between the two providing the net position. Increases or decreases in the net position may indicate whether the financial position of the School is improving or deteriorating, respectively.

*The Statement of Activities* reflects changes in net position during the fiscal year. Changes in net position are reported using the accrual basis of accounting, similar to that used by private-sector companies. Accrual basis accounting takes into account all current year related revenue and expenditures, regardless of when cash is received or paid.

The GWFS presents an aggregate view of the School's finances and contains useful long-term information as well as information for the just-completed fiscal year.

To assess the overall financial condition of the School, additional non-financial factors, such as changes in the condition of school buildings and other facilities, should be considered.

In the GWFS, the School's activities are all classified as governmental activities. Governmental activities include all regular and special education, all educational support activities, administration, custodial, maintenance, transportation, and food services. Most of these activities are supported by the State of Utah Minimum School Program. The GWFS can be found on pages 9-10 of this report.

### **Fund Financial Statements**

Funds are accounting devices the School uses to keep track of sources of funding and spending on particular programs and to demonstrate compliance with various regulatory requirements. Fund financial statements focus on individual parts of the School. Fund statements generally report operations in more detail than the government-wide statements. This statement focuses on its most significant or "major" funds and not on the School as a whole.

The School establishes other funds, as necessary, to control and manage money for particular purposes or to show that it is properly using certain revenue.

### **Governmental Funds**

Governmental funds account for nearly the same functions as the governmental activities. However, unlike the GWFS, governmental funds focus on near-term inflows and outflows as well as the balances left at year-end that are available for funding future basic services.

It is useful to compare information found in the governmental funds with that of the governmental activities. By doing so, readers may better understand the long-term impact of the School's near-term financing decisions.

The basic governmental funds financial statements can be found on pages 11-14 of this report.

### **Notes**

The notes to the financial statements starting on page 15 provide further explanation of some of the information in the statements and provide additional disclosures so statement users have a complete picture of the School's financial activities and position.

Required supplementary information further explains and supports the financial statements by including a comparison of the School's budget data for the year.

### Government-Wide Financial Analysis

Net position may serve as a useful indicator of an organization's financial position.

	<u>2022</u>	<u>2021</u>
<b>Assets</b>		
Current and other assets	\$ 2,308,905	\$ 1,793,575
Capital assets	<u>5,664,288</u>	<u>5,538,580</u>
Total assets	<u><u>\$ 7,973,193</u></u>	<u><u>\$ 7,332,155</u></u>
<b>Liabilities</b>		
Current and other liabilities	\$ 245,510	\$ 285,876
Long-term liabilities	<u>5,463,569</u>	<u>5,618,010</u>
Total liabilities	<u><u>5,709,079</u></u>	<u><u>5,903,886</u></u>
<b>Net Position</b>		
Net investment in capital assets	200,719	(79,430)
Restricted	109,746	57,136
Unrestricted	<u>1,953,649</u>	<u>1,450,563</u>
Total net position	<u><u>\$ 2,264,114</u></u>	<u><u>\$ 1,428,269</u></u>

A portion of the School's net position is the investment in capital assets (i.e., land, buildings and improvements, equipment, software, and furniture and fixtures) and the related debt used to acquire those assets still outstanding. These capital assets provide services to students; consequently, these assets are not available for future spending. Restricted net position is restricted for program restrictions. The remaining portion of the School's net position is unrestricted.

### Governmental Activities

Changes in Net Position – The table below shows the changes in net position for the fiscal years 2022 and 2021. The School relies on state and federal support for 99% of its governmental activities for the year ended June 30, 2022. The School had total revenue of \$4,721,781 and total expenses of \$3,885,936, during the year ended June 30, 2022. The School had an increase in net position of \$835,845 during the year ended June 30, 2022. The increase in net position was largely due to the increase in federal and state revenue and the School's finance committee's conservative approach to their budgeting to ensure a healthy bottom line at the end of the fiscal year.

Promontory School of Expeditionary Learning  
Management's Discussion and Analysis  
June 30, 2022

	<u>2022</u>	<u>2021</u>	<u>Change</u>
Revenue			
Program revenue			
State and federal aid	\$ 4,673,932	\$ 4,054,996	\$ 618,936
Charges for services	5,562	7,192	(1,630)
Operating grants and contributions	9,487	7,301	2,186
Other local revenue	<u>32,800</u>	<u>28,767</u>	<u>4,033</u>
Total revenue	<u>4,721,781</u>	<u>4,098,256</u>	<u>623,525</u>
Expenses			
Instructional	2,144,384	2,158,143	(13,759)
Support services			
Students	176,674	126,621	50,053
Staff assistance	169,892	129,798	40,094
General	49,416	44,038	5,378
School administration	287,543	285,813	1,730
Central services	129,775	132,368	(2,593)
Operation and maintenance of facilities	473,957	370,852	103,105
School food services	201,548	223,986	(22,438)
Interest and other costs	<u>252,747</u>	<u>259,638</u>	<u>(6,891)</u>
Total expenses	<u>3,885,936</u>	<u>3,731,257</u>	<u>154,679</u>
Change in Net Position	<u>\$ 835,845</u>	<u>\$ 366,999</u>	<u>\$ 468,846</u>

### Governmental Funds

The focus of the School's governmental funds is to provide balances of spendable resources and to provide data on near-term inflows and outflows.

General Fund – The general fund is the general operating fund for the School. At the end of the current fiscal year, the general fund balance is \$2,077,034, which is an increase of \$555,301 from the prior year. The increase to the general fund was attributed to sound budgeting, which allowed the School to offer several avenues of learning during the COVID-19 pandemic while still increasing the fund balance.

Expenditures for general School purposes totaled \$4,166,480, which is an increase of \$334,245 from the prior year. Each year the School sees an increase in salaries as employees gain more experience and receive an increase in their annual pay. This, along with the increased expenses to accommodate various teaching and learning methods, attributed to the increase in expenses.

General fund salaries totaled \$1,948,140, while the associated fringe benefits of retirement, social security, unemployment, workers compensation, health, dental, and vision added \$595,277 to arrive at 61% of the School's general fund expenditures.

### **Budgetary Highlights**

The School adopts an original budget in June for the subsequent year.

Actual expenditures in the general fund were \$137,004 less than the amended budget. The School approved the final budget with over a month left in the fiscal year. The increase in expenditures was due to planned expenditures changing between when the final budget was passed and when the fiscal year ended. The discrepancy was also due to oversight to add funds to a budget line in the final budget approval process.

### **Capital Assets**

The School has invested \$7,653,017 in a wide range of capital assets, but primarily in land and building and improvements. The total accumulated depreciation on these assets amounts to \$1,988,729. There were capital asset additions of \$392,027 for fiscal year 2022.

Additional information regarding the School's capital assets can be found in Note 3 to the basic financial statements.

### **Long-Term Debt**

Long-term debt consists of a note payable totaling \$5,463,569 as of June 30, 2022 that bears interest at a variable rate. At June 30, 2022 the interest rate on the note is 4.5%. The note payable matures in February 2044. See Note 4 to the financial statements for more information about long-term debt.

### **Requests for Information**

This financial report is designed to provide our citizens, taxpayers, customers, and investors and creditors with a general overview of the School's finances and to demonstrate the School's accountability for the money it receives. If you have questions about this report or need additional financial information, contact the Board Chair, Amber Edelman at the Promontory School of Expeditionary Learning, 1051 W. 2700 S. Perry, Utah 84302, or by email at [aedelman@promontoryschool.org](mailto:aedelman@promontoryschool.org).

Promontory School of Expeditionary Learning  
Statement of Net Position  
June 30, 2022

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	<u>Governmental Activities</u>
<b>Assets</b>	
Cash and investments	\$ 1,986,038
State receivables	34,637
Federal receivables	251,256
Other receivables	16,423
Prepaid expenses	20,551
Capital assets (not subject to depreciation)	394,338
Capital assets (net of accumulated depreciation)	<u>5,269,950</u>
Total assets	<u>7,973,193</u>
<b>Liabilities</b>	
Accounts payable	40,373
Accrued liabilities	191,498
Accrued interest	13,639
Long-term liabilities	
Due within one year - note payable	165,469
Due in more than one year - note payable	<u>5,298,100</u>
Total liabilities	<u>5,709,079</u>
<b>Net Position</b>	
Net investment in capital assets	200,719
Restricted for	
Food service	108,799
Math and science teacher recruitment	947
Unrestricted	<u>1,953,649</u>
Total net position	<u><u>\$ 2,264,114</u></u>

Promontory School of Expeditionary Learning  
Statement of Activities  
Year Ended June 30, 2022

		Program Revenue		
	Expenses	Charges for Services	Operating Grants and Contributions	Net Revenue (Expense) and Changes in Net Position
Functions/Programs				
<i>Governmental activities</i>				
Instructional	\$ 2,144,384	\$ -	\$ 2,912,373	\$ 767,989
Support services				
Students	176,674	-	-	(176,674)
Staff assistance	169,892	-	-	(169,892)
General	49,416	-	-	(49,416)
School administration	287,543	-	-	(287,543)
Central services	129,775	-	-	(129,775)
Operation and maintenance of facilities	473,957	-	-	(473,957)
School food services	201,548	5,562	-	(195,986)
Interest and other costs	252,747	-	-	(252,747)
Total Governmental Activities	<u>\$ 3,885,936</u>	<u>\$ 5,562</u>	<u>\$ 2,912,373</u>	<u>(968,001)</u>
General Revenue				
Grants and contributions not restricted to specific programs				
State aid				1,771,046
Local revenue				27,825
Interest earnings				4,975
Total general revenue				<u>1,803,846</u>
Change in Net Position				835,845
Net Position, Beginning of Year				<u>1,428,269</u>
Net Position, End of Year				<u>\$ 2,264,114</u>



# Promontory School of Expeditionary Learning

Balance Sheet – Governmental Funds

June 30, 2022

	<u>General</u>
<b>Assets</b>	
Cash and investments	\$ 1,986,038
State receivables	34,637
Federal receivables	251,256
Other receivables	16,423
Prepaid expenses	<u>20,551</u>
Total assets	<u><u>\$ 2,308,905</u></u>
<b>Liabilities and Fund Balance</b>	
<b>Liabilities</b>	
Accounts payable	\$ 40,373
Accrued liabilities	<u>191,498</u>
Total liabilities	<u>231,871</u>
<b>Fund Balance</b>	
Nonspendable	
Prepaid expenses	20,551
Restricted for	
Food service	108,799
Math and science teacher recruitment	947
Unassigned	<u>1,946,737</u>
Total fund balance	<u>2,077,034</u>
	<u><u>\$ 2,308,905</u></u>

Promontory School of Expeditionary Learning  
Reconciliation for Governmental Funds Balance Sheet to the Statement of Net Position  
June 30, 2022

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Total Fund Balance - Governmental Funds \$ 2,077,034

The cost of capital assets (land, buildings and improvements, equipment, software, and furniture and fixtures) purchased or constructed is reported as an expenditure in governmental funds. The statement of net position includes those capital assets among the assets of the School as a whole. The cost of those capital assets is allocated over their estimated useful lives (as depreciation expense) to the various programs reported as governmental activities in the statement of activities. Because depreciation expense does not affect financial resources, it is not reported in government funds.

Costs of capital assets	7,653,017	
Depreciation expense to date	<u>(1,988,729)</u>	
		5,664,288

Long-term liabilities applicable to governmental activities are not due and payable in the current period and therefore are not reported as fund liabilities. All liabilities, both current and long-term, are reported in the statement of net position. Balances at year end are:

Long-term liabilities		
Note payable	(5,463,569)	
Accrued interest	<u>(13,639)</u>	
		<u>(5,477,208)</u>

Net Position		<u><u>\$ 2,264,114</u></u>
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Promontory School of Expeditionary Learning  
Statement of Revenue, Expenditures, and Changes in Fund Balance – Governmental Funds  
Year Ended June 30, 2022

	<u>General</u>
Revenue	
State aid	\$ 3,879,716
Federal aid	794,216
Earnings on investments	4,975
School fees and activities	20,823
School lunch sales	5,562
Local contributions	9,487
Other local sources	<u>7,002</u>
Total revenue	<u>4,721,781</u>
Expenditures	
Instructional	<u>2,144,384</u>
Support services	
Students	176,674
Staff assistance	169,892
General	49,416
School administration	287,543
Central services	129,775
Operation and maintenance of facilities	<u>207,638</u>
Total support services	<u>1,020,938</u>
Non instructional	
School food services program	201,548
Capital outlay	<u>392,027</u>
Total non instructional	<u>593,575</u>
Debt service	
Principal	154,441
Interest	<u>253,142</u>
Total debt service	<u>407,583</u>
Total expenditures	<u>4,166,480</u>
Net Change in Fund Balance	555,301
Fund Balance, Beginning of Year	<u>1,521,733</u>
Fund Balance, End of Year	<u><u>\$ 2,077,034</u></u>

Promontory School of Expeditionary Learning  
Reconciliation of Governmental Funds Statement of Revenue, Expenditures,  
and Changes in Fund Balance to the Statement of Activities  
Year Ended June 30, 2022

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Total Net Change in Fund Balance - Governmental Funds	\$	555,301
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Amounts reported for governmental activities in the statement of activities are different because:

Capital outlays are reported in governmental funds as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives as depreciation expense. This is the amount by which depreciation expense exceeded capital outlay during the fiscal year:

Capital outlay additions	392,027		
Depreciation expense	(266,319)		
			125,708

The governmental funds report repayment of long-term liability payments as expenditures. Interest is recognized as an expenditure in the governmental activities when it is due. In the statement of activities, interest expense is recognized as it accrues, regardless of when it is due. The net effect of these differences in the treatment of debt and related items is as follows:

Repayment of note payable principal	154,441		
Change in accrued interest	395		
			154,836

Change in Net Position of Governmental Activities	\$	835,845
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## **Note 1 - Summary of Significant Accounting Policies**

Promontory School of Expeditionary Learning (the School) was incorporated in the state of Utah on March 29, 2010, as a nonprofit organization involved in public education. The School operates a public charter school in Perry, Utah, and serve students from kindergarten through grade eight.

The financial statements of the School have been prepared in conformity with accounting principles generally accepted in the United States of America (GAAP) as applied to local government units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles. The more significant accounting policies of the School are described below.

### **Financial Reporting Entity**

The School follows Governmental Accounting Standards Board (GASB) in determining the reporting entity and component units. The financial reporting entity consists solely of the primary government. Accordingly, the financial statements include all funds and agencies of the primary government whose budgets are controlled or whose boards are appointed by the School's Board of Directors (the Board).

The accounts of the School are organized and operated on the basis of funds. A fund is an independent fiscal and accounting entity with a self-balancing set of accounts. Fund accounting segregates funds according to their intended purpose and is used to aid management in demonstrating compliance with finance-related legal and contractual provisions. The minimum number of funds is maintained consistent with legal and managerial requirements.

The funds of the School are classified as governmental funds. The fund classifications and a description of each existing fund type follow:

### **Governmental Funds**

Governmental funds are used to account for the School's general government activities, including the collection and disbursement of specific or legally restricted monies, the acquisition or construction of general fixed assets, and the servicing of general long-term debt.

The general fund is considered a major fund. Governmental funds include:

General fund – the primary operating fund of the School accounts for all financial resources, except those required to be accounted for in other funds.

## **Measurement Focus and Basis of Accounting**

### **Government-Wide Financial Statements (GWFS)**

The statement of net position and the statement of activities display information about the reporting government as a whole.

The statement of net position and the statement of activities were prepared using the economic resources measurement focus and the accrual basis of accounting. Revenue, expenses, gains, losses assets and liabilities resulting from exchange and exchange-like transactions are recognized when the exchange takes place. Revenue, expenses, gains, losses, assets and liabilities resulting from nonexchange transactions are recognized in accordance with the requirements of GASB Statement No. 33 *Accounting and Financial Reporting for Nonexchange Transactions* in the GWFS.

### **Program Revenue**

Program revenue included in the statement of activities derive directly from the program itself or from parties outside the School's citizenry, as a whole; program revenue reduces the cost of the function to be financed from the School's general revenue. Program revenue includes charges to students or applicants who purchase, use or directly benefit from the goods or services provided by the given function.

## **Fund Financial Statements**

### **Governmental Funds**

The accounting and financial reporting treatment applied to a fund is determined by its measurement focus. Governmental fund types use the flow of current financial resources measurement focus and the modified accrual basis of accounting. Under the modified accrual basis of accounting, revenue is recognized when susceptible to accrual, defined as measurable and available. Measurable means the amount of the transaction can be determined and available means collectible within the current period or soon enough thereafter to pay liabilities of the current period. Expenditures are recorded when the related fund liability is incurred, except for unmatured principal and interest on general long-term debt, which is recognized when due, and claims and judgments which are recognized when the obligations are expected to be liquidated with expendable available financial resources. With this measurement focus, only current assets and current liabilities and deferred outflows and inflows of resources, as applicable, are generally included on the balance sheet. Operating statements of these funds present increases and decreases in fund balance.

The governmental funds use the following practices in recording revenue and expenditures:

**Revenue**

Entitlements and shared revenue (which include state equalization and state revenue sharing) are recorded as unrestricted grants-in-aid at the time of receipt or earlier if the susceptible to accrual criteria are met. Expenditure-driven grants are recognized as revenue when the qualifying expenditures have been incurred and all other grant requirements have been met and the susceptible to accrual criteria have been met.

Other receipts become measurable and available (collected within 90 days of year-end) when cash is received by the School and are recognized as revenue at that time. The School's period of availability is 90 days subsequent to year end.

**Expenditures**

Salaries are recorded as incurred. Salaries for July and August are accrued at June 30 as it relates to work performed prior to year-end.

**Investments**

Investments are recorded at fair value in accordance with GASB Statement No. 72, *Fair Value Measurement and Application*. Accordingly, the change in fair value of investments is recognized as an increase or decrease to investment assets and investment income.

**Receivables**

All receivables are shown net of any allowance for uncollectible amounts. No allowances for uncollectible items have been recorded as of June 30, 2022.

**Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates and those differences could be material.

**Capital Assets**

Capital assets are recorded at historical cost and depreciated over their estimated useful lives (excluding salvage value). Donated capital assets are recorded at their estimated acquisition value at the date of donation. Estimated useful lives are management's estimate of how long the asset is expected to meet service demands. Straight-line depreciation is used based on the following estimated useful lives:

Building and improvements	5-30 years
Equipment	2-10 years
Software	5 years
Furniture and Fixtures	10-20 years

The School's capitalization threshold is \$1,000. The cost of normal maintenance and repairs not adding to the value of the asset or materially extending asset lives are not capitalized.

**Long-Term Liabilities**

For government-wide reporting, material premiums and discounts are deferred and amortized over the life of the debt using the effective interest method. Debt is reported net of the applicable premium or discount. Issuance costs are expensed as incurred.

For fund financial reporting, premiums and discounts, as well as issuance costs are recognized in the period the debt is issued. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuance are reported as other financing sources while discounts on debt issuances are reported as other financing uses. Issuance costs, even if withheld from the actual net proceeds received, are reported as debt service expenditures.

**Restricted Net Position**

For the government-wide statement of net position, net position is reported as restricted when constraints placed on net position use is either:

Externally imposed by creditors (such as debt covenants), grantors, contributors, or laws or regulations of other governments;

Imposed by law through constitutional provisions or enabling legislation.

It is the School's policy to consider restricted-net position to have been depleted before unrestricted-net position is applied.



### **Fund Balances of Fund Financial Statements**

The governmental fund financial statements present fund balances based on classifications that comprise a hierarchy that is based primarily on the extent to which the School is bound to honor constraints on the specific purposes for which amounts in the respective governmental funds can be spent. The classifications used in the governmental fund financial statements are as follows:

**Nonspendable:** This classification includes amounts that cannot be spent because they are either (a) not in spendable form or (b) are legally or contractually required to be maintained intact. The School has historically shown prepaids as being nonspendable as these items are not expected to be converted to cash or are not expected to be converted to cash within the next year.

**Restricted:** This classification includes amounts for which constraints have been placed on the use of the resources either (a) externally imposed by creditors (such as through a debt covenant), grantors, contributors, or laws or regulations of other governments, or (b) imposed by law through constitutional provisions or enabling legislation. Debt service resources are to be used for future servicing of the general obligations and are restricted through debt covenants.

**Committed:** This classification includes amounts that can be used only for specific purposes pursuant to constraints imposed by formal action by the Board. These amounts cannot be used for any other purpose unless the Board removes or changes the specified use by taking the same type of action (resolution) that was employed when the funds were initially committed.

**Assigned:** This classification includes amounts that are constrained by the Board's intent to be used for a specific purpose but are neither restricted nor committed. This intent can be expressed by the Board or by the Board delegating this responsibility to the Executive Director or their designee through the budgetary process.

**Unassigned:** This classification includes the residual fund balance for the general fund and the amount established for minimum funding.

The School would typically use restricted fund balances first, followed by committed resources, and the assigned resources, as appropriate opportunities arise, but reserves the right to selectively spend unassigned resources first to defer the use of these other classified funds.

### **Grants and Other Intergovernmental Revenue**

Federal and state reimbursement-type grants are recorded as intergovernmental revenue when the related expenditures/expenses are incurred and, in the governmental funds, when the revenue meets the availability criterion.

**Implementation of GASB Statement No. 87**

In June 2017, the GASB issued Statement No. 87, Leases, which improves accounting and financing reporting for leases by governments. The Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously classified as operating leases. This statement is effective for reporting periods beginning after June 15, 2021, as it was postponed by eighteen months with the issuance of GASB Statement No. 95. The School adopted this guidance for the period ended June 30, 2022, and it did not have a material impact on the School's financial statements.

**Note 2 - Cash and Investments**

At June 30, 2022, the School's cash and investments consisted of the following:

Cash			
Insured		\$ 281,422	
Uninsured and not collateralized		<u>704,798</u>	
Total balance of deposits		<u>\$ 986,220</u>	
	<u>Rating</u>	<u>Fair Value</u>	<u>Investment Maturities</u>
Investments			
PTIF	Unrated	<u>\$ 999,818</u>	Less than 1 year
Total cash and investments		<u>\$ 1,986,038</u>	

The State of Utah Money Management Council has the responsibility to advise the State Treasurer about investment policies, promote measures and rules that will assist in strengthening the banking and credit structure of the state, and review the rules adopted under the authority of the State of Utah Money Management Act (the Act) that relate to the deposit and investment of public funds.

The School follows the requirements of the Act (Utah Code, Title 51, Chapter 7) in handling its depository and investment transactions. The Act requires the depositing of School funds in a qualified depository. The Act defines a qualified depository as any financial institution whose deposits are insured by an agency of the federal government and which has been certified by the State Commissioner of Financial Institutions as meeting the requirements of the Act and adhering to the rules of the Utah Money Management Council.

The Act defines the types of securities authorized as appropriate investments for the School's funds and the conditions for making investment transactions. Investment transactions may be conducted only through qualified depositories, certified dealers, or directly with issuers of the investment securities.

Statutes authorize the School to invest in negotiable or nonnegotiable deposits of qualified depositories and permitted negotiable depositories; repurchase and reverse repurchase agreements; commercial paper that is classified as "first tier" by two nationally recognized statistical rating organizations; bankers' acceptances; obligations of the United States Treasury including bills, notes, and bonds; obligations, other than mortgage derivative products, issued by U.S. government sponsored enterprises (U.S. Agencies) such as the Federal Home

## Promontory School of Expeditionary Learning

Notes to Financial Statements

June 30, 2022

Loan Bank System, Federal Home Loan Mortgage Corporation (Freddie Mac), and Federal National Mortgage Association (Fannie Mae); bonds, notes, and other evidence of indebtedness of political subdivisions of the state; fixed rate corporate obligations and variable rate securities rated "A" or higher, or the equivalent of "A" or higher, by two nationally recognized statistical rating organizations; shares or certificates in a money market mutual fund as defined in the Act; and the Utah State Public Treasurers' Investment Fund.

The Utah State Treasurer's Office operates the Public Treasurers' Investment Fund (PTIF). The PTIF is available for investment of funds administered by any Utah public treasurer and is not registered with the SEC as an investment company. The PTIF is authorized and regulated by the Act (Utah Code, Title 51, Chapter 7). The Act established the Money Management Council which oversees the activities of the State Treasurer and the PTIF and details the types of authorized investments. Deposits in the PTIF are not insured or otherwise guaranteed by the State of Utah, and participants share proportionally in any realized gains or losses on investments.

The PTIF operates and reports to participants on a fair value basis. The income, gains, and losses of the PTIF, net of administration fees, are allocated based upon the participant's average daily balance. The fair value of the PTIF investment pool is approximately equal to the value of the pool shares.

### *Fair Value of Investments*

The School measures and records its investments using fair value measurement guidelines established by generally accepted accounting principles. These guidelines recognize a three-tiered fair value hierarchy, as follows:

- Level 1: Quoted prices for identical investments in active markets;
- Level 2: Observable inputs other than quoted market prices; and,
- Level 3: Unobservable inputs.

The investments consist only of PTIF funds which are classified as Level 2. The PTIF funds use the application of the June 30, 2022, fair value as calculated by the Utah State Treasurer, to the School's average daily balance in the Fund. The School currently has no assets that qualify for Level 1 or 3 investments. The following table illustrates the investments by the appropriate levels for the School:

	<u>Total</u>	<u>Quoted Prices in Active Markets (Level 1)</u>	<u>Other Observable Inputs (Level 2)</u>	<u>Unobservable Inputs (Level 3)</u>
June 30, 2022 PTIF	<u>\$ 999,818</u>	<u>\$ -</u>	<u>\$ 999,818</u>	<u>\$ -</u>

### **Custodial Credit Risk**

For deposits and investments, custodial credit risk is the risk that, in the event of the failure of the counterparty, the School will not be able to recover the value of its deposits, investments, or collateral securities that are in the possession of an outside party. The School's policy for managing custodial credit risk is to adhere to the Act. The Act requires all deposits of the School to be in a qualified depository, defined as any financial institution whose deposits are insured by an agency of the federal government and which has been certified by the Commissioner of Financial Institutions as meeting the requirements of the Act and adhering to the rules of the Utah Money Management Council.

### **Credit Risk**

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The School's policy for reducing its exposure to credit risk is to comply with the Act, as previously discussed.

### **Concentration of Credit Risk**

Concentration of credit risk is the risk of loss attributed to the magnitude of the School's investment in a single issuer. The School's policy for reducing this risk of loss is to comply with the Rules of the Money Management Council. Rule 17 of the Money Management Council limits investments in a single issuer of commercial paper and corporate obligations to 5-10% depending upon the total dollar amount held in the portfolio.

### **Interest Rate Risk**

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. The School's policy for managing its exposure to fair value loss arising from increasing interest rates is to comply with the Act. Section 51-7-11 of the Act requires that the remaining term to maturity of investments may not exceed the period of availability of the funds to be invested. The Act further limits the remaining term to maturity on all investments in commercial paper, bankers' acceptances, fixed rate negotiable deposits, and fixed rate corporate obligations to 270 days - 15 months or less. The Act further limits the remaining term to maturity on all investments in obligations of the United States Treasury; obligations issued by U.S. government sponsored enterprises; and bonds, notes, and other evidence of indebtedness of political subdivisions of the state to five years. In addition, variable rate negotiable deposits and variable rate securities may not have a remaining term to final maturity exceeding three years.

**Note 3 - Capital Assets**

A summary of activity in the capital assets is as follows:

	<u>June 30, 2021</u>	<u>Additions</u>	<u>Deletions</u>	<u>June 30, 2022</u>
Governmental activities				
Capital assets, not subject to depreciation				
Land	\$ 394,338	\$ -	\$ -	\$ 394,338
Capital assets				
Buildings and improvements	6,365,058	7,000	-	6,372,058
Equipment	458,503	376,921	(13,952)	821,472
Software	50,320	-	-	50,320
Furniture and fixtures	6,723	8,106	-	14,829
Total capital assets	<u>6,880,604</u>	<u>392,027</u>	<u>(13,952)</u>	<u>7,258,679</u>
Less accumulated depreciation for				
Buildings and improvements	(1,463,346)	(181,736)	-	(1,645,082)
Equipment	(230,126)	(76,107)	13,952	(292,281)
Software	(42,554)	(7,449)	-	(50,003)
Furniture and fixtures	(336)	(1,027)	-	(1,363)
Total accumulated depreciation	<u>(1,736,362)</u>	<u>(266,319)</u>	<u>13,952</u>	<u>(1,988,729)</u>
Total capital assets, subject to depreciation	<u>5,144,242</u>	<u>125,708</u>	<u>-</u>	<u>5,269,950</u>
Total capital assets, net	<u>\$ 5,538,580</u>	<u>\$ 125,708</u>	<u>\$ -</u>	<u>\$ 5,664,288</u>

Depreciation expense was charged to operation and maintenance of facilities function of the School.

**Note 4 - Long-Term Liabilities**

A summary of activity for the long-term liabilities is as follows:

	<u>Balance at June 30, 2021</u>	<u>Additions</u>	<u>Retirements</u>	<u>Balance at June 30, 2022</u>	<u>Due Within One Year</u>
Note payable	<u>\$ 5,618,010</u>	<u>\$ -</u>	<u>\$ (154,441)</u>	<u>\$ 5,463,569</u>	<u>\$ 165,469</u>

# Promontory School of Expeditionary Learning

Notes to Financial Statements

June 30, 2022

The note payable as of June 30, 2022, consists of the following:

The School borrowed \$6,510,453 through a note payable from a financial institution. The note bears interest at a variable interest rate that resets every five years. The interest rate at June 30, 2022, is 4.5%. The note requires monthly payments of \$33,965 until March 2024 when monthly payments reduce to \$29,948 and matures February 2044. The note is secured by the building and land. The School is required to meet certain debt covenants including having \$380,000 in liquid assets and maintaining The a minimum debt service coverage ratio of 1.20x measured annually.

\$ 5,463,569

The annual requirements to pay principal and interest on the outstanding note payable is as follows:

<u>Years Ending</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2023	\$ 165,469	\$ 242,111	\$ 407,580
2024	175,642	215,874	391,516
2025	187,576	171,804	359,380
2026	194,034	165,346	359,380
2027	200,715	158,665	359,380
2028-2032	1,112,125	684,776	1,796,901
2033-2037	1,317,233	479,666	1,796,899
2038-2042	1,560,169	236,731	1,796,900
2043-2044	550,606	17,444	568,050
Total	<u>\$ 5,463,569</u>	<u>\$ 2,372,417</u>	<u>\$ 7,835,986</u>

## Note 5 - Concentrations

The School's principal source of support is state and federal-based support revenue. For the year ended June 30, 2022, state funding accounted for approximately 86% of all revenue and federal funding accounted for approximately 13% of all revenues.

## Note 6 - Benefit Plan

The School has a defined contribution plan covering substantially all employees. The plan provides that all full-time employees can voluntarily contribute up to the statutory limits of their earnings to the plan. Employer contributions are discretionary and are determined and authorized by the Board of Directors each plan year. Total expense related to the plan for the year ended June 30, 2022 was \$84,486.



Required Supplementary Information  
June 30, 2022

## Promontory School of Expeditionary Learning

Promontory School of Expeditionary Learning

Schedule of Revenue, Expenditures, and Changes in Fund Balance – Budget and Actual – General Fund

Year Ended June 30, 2022

	Budgeted Amounts		Actual	Variance
	Original	Final	Amounts	with Final Budget- Positive (Negative)
Revenue				
State aid	\$ 3,753,764	\$ 3,878,085	\$ 3,879,716	\$ 1,631
Federal aid	462,564	765,772	794,216	28,444
Earnings on investments	5,000	4,400	4,975	575
School fees and activities	6,000	7,078	20,823	13,745
School lunch sales	7,000	7,000	5,562	(1,438)
Local contributions	9,796	28,560	9,487	(19,073)
Other local sources	2,000	6,084	7,002	918
Total revenue	4,246,124	4,696,979	4,721,781	24,802
Expenditures				
Instructional	2,090,094	2,116,785	2,144,384	(27,599)
Support services				
Students	170,251	186,696	176,674	10,022
Staff assistance	73,271	112,677	169,892	(57,215)
General	55,400	64,063	49,416	14,647
School administration	417,773	405,730	287,543	118,187
Central services	119,328	119,328	129,775	(10,447)
Operation and maintenance of facilities	194,798	214,925	207,638	7,287
Total support services	1,030,821	1,103,419	1,020,938	82,481
Non instructional				
School food services program	210,437	227,848	201,548	26,300
Capital outlay	247,000	447,849	392,027	55,822
Total non instructional	457,437	675,697	593,575	82,122
Debt service				
Principal	137,583	137,583	154,441	(16,858)
Interest	270,000	270,000	253,142	16,858
Total debt service	407,583	407,583	407,583	-
Total expenditures	3,985,935	4,303,484	4,166,480	137,004
Net Change in Fund Balance	\$ 260,189	\$ 393,495	\$ 555,301	\$ 161,806



**Note 1 - Basis of Budgeting**

The School follows these procedures in establishing the budgetary data reflected in the financial statements.

1. The School's Director is appointed as the budget officer. Before June 1 of each year, the budget officer shall prepare a tentative budget, with supporting documentation, to be submitted to the Board.
2. The tentative budget and supporting documents shall include the following items:
  - a. The revenue and expenditures of the preceding fiscal year
  - b. The estimated revenue and expenditures of the current fiscal year
  - c. A detailed estimate of the essential expenditures for all the purposes for the next succeeding fiscal year, and
  - d. The estimated financial condition of the School at the close of the fiscal year
3. The tentative budget shall be filed with the School's Director for public inspection at least 15 days before the date of the tentative budget's proposed adoption by the Board.
4. Before June 30 of each year, the Board will adopt a budget for the next fiscal year.
5. By the sooner of July 15 or 30 days of adopting a budget, the Board will file a copy of the adopted budget with the state auditor and the State Board of Education.



Compliance Reports  
June 30, 2022

# Promontory School of Expeditionary Learning



**Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards***

The Board of Directors  
Promontory School of Expeditionary Learning  
Perry, Utah

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the financial statements of the governmental activities and the major fund of Promontory School of Expeditionary Learning (the School), as of and for the year ended June 30, 2022, and the related notes to the financial statements, which collectively comprise the School's basic financial statements and the related notes to the financial statements and have issued our report thereon dated November 22, 2022.

**Report on Internal Control Over Financial Reporting**

In planning and performing our audit of the financial statements, we considered the School's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the School's internal control. Accordingly, we do not express an opinion on the effectiveness of the School's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the School's financial statements will not be prevented or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

## **Report on Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the School's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

## **Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the School's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the School's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

A handwritten signature in black ink that reads "Eide Bailly LLP". The signature is written in a cursive, flowing style.

Ogden, Utah  
November 22, 2022



**Independent Auditor's Report on Compliance and Report on Internal Control over Compliance  
as Required by the *State Compliance Audit Guide***

The Board of Directors  
Promontory School of Expeditionary Learning  
Perry, Utah

**Report on Compliance**

We have audited Promontory School of Expeditionary Learning's (the School) compliance with the applicable state compliance requirements described in the *State Compliance Audit Guide*, issued by the Office of the State Auditor, for the year ended June 30, 2022.

State compliance requirements were tested for the year ended June 30, 2022, in the following areas:

- Budgetary Compliance
- Fraud Risk Assessment
- Public Treasurer's Bond
- Internal Control Systems
- Public Education Programs

**Management's Responsibility**

Management is responsible for compliance with the state requirements referred to above.

**Auditor's Responsibility**

Our responsibility is to express an opinion on the School's compliance based on our audit of the state compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States; and the *State Compliance Audit Guide*. Those standards and the *State Compliance Audit Guide* require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the state compliance requirements referred to above that could have a direct and material effect on a state compliance requirement occurred. An audit includes examining, on a test basis, evidence about the School's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each state compliance requirement referred to above. However, our audit does not provide a legal determination of the School's compliance with those requirements.

### **Opinion on Compliance**

In our opinion, the School complied, in all material respects, with the state compliance requirements referred to above for the year ended June 30, 2022.

### **Report on Internal Control over Compliance**

Management of the School is responsible for establishing and maintaining effective internal control over compliance with the state compliance requirements referred to above. In planning and performing our audit of compliance, we considered the School's internal control over compliance with the state compliance requirements referred to above as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance with those state compliance requirements and to test and report on internal control over compliance in accordance with the *State Compliance Audit Guide*, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the School's internal control over compliance.

*A deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct noncompliance with a state compliance requirement on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a state compliance requirement will not be prevented or detected and corrected on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a state compliance requirement that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control and compliance and the results of that testing based on the requirements of the *State Compliance Audit Guide*. Accordingly, this report is not suitable for any other purpose.



Ogden, Utah  
November 22, 2022

## **APPENDIX D**

### **FORMS OF BOND DOCUMENTS**

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INDENTURE OF TRUST  
DATED AS OF MAY 1, 2023

between

UTAH CHARTER SCHOOL FINANCE AUTHORITY,  
as Issuer

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
as Trustee

\$ \_\_\_\_\_  
Charter School Revenue Bonds  
(Promontory School of Expeditionary Learning),  
Series 2023A

\$ \_\_\_\_\_  
Taxable Charter School Revenue Bonds  
(Promontory School of Expeditionary Learning),  
Series 2023B

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EXHIBIT B	– COSTS OF ISSUANCE REQUISITION

## INDENTURE OF TRUST

THIS INDENTURE OF TRUST, dated as of May 1, 2023 (the “*Indenture*”), is entered into between UTAH CHARTER SCHOOL FINANCE AUTHORITY (the “*Issuer*”), a body politic and corporate organized and existing under the laws of the State of Utah (the “*State*”) and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, duly organized and existing under the laws of the United States of America, with a principal corporate trust office located in Salt Lake City, Utah and authorized under such laws to accept and execute trusts of the character herein set out.

### WITNESSETH:

WHEREAS, pursuant to the Utah Industrial Facilities and Development Act, Title 11, Chapter 17, Utah Code Annotated 1953, as amended, and Title 53G, Chapter 5, Part 6, Utah Code Annotated 1953, as amended (collectively, the “*Act*”), the Issuer is authorized to issue revenue bonds to finance or refinance the acquisition, construction or rehabilitation of buildings, structures, facilities, improvements and equipment owned, or to be acquired by, a charter school for any of its business purposes or to provide educational services to the general public; and

WHEREAS, Promontory School of Expeditionary Learning (the “*Borrower*”) is a nonprofit corporation organized under the laws of the State and authorized to do business as a charter school in the State under Title 53G, Chapter 5, Utah Code Annotated, as amended (the “*Charter Schools Act*”) and has requested that the Issuer issue its bonds and loan the proceeds therefrom to the Borrower for the purpose of (i) refunding certain outstanding obligations of the Borrower (the “*Refunded Obligations*”), which financed the costs of the Borrower’s charter school facilities (the “*Existing Facilities*”), (ii) financing the acquisition and construction of improvements to the Existing Facilities (the “*2023 Project*”), (iii) funding a debt service reserve, and (iv) paying costs of issuance of the Series 2023 Bonds; and

WHEREAS, the Issuer has agreed to issue its \$\_\_\_\_\_ aggregate principal amount of Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023A (the “*Series 2023A Bonds*”) and \$\_\_\_\_\_ aggregate principal amount of Taxable Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023B (the “*Series 2023B Bonds*”) and, collectively with the Series 2023A Bonds, the “*Series 2023 Bonds*”), pursuant to and secured by this Indenture, for the purposes described above; and

WHEREAS, the Series 2023 Bonds and the authentication certificates are to be substantially in the form of *Exhibit A* hereto, with such necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture; and

WHEREAS, all things necessary to make the Series 2023 Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid, binding and legal obligations of the Issuer and to constitute this Indenture a valid, binding and legal instrument for the security of the Series 2023 Bonds in accordance with its terms, have been done and performed;

NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH:

That the Issuer, in consideration of the premises and of the mutual covenants contained herein and of the purchase and acceptance of the Bonds (as defined below) by the Owners and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any and interest on all Bonds at any time Outstanding under this Indenture, according to their tenor and effect, to secure the performance and observance of all the covenants and conditions in the Bonds and herein contained and to declare the terms and conditions upon and subject to which the Bonds are issued and secured, has executed and delivered this Indenture and has granted, bargained, sold, alienated, assigned, pledged, set over and confirmed and by these presents does grant, bargain, sell, assign, pledge, set over and confirm unto U.S. Bank Trust Company, National Association, as Trustee, for the benefit of the Owners from time to time of the Bonds (as defined below) on a parity basis and to its successors and assigns forever, all and singular the Trust Estate (as defined below),

TO HAVE AND TO HOLD the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended to be, to the Trustee and its successors in said trust and assigns forever,

IN TRUST, NEVERTHELESS, upon the terms herein set forth for the equal and proportionate benefit, security and protection of all Owners of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any other of the Bonds except as otherwise provided in Article VII hereof or with respect to moneys otherwise held to redeem or pay particular Bonds hereunder;

*PROVIDED, HOWEVER*, that if the Issuer, its successors or assigns shall well and truly pay, or cause to be paid, solely from the Trust Estate established herein, the principal of the Bonds and the premium, if any and the interest due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof and shall cause the payments to be made into the Debt Service Account as hereinafter required or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, or certain securities as herein permitted and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it and shall pay or cause to be paid to the Trustee, the Issuer and the United States of America all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, terminate and be void, but otherwise this Indenture shall be and remain in full force and effect.

IT IS HEREBY EXPRESSLY ACKNOWLEDGED that the Issuer has entered into this Indenture and issued the Bonds to fulfill the public purposes of the Act and the Trustee hereby accepts such trust and covenants to enforce the provisions of this Indenture and the Loan Agreement so as to effect the public purposes of the Act.

THIS INDENTURE FURTHER WITNESSETH and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered, and all said property, rights, interests and revenues and funds hereby pledged, assigned and mortgaged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements,

trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted and does hereby agree and covenant with the Trustee for the benefit of the Owners from time to time of the Bonds as follows:

## ARTICLE I

### DEFINITIONS; INDENTURE TO CONSTITUTE CONTRACT

*Section 1.01. Definitions.* Certain terms are defined in the recitals hereto. In addition, the following terms, except where the context indicates otherwise, shall have the respective meanings set forth below:

*“Acceleration Price”* has the meaning set forth in Section 8.02.

*“Accrued Debt Service”* means, as of any date of calculation, the amount of Debt Service that has accrued with respect to any Series of Bonds, calculating the Debt Service that has accrued with respect to each Series of Bonds as an amount equal to the sum of (1) the interest on the Bonds of such Series that has accrued and is unpaid and that will have accrued by the end of the then current calendar month, and (2) that portion of the principal of the Bonds that is payable within the twelve-month period following the date of calculation for the Bonds of such Series that would have accrued (if deemed to accrue in the same manner as interest accrues) by the end of the then current calendar month.

*“Act”* means Title 53G, Chapter 5, Part 6, Utah Code Annotated 1953, as amended, and the Utah Industrial Facilities and Development Act, Title 11, Chapter 17, Utah Code Annotated 1953, as amended.

*“Act of Bankruptcy”* means one of the following shall have occurred:

(a) The Borrower shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or agreement seeking any reorganization, incorporation, readjustment, liquidation or similar relief for itself under any present or future statutes, laws or regulations or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Borrower or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(b) A petition shall be filed against the Borrower seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation and shall remain undismissed or unstayed for an aggregate period of 60 days (whether or not consecutive), or if any trustee, receiver or liquidator of the Borrower or of all or any substantial part of its properties shall be appointed without the consent or acquiescence of the Borrower and such appointment shall remain undismissed or unstayed for an aggregate period of 60 days (whether or not consecutive).

*“Additional Bonds”* means any Additional Bonds authorized and issued pursuant to Section 2.10 herein.

*“Additional Promissory Notes”* means any promissory note or notes, in addition to the Series 2023 Promissory Note, delivered by the Borrower to the Issuer in connection with the issuance of Additional Bonds, as provided in the related Loan Agreement.

*“Authorized Borrower Representative”* means the Chair of the Board, the Vice Chair of the Board, Director of the Borrower, the Secretary of the Borrower, or any officer, employee or other person authorized by the Borrower to perform such act, discharge such duty or execute such certificate or other document.

*“Authorized Denomination”* means, unless otherwise provided in a Supplemental Indenture providing for the issuance of Bonds, \$5,000 or any integral multiple of \$1,000 in excess thereof.

*“Authorized Issuer Representative”* means any officer of the Issuer or any other person at the time designated to act on behalf of the Issuer by written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the Issuer by one of its authorized signatories, which certificate may designate an alternate or alternates and, when used with reference to the performance of any act, the discharge of any duty or the execution of any certificate or other document, any officer, employee or other person authorized to perform such act, discharge such duty or execute such certificate or other document.

*“Beneficial Owner(s)”* means the person or entity for whom the Bonds were deposited with DTC (in the name of its nominee, Cede & Co.).

*“Board”* or *“Board of Trustees”* means the Board of Trustees of the Borrower.

*“Bond Counsel”* means Chapman and Cutler LLP or such other firm of nationally recognized attorneys with a proven reputation in the field of municipal finance and experienced in the financing of facilities for non-exempt persons through the issuance of tax-exempt revenue bonds under the exemption provided under Section 103 of the Code and approved by the Issuer.

*“Bond Purchase Agreement”* means, as to the Series 2023 Bonds, the Bond Purchase Agreement, dated \_\_\_\_\_, 2023 among the Issuer, the Borrower and the Underwriter, and as to a Series of Additional Bonds, the Bond Purchase Agreement among the Issuer, the Borrower and the Underwriter related to such Series of Additional Bonds.

*“Bonds”* means, collectively, the Series 2023 Bonds and any Additional Bonds.

*“Bond Fund”* means the fund by that name created pursuant to Section 3.02 of this Indenture, consisting of the Debt Service Account and the Debt Service Reserve Account.

*“Borrower”* has the meaning set forth in the Recitals, and shall include any surviving, resulting or transferee corporation, as provided in Section 8.02 of the Loan Agreement.

*“Borrower Documents”* means, with respect to a Series of Bonds, the Loan Agreement, the Deed of Trust, the Promissory Notes, the Bond Purchase Agreement, the Tax Certificate, the Continuing Disclosure Undertaking (if any), and each of the other agreements, certificates, contracts or instruments to be executed by the Borrower in connection with the issuance of such

Series of Bonds or the financing of all or a portion of the expenses associated with the Project to be financed or refinanced by such Bonds.

“*Building*” means that certain building or buildings and all other structures and facilities now owned or hereafter acquired or constructed (including all fixtures, heating and air conditioning equipment and all other equipment and machinery affixed to the Land or Building) which are located on the Land, as they may from time to time exist.

“*Business Day*” means any day other than (i) a Saturday or Sunday, (ii) a day on which the Federal Reserve System is closed, or (iii) a day on which commercial banks in the State or in the city in which the corporate trust office of the Trustee is authorized by law to close.

“*Cash on Hand*” means the sum of cash, cash equivalents, liquid investments and unrestricted marketable securities (valued at the lower of cost or market) of the Borrower.

“*Cede & Co.*” means Cede & Co., the nominee of DTC and any successor nominee of DTC.

“*Closing Date*” means, as to a Series of Bonds, the date of issuance of such Series.

“*Code*” means the Internal Revenue Code of 1986, as amended. References to the Code and Sections of the Code include relevant applicable regulations and proposed regulations thereunder and under the Internal Revenue Code of 1954, as amended and any successor provisions to those Sections, regulations, or proposed regulations and, in addition, all revenue rulings, announcements, notices, procedures and judicial determinations under the foregoing applicable to the Bonds.

“*Continuing Disclosure Undertaking*” means, as to the Series 2023 Bonds, the Continuing Disclosure Undertaking, between the Borrower and U.S. Bank Trust Company, National Association, as dissemination agent, relating thereto, and, as to any Series of Additional Bonds, the continuing disclosure undertaking or agreement entered into by the Borrower in connection with such Series of Additional Bonds.

“*Costs of Issuance Fund*” means the fund by that name created pursuant to Section 3.02 of this Indenture.

“*Cost of the Project*” means the sum total of all reasonable or necessary costs incidental to the Project which may be financed pursuant to the Act and the Code.

“*Credit Enhancement Program*” means the Charter School Credit Enhancement Program established under Title 53G, Chapter 5, Part 6, Utah Code Annotated 1953, as amended.

“*Days Cash on Hand*” means (a) Cash on Hand of the Borrower, as shown on the financial statements for each Fiscal Year divided by (b) the quotient of Operating Expenses, as shown on the financial statements for such Fiscal Year, divided by 365.

“*Debt Service*” means, for the indicated period, the amount of the principal of and interest due on Indebtedness, less (i) with respect to a period that includes the final maturity date of a Series of Bonds, amounts on deposit in, and anticipated to be available for release at the time of the final

payment of such Series of Bonds from, the Debt Service Reserve Account, to the extent the Debt Service Reserve Account is not less than the Debt Service Reserve Requirement at the time of calculation, and (ii) capitalized interest on deposit in, and anticipated to be available for payment of interest on the Bonds; *provided, however*, that, as to any Indebtedness that bears interest at a variable interest rate which cannot be ascertained at the time of calculation, an interest rate equal to the weighted average rate of interest born by such Indebtedness (or other indebtedness of comparable credit quality, maturity and purchase terms in the event that such debt was not outstanding) during the preceding Fiscal Year (or any period of comparable length ending within 180 days) prior to the date of calculation shall be presumed to apply for all future dates, and the principal shall be amortized on a level debt service basis over the life of the Indebtedness but solely for the purpose of spreading the principal requirements for calculation of coverage.

“*Debt Service Account*” means the account by that name created in the Bond Fund pursuant to Section 3.02 herein.

“*Debt Service Reserve Account*” means the account by that name created in the Bond Fund pursuant to Section 3.02 herein.

“*Debt Service Reserve Requirement*” means, with respect to the Series 2023 Bonds, (a) \$\_\_\_\_\_, or (b) if less than the applicable amount in (a), the maximum annual Debt Service of the Series 2023 Bonds, calculated from time to time as of any date on which a portion of the Series 2023 Bonds is refunded or defeased and deemed no longer Outstanding, as applicable. Debt Service Reserve Requirement means with respect to a Series of Additional Bonds for which a separate subaccount is established in the Debt Service Reserve Account, the Debt Service Reserve Requirement established for that Series of Bonds in the related Supplemental Indenture.

“*Debt Service Reserve Subaccount*” means the subaccount established in the Debt Service Reserve Account with respect to a Series of Bonds.

“*Deed of Trust*” means the Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing, dated as of May 1, 2023, from the Borrower, as trustor in favor of U.S. Bank Trust Company, National Association, as trustee, for the benefit of the Issuer, and any modification to such Deed of Trust and any other deed of trust or mortgage delivered by the Borrower to the Issuer or the Trustee in connection with the issuance of Additional Bonds or to provide additional security.

“*Determination of Taxability*” shall have been deemed to occur if a final decree or judgment of any federal court or a final action of the Internal Revenue Service determines that interest paid or payable on any Tax-Exempt Bond is or was includable in the gross income of the Bondowner of said Tax-Exempt Bond for federal income tax purposes under the Code; *provided, however*, no such decree or action will be considered final for this purpose unless the Issuer and the Borrower have been given written notice and, if it is so desired and is legally allowed, have been afforded the opportunity to contest the same, at the expense of the Borrower, either directly or in the name of any Bondowner of a Tax-Exempt Bond, and until conclusion of any appellate review, if sought.

“*DTC*” means The Depository Trust Company, New York, New York and its successors and assigns.

“*Event of Default*” means those defaults specified in Section 10.01 of the Loan Agreement and in Section 8.01 of this Indenture.

“*Expense Fund*” means the fund by that name created pursuant to Section 3.02 herein.

“*Facilities*” means the Existing Facilities, the 2023 Project, and all additional land, buildings and equipment owned or leased by the Borrower at any time in connection with its operation of charter school facilities.

“*Federal Securities*” means investments set forth in paragraphs (a) through (f) of the definition of Permitted Investments.

“*Fiscal Year*” means the Borrower’s fiscal year, which currently begins on July 1 and ends on June 30 of each calendar year.

“*Fitch*” means Fitch Ratings, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Borrower by notice to the Trustee.

“*Funds*” means the Bond Fund, the Project Fund, the Costs of Issuance Fund, the Rebate Fund, the Revenue Fund, the Expense Fund, and any other funds, accounts or subaccounts established hereunder.

“*Generally Accepted Accounting Principles*” means those accounting principles applicable in the preparation of financial statements of the Borrower, as promulgated by the Financial Accounting Standards Board or such other body recognized as authoritative by the American Institute of Certified Public Accountants.

“*Government Obligations*” means direct non-callable obligations of or direct non-callable obligations the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by the United States of America.

“*Indebtedness*” means (i) indebtedness incurred or assumed by the Borrower for borrowed money or for the acquisition, construction or improvement of the Facilities or property related thereto other than goods that are acquired in the ordinary course of business of the Borrower, including indebtedness subordinate as to security and payment to other Indebtedness, (ii) lease obligations of the Borrower that, in accordance with Generally Accepted Accounting Principles, are shown on the liability side of a balance sheet, (iii) all indebtedness (other than indebtedness otherwise treated as Indebtedness hereunder) for capitalized lease obligations guaranteed, directly or indirectly, in any manner by the Borrower, or in effect guaranteed, directly or indirectly, by the Borrower through an agreement, contingent or otherwise, to purchase any such indebtedness or to advance or supply funds for the payment or purchase of any such indebtedness or to purchase property or services primarily for the purpose of enabling the debtor or seller to make payment of such indebtedness, or to assure the owner of the indebtedness against loss, or to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether or not such property is delivered or such services are rendered), or otherwise; and (iv) all indebtedness secured by any mortgage, lien, charge, encumbrance, pledge

or other security interest upon the Facilities or property related thereto owned by the Borrower whether or not the Borrower has assumed or become liable for the payment thereof. For the purpose of computing “Indebtedness,” there shall be excluded any particular Indebtedness if, upon or prior to the maturity thereof, there shall have been deposited with the proper depository in trust the necessary funds (or evidences of such Indebtedness or investments that will provide sufficient funds, if permitted by the instrument creating such Indebtedness) for the payment, redemption or satisfaction of such Indebtedness; and thereafter such funds, evidences of Indebtedness and investments so deposited shall not be included in any computation of the assets of the Borrower, and the income from any such deposits shall not be included in the calculation of Net Income Available for Debt Service.

“*Indemnified Parties*” has the meaning set forth in Section 6.06 of the Loan Agreement.

“*Interest Payment Date*” means, as to the Series 2023 Bonds, each April 15 and October 15, commencing October 15, 2023, and as to a Series of Additional Bonds, the interest payment date established in the related Supplemental Indenture.

“*Investment*” has the meaning set forth in Section 1.148-1(b) of the Treasury Regulations.

“*Investment Grade Rating*” means a rating on the Bonds of “BBB-” or higher by S&P or Fitch, or “Baa3” or higher by Moody’s.

“*Issuer*” means the Utah Charter School Finance Authority.

“*Issuer Documents*” means, with respect to a Series of Bonds, the Loan Agreement, the Indenture, the Bond Purchase Agreement and any other agreement, certificate, contract, or instrument to be executed by the Issuer in connection with the issuance of the Bonds or the financing of a portion of the expense associated with the Project.

“*Issuer Indemnified Party*” or “*Issuer Indemnified Parties*” means the Issuer, its past, present and future directors, board members, officers, counsel, advisors, employees and agents, individually and collectively.

“*Issuer’s Administration Fee*” means (i) the Issuer’s administration fee payable on the issuance of the Series 2023 Bonds in the amount of 1.5% of the original principal amount of the Series 2023 Bonds at the time of issuance of the Series 2023 Bonds and (ii) any Issuer’s Administration Fee payable in connection with the issuance of Additional Bonds.

“*Issuer’s Annual Fee*” means the Issuer’s annual fee in an annual amount equal to 0.20% of the then outstanding principal amount of the Bonds, payable to the Issuer on July 1 of each year the Bonds are outstanding from the Expense Fund; *provided, however*, that if the Borrower fails to meet any of its covenants contained in the Borrower Documents or in its charter contract, the Issuer may increase the Issuer’s Annual Fee up to an annual amount equal to 0.50% of the outstanding principal amount of the Bonds.

“*Issuer’s Unassigned Rights*” means the rights of the Issuer to (a) inspect books and records, (b) give or receive notices, approvals, consents, requests, and other communications, (c) receive payment or reimbursement for expenses or appropriations under the Credit Enhancement Program (d) receive payment of the Issuer’s Administration Fee and the Issuer’s

Annual Fee, (e) immunity from and limitation of liability, (f) indemnification from liability by the Borrower, (g) security for the Borrower's indemnification obligation, (h) take any action as provided under the Credit Enhancement Program, and (i) be reimbursed for expenses described in Section 5.01(c) of the Loan Agreement.

*"Land"* means, collectively, the real estate, interests in real estate and other real property rights described in *Exhibit A* to the Loan Agreement, together with all real estate, interests in real estate, interests in real property and other real property rights made a part of the Land in connection with the substitution of such real estate and other real property rights pursuant to Section 8.10 of the Loan Agreement or as the result of replacement of property taken in condemnation, or otherwise, less such real estate, interests in real estate and other real property rights released under the provisions of Section 8.10 of the Loan Agreement or taken by the exercise of the power of eminent domain as provided in Section 7.01 of the Loan Agreement.

*"Lien"* means any mortgage or pledge of, security interest in, or lien or encumbrance on, any property which secures any Indebtedness or other obligation of the Borrower or which secures any obligation of any Person other than an obligation to the Borrower excluding liens applicable to property in which the Borrower has only a leasehold interest unless the lien secures Indebtedness of the Borrower.

*"Loan"* means the loan made by the Issuer to the Borrower of the proceeds from the sale of the Bonds pursuant to the Loan Agreement.

*"Loan Agreement"* means, with respect to the Series 2023 Bonds, the Loan Agreement dated as of May 1, 2023, between the Borrower and the Issuer and any amendments and supplements thereto made in conformity with the requirements thereof and of this Indenture and, as to any Series of Additional Bonds, the loan agreement or supplement or amendment to Loan Agreement entered into between the Borrower and the Issuer in connection with such Series of Additional Bonds.

*"Loan Payments"* means those payments required to be paid by the Borrower pursuant to Section 5.01 of the Loan Agreement.

*"Long-Term Indebtedness"* means all Indebtedness created, assumed or guaranteed by the Borrower that matures by its terms (in the absence of the exercise of any earlier right of demand), or is renewable at the option of the Borrower to a date, more than one year after the original creation, assumption, or guarantee of such Indebtedness by the Borrower.

*"Maximum Annual Debt Service"* means, as of any date of calculation, the highest annual Debt Service requirements (excluding all or a portion of the final maturity payment for any Indebtedness in an amount equal to funds on deposit in a Debt Service Reserve Subaccount that are permitted to be applied to the payment of such final maturity at the time of such final maturity) with respect to all outstanding Indebtedness for any succeeding Fiscal Year.

*"Monthly Disbursement Date"* means a date not later than two business days after receipt by the Borrower (or the Trustee on behalf of the Borrower) of State Payments (and in no event later than the fifth day of each month).

*"Moody's"* means Moody's Investors Service, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Borrower by notice to the Trustee.

*"Net Income Available for Debt Service"* means, for any period of determination thereof, Pledged Revenues of the Borrower for such period, plus all interest earnings on moneys held in the Debt Service Reserve Account established under this Indenture, plus proceeds of Indebtedness set aside for the payment of interest on the Bonds, minus its total Operating Expenses for such period but excluding (i) any profits or losses which would be regarded as extraordinary items under Generally Accepted Accounting Principles, (ii) cancellation of indebtedness income, (iii) proceeds of Bonds and any other Indebtedness permitted by the Loan Agreement, and (iv) proceeds of insurance policies, other than policies for business interruption insurance, maintained by or for the benefit of the Borrower, the proceeds of any sale, transfer or other disposition of the Facilities or any other of the Borrower's assets by the Borrower, and any condemnation or any other damage award received by or owing to the Borrower.

*"Net Proceeds"* means, when used with respect to any insurance payment or condemnation award, the gross proceeds thereof less the expenses (including attorneys' fees) incurred in the collection of such gross proceeds.

*"Non-Appropriation"* means, with respect to any Series of Bonds, (i) the Issuer does not timely certify to the governor of the State the amount, if any, required to restore amounts on deposit in the Debt Service Reserve Subaccount to the Debt Service Reserve Requirement, (ii) the governor does not timely request from the legislature of the State an appropriation at least equal to the certified amount, or (iii) the legislature of the State does not appropriate money to the Issuer under the Credit Enhancement Program to restore amounts on deposit in the Debt Service Reserve Subaccount to the Debt Service Reserve Requirement with respect to such Bonds.

*"Offering Document"* means, as to the Series 2023 Bonds, the Official Statement dated \_\_\_\_\_, 2023, and, as to a Series of Additional Bonds, the applicable offering document prepared in connection with the sale of such Series of Bonds.

*"Operating Expenses"* means fees and expenses of the Borrower, incurred with respect to the Facilities, including maintenance, repair expenses, utility expenses, real estate taxes, insurance premiums, administrative and legal expenses, miscellaneous operating expenses, advertising costs, payroll expenses, the cost of material and supplies used for current operations of the Borrower, the cost of vehicles, equipment leases and service contracts, taxes upon the operations of the Borrower not otherwise mentioned herein, charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which are such as may reasonably be expected to be incurred in accordance with Generally Accepted Accounting Principles, all in such amounts as reasonably determined by the Borrower; provided, however, "Operating Expenses" shall not include depreciation and amortization expenses, interest expense, expenses incurred in connection with capital improvements, expenses paid from grants from state, federal or local sources, and expenses paid from the proceeds of any insurance or condemnation awards.

*"Opinion of Counsel"* means an opinion in writing of legal counsel, who may be counsel to the Issuer, the Trustee or the Borrower.

“*Outstanding*” or “*outstanding*” means when used with respect to the Bonds, as of any particular time, all Bonds which have been duly authenticated and delivered by the Trustee under this Indenture, except:

(a) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation after purchase in the open market or because of payment at, or redemption prior to, maturity;

(b) Bonds for the payment or redemption of which cash funds (or securities to the extent permitted in Section 7.01 hereof) shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); *provided* that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee, shall have been filed with the Trustee;

(c) Bonds in lieu of which other Bonds have been authenticated under Section 2.05 or 2.06 herein; and

(d) Bonds owned by the Borrower.

“*Participants*” means those broker-dealers, banks and other financial institutions from time to time for which DTC holds Bonds as a securities depository.

“*Permitted Encumbrance*” means, as of any particular time, any of the following:

(a) Liens for taxes and special assessments on the Facilities, not then delinquent;

(b) the Deed of Trust;

(c) purchase money security interests related to the Facilities;

(d) utility, access and other easements and rights-of-way, mineral rights and reservations, restrictions and exceptions which would not in the aggregate (i) materially interfere with or impair any present use of the Facilities or any reasonably probable future use of the Facilities, or (ii) materially reduce the value which would be reasonably expected to be received for the Facilities upon any sale (including any foreclosure of the mortgage granted by the Deed of Trust);

(e) mechanics’ and materialmen’s Liens related to the Facilities when payment of the related bill is not overdue;

(f) mechanics’ and materialmen’s Liens, security interests or other encumbrances related to the Facilities to the extent permitted in Section 6.01 of the Loan Agreement;

(g) judgment liens against the Borrower so long as such judgment is being contested and execution thereon is stayed or while the period for responsive pleading has not lapsed;

(h) (i) Rights reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license or permit, or provision of law, affecting the Facilities, to (A) terminate such right, power, franchise, grant, license or permit, *provided* that the exercise of such right would not materially impair the use of the Facilities or materially and adversely affect the value thereof, or (B) purchase, condemn, appropriate, or recapture, or designate a purchaser of, the Facilities; (ii) Liens on the Facilities for taxes, assessments, levies, fees, water and sewer charges and other governmental and similar charges not yet due or delinquent; (iii) easements, rights-of-way, servitudes, restrictions and other minor defects, encumbrances and irregularities in the title to the Facilities which do not materially impair the use of the Facilities or materially and adversely affect the value thereof; or (iv) rights reserved to or vested in any municipality or public authority to control or regulate the Facilities or to use the Facilities in any manner, which rights do not materially impair the use of the Facilities or materially and adversely affect the value thereof;

(i) Liens and any other restrictions, exceptions, leases, easements or encumbrances which are existing on the date of initial issuance and delivery of the Bonds and set forth in the related title commitment, *provided* that no such Lien (or the amount of Indebtedness secured thereby), restriction, exception, lease, easement or encumbrance may be increased, extended, renewed or modified to apply to the Facilities not subject to such Lien on such date, unless such Lien as so extended, renewed or modified or otherwise qualified as a Permitted Encumbrance hereunder;

(j) Liens arising by reason of an irrevocable deposit in trust of cash in an amount (or Government Obligations, the principal of and interest on which will be in an amount) and under terms sufficient to pay all or a specified portion of the principal of, premium, if any and/or the interest on, as the same shall become due, any Indebtedness which would otherwise be considered Outstanding; and

(k) Liens on the Facilities or the Pledged Revenues to secure payment of indebtedness subordinate to the obligations of the Borrower under the Loan Agreement to the extent such subordinate indebtedness is permitted to be incurred under Section 8.12 of the Loan Agreement.

“*Permitted Investments*” means to the extent from time to time permitted by applicable law:

(a) Government Obligations;

(b) obligations of the Federal National Mortgage Association;

(c) obligations of the Federal Intermediate Credit Corporation;

(d) obligations of Federal Banks for Cooperatives;

(e) obligations of Federal Land Banks;

(f) obligations of Federal Home Loan Banks (*provided* that obligations described in clauses (b) through (f) above shall constitute Permitted Investments only to



the extent that S&P and Moody's have assigned a rating to such obligations which is "AA" or better by S&P and "Aa2" or better by Moody's or if such obligations are secured by a pledge of the full faith and credit of the United States of America);

(g) certificates of deposit or time deposits of any bank or trust company which, to the extent not insured by the Federal Deposit Insurance Corporation, are secured by at least an equal amount of Federal Securities in the same manner as is required for repurchase agreements under clause (j) below, said Federal Securities having a market value at all times at least equal to the uninsured amount of such deposit;

(h) investment agreements (which term, for purposes of this clause (h), shall not include repurchase agreements) with banks, non-bank financial institutions and insurance companies that have long-term debt (or claims paying ability for insurance companies) rated at least "A-" and "A3" by S&P and Moody's, respectively. In the case of a guaranty corporation, the long-term debt (or claims paying ability for insurance companies) of the guarantor must be rated at least "A-" and "A3" by S&P and Moody's, respectively;

(i) shares of an investment company which are rated in one of the three top rating categories by S&P and Moody's;

(j) repurchase agreements with banks or other financial institutions, including but not limited to the Trustee, *provided* that each such repurchase agreement (A) is in commercially reasonable form and is for a commercially reasonable period and (B) results in transfer to the Trustee of legal title to, or the grant to the Trustee of a prior perfected security interest in, identified Government Obligations that are free and clear of any claims by third parties and are segregated in a custodial or trust account held by a third party (other than the repurchaser) as the agent solely of, or in trust solely for the benefit of, the Trustee;

(k) commercial paper issued by United States corporations or their Canadian subsidiaries that mature in 270 days or less and are rated "A-1" by S&P and "P-1" by Moody's or commercial paper backed by a Letter of Credit or line of credit rated "A-1" by S&P and "P-1" by Moody's;

(l) bond or notes issued by any state or municipality which are rated "A-" or better by S&P or "A3" or better by Moody's;

(m) the Utah Public Treasurer's Investment Fund; and

(n) any other investment permitted under the State Money Management Act, Title 51, Chapter 7, Utah Code Annotated 1953, as amended.

*provided* that "Permitted Investments" shall not include a financial instrument, commonly known as a "derivative," whose performance is derived, at least in part, from the performance of any underlying asset, including, without limitation, futures, options on securities, options on futures, forward contracts, swap agreements, structure notes and participations in pools of mortgages or other assets.

"Person" includes an individual, association, corporation, partnership, joint venture or a government or an agency or a political subdivision thereof.

"Phase I Report" means the Phase I Environmental Site Assessment, dated April 3, 2023, prepared in connection with the Facilities.

"Pledged Revenues" means all revenues, rentals, fees, third-party payments, receipts, donations, contributions or other income of the Borrower or derived from the Facilities, including the rights to receive such revenues, all as calculated in accordance with sound accounting practices, including, but not limited to, State Payments (whether paid to the Trustee by the Borrower or on behalf of the Borrower), proceeds derived from insurance, condemnation proceeds, accounts, contract rights and other rights and assets, whether now or hereafter owned, held or possessed by the Borrower which are derived from the Facilities, including all amounts received by the Trustee, as assignee with respect to the Deed of Trust; and all gifts, grants, bequests and contributions (including income and profits therefrom), to the extent not specifically restricted by the donor or maker thereof to a particular purpose inconsistent with their use for any of the payments required hereunder, but not including any of the Issuer's Unassigned Rights, including the Issuer's Administration Fee and the Issuer's Annual Fees, or any moneys required to be deposited in the Rebate Fund.

"Principal Payment Date" or "sinking fund payment date" means, with respect to the Series 2023 Bonds, each October 15, as set forth herein, and, with respect to a Series of Additional Bonds, the principal payment date or sinking fund date established for that Series of Bonds in the related Supplemental Indenture.

"Project" means, individually or collectively, as the context requires, the portion of the Facilities financed or refinanced with a Series of Bonds.

"Project Fund" means the fund by that name created pursuant to Section 3.02 herein.

"Promissory Note(s)" or "Note(s)" means, together, the Series 2023 Promissory Note and any Additional Promissory Notes.

"Rating Agency" means S&P, Fitch or Moody's.

"Rebate Amount" means the amount of arbitrage computed annually for payment as of the last day of every fifth Rebate Year and required to be rebated to the United States pursuant to Section 148 of the Code and Treasury Regulation Section 1.148-2 and any successor regulation as may be applicable thereto.

"Rebate Analyst" means an independent certified public accountant, financial analyst, or Bond Counsel, or any firm of the foregoing, or financial institution, experienced in making the arbitrage and rebate calculations required pursuant to Section 148(f) of the Code.

"Rebate Fund" means the fund, if any, by that name created pursuant to Section 3.02 herein.

"Rebate Year" means, as to a Series of Tax-Exempt Bonds, the period beginning on the date of issuance of that Series of Tax-Exempt Bonds and ending on the day immediately prior to

the next succeeding anniversary of such date of issuance, and for all other Rebate Years, the one year period beginning on the day after the end of the preceding Rebate Year and ending on the day immediately prior to the following anniversary of the issuance date, as the case may be, unless the Borrower, the Issuer and the Trustee are advised by the Rebate Analyst that another period is required by law; *provided, however*, that the last Rebate Year for a Series of Tax-Exempt Bonds shall end on the date on which such Series of Tax-Exempt Bonds is paid and cancelled.

“*Registered Owner*,” “*Bondholder*” or “*Owner*” means the person or persons in whose name or names a particular Bond is registered on the registration records maintained for that purpose pursuant to Section 2.05 hereof.

“*Regular Record Date*” means, as to the Series 2023 Bonds, the 1st calendar day of the month of each Interest Payment Date, and as to a Series of Additional Bonds, the record dates established in the related Supplemental Indenture.

“*Repair and Replacement Fund*” means the Repair and Replacement Fund established pursuant to Section 3.02 herein.

“*Repair and Replacement Monthly Deposit*” means the amount required to be deposited in the Repair and Replacement Fund pursuant to Section 8.14 of the Loan Agreement.

“*Repair and Replacement Requirement*” means, initially, \$\_\_\_\_\_, or such other amount as the Board shall determine from time to time by resolution of the Board.

“*Revenue Fund*” means the fund by that name created pursuant to Section 3.02 herein.

“*Series*” means a series of Bonds issued pursuant to this Indenture.

“*Series 2023 Promissory Note*” means the Series 2023 Promissory Note, executed by the Borrower in the aggregate principal amount of \$\_\_\_\_\_ and made payable to the order of the Issuer, a form of which is attached to the Loan Agreement as *Exhibit C*.

“*Short-Term Debt*” means any indebtedness other than Long-Term Indebtedness, consisting of notes, commercial paper, a bank line of credit or any other instrument to finance operating costs of the Borrower and including deposits into the Debt Service Account.

“*S&P*” means S&P Global Ratings, a corporation organized and existing under the laws of the State of New York, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “*S&P*” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Borrower by notice to the Trustee.

“*Special Record Date*” means a special record date, which shall be a business day, fixed to determine the names and addresses of owners for purposes of paying interest on a special Interest Payment Date for the payment of defaulted interest, all as further provided in Section 2.03 hereof.

“*State*” means the State of Utah.

“*State Payments*” means any and all payments made by the State to the Borrower pursuant to the Charter Schools Act which are permitted to be used as Pledged Revenues.

“*Supplemental Indenture*” means any indenture supplemental to this Indenture entered into between the Issuer and the Trustee in accordance with Article X hereof.

“*Tax Certificate*” means any tax certificate of the Issuer and/or the Borrower with respect to the Tax-Exempt Bonds.

“*Tax-Exempt Bonds*” means the Series 2023A Bonds and any Additional Bonds, the interest on which, in the opinion of Bond Counsel delivered at the time of issuance thereof, is excludable from gross income of the Owner thereof for federal income tax purposes.

“*Title Company*” means, with respect to the Series 2023 Bonds, Cottonwood Title Insurance Agency, Inc.

“*Treasury Regulations*” means the regulations promulgated by the United States Department of Treasury for the interpretation of the Code.

“*Trust Estate*” means, except as otherwise provided in this definition, (a) the rights and interests of the Issuer under the Loan Agreement, as amended from time to time, between the Issuer and the Borrower, (b) the Facilities and all rights and interests of the Issuer in the Facilities, (c) the Pledged Revenues and all rights and interests of the Issuer in the Pledged Revenues, (d) the rights and interests of the Issuer and the Borrower under the Deed of Trust and the Promissory Notes, (e) all Funds (except the Costs of Issuance Fund and any Rebate Fund or otherwise any moneys required to be rebated to the United States of America pursuant to Section 148(f) of the Code), except for moneys or obligations deposited with or paid to the Trustee for the payment or redemption of Bonds that are no longer deemed to be Outstanding hereunder, subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture and (f) any and all other interests in real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind specifically mortgaged, pledged or hypothecated, as and for additional security under this Indenture by the Issuer or by anyone on its behalf or with its written consent in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same, subject to the terms hereof, all of which has been pledged, assigned and mortgaged to the Trustee pursuant to the granting clauses hereof; *provided, however*, that the “*Trust Estate*” shall not include the Issuer’s Unassigned Rights.

“*Trustee*” means U.S. Bank Trust Company, National Association, Salt Lake City, Utah, designated as paying agent, registrar, transfer agent and trustee under this Indenture, or any successor corporate trustee.

“*Trustee’s Expenses*” means expenses incurred by the Trustee in its capacity as Trustee with respect to the Bonds.

“*Trustee’s Fees*” means fees incurred by the Trustee in its capacity as Trustee with respect to the Bonds.

“Trustee Indemnified Parties” has the meaning set forth in Section 8.06 of the Loan Agreement.

“Underwriter” means, with respect to the Series 2023 Bonds, Robert W. Baird & Co. Incorporated, and, with respect to any Additional Bonds, such purchaser or underwriter as shall be approved by the Issuer.

*Section 1.02. Indenture to Constitute Contract.* In consideration of the purchase and acceptance of any or all of the Bonds by those who shall own the same from time to time, the provisions of this Indenture shall be part of the contract of the Issuer with the Owners of the Bonds and shall be deemed to be and shall constitute contracts among the Issuer, the Trustee and the Owners from time to time of the Bonds. The pledge made in this Indenture and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the Issuer shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds except as otherwise provided in Article VII hereof or with respect to moneys otherwise held to redeem or pay particular Bonds hereunder. All of the Bonds, regardless of the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided in or pursuant to this Indenture.

## ARTICLE II

### AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF BONDS

*Section 2.01. Authorized Amount of Bonds.* No Bonds may be issued under this Indenture except in accordance with this Article. The total principal amount of Series 2023 Bonds that may be issued hereunder is hereby expressly limited to (a) with respect to the series 2023A Bonds, \$\_\_\_\_\_, and (b) with respect to the series 2023B Bonds, \$\_\_\_\_\_ except as provided in Sections 2.05, 2.06 and 2.10 hereof.

*Section 2.02. All Bonds Equally and Ratably Secured by Trust Estate; Limited Obligation of Bonds and Pledges Securing the Same.* Except as hereinafter provided, all Bonds issued under this Indenture and at any time Outstanding shall in all respects be equally and ratably secured hereby, without preference, priority or distinction on account of the date or dates or the actual time or times of the issue or maturity of the Bonds, so that all Bonds at any time issued and Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby.

THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE, DO NOT GIVE RISE TO A GENERAL OBLIGATION OR LIABILITY OF THE ISSUER OR CHARGE AGAINST ITS GENERAL CREDIT AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER. THE BONDS DO NOT CONSTITUTE A DEBT, LIABILITY OR LOAN OF CREDIT OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE STATE OF UTAH OR OF ANY POLITICAL SUBDIVISION THEREOF. THE ISSUANCE OF THE BONDS SHALL NOT DIRECTLY, INDIRECTLY OR CONTINGENTLY OBLIGATE THE ISSUER, THE STATE OF UTAH OR ANY AGENCY, INSTRUMENTALITY OR POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS INDENTURE OR THE BONDS, NONE OF THE BORROWER, THE TRUSTEE OR ANY BONDHOLDER SHALL LOOK TO THE ISSUER FOR DAMAGES SUFFERED BY THE BORROWER, THE TRUSTEE OR SUCH BONDHOLDER AS A RESULT OF THE FAILURE OF THE ISSUER TO PERFORM, FAIL TO PERFORM OR INSUFFICIENTLY PERFORM ANY COVENANT, UNDERTAKING OR OBLIGATION UNDER THE ISSUER DOCUMENTS OR ANY OF THE OTHER DOCUMENTS REFERRED TO IN THIS INDENTURE, NOR AS A RESULT OF THE INCORRECTNESS OF ANY REPRESENTATION MADE BY THE ISSUER IN ANY OF SUCH DOCUMENTS, NOR FOR ANY OTHER REASON.

*Section 2.03. Authorization of Series 2023 Bonds; Payment of Bonds.* (a) There are hereby authorized to be issued hereunder and secured hereby, charter school revenue bonds, which shall be entitled “Utah Charter School Finance Authority Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023A” and “Utah Charter School Finance Authority Taxable Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023B” The Series 2023 Bonds shall be issuable as fully-registered bonds in Authorized Denominations and shall be numbered separately and lettered, if at all, in such manner as the Trustee shall determine. The Series 2023 Bonds will be in substantially the form set forth in *Exhibit A* to this Indenture, with such variations, omissions and insertions as are permitted or required by this Indenture.

(b) The Series 2023 Bonds shall be dated the Closing Date. The Series 2023 Bonds shall bear interest on the basis of a 360-day year, consisting of twelve 30-day months, from their date of issuance until payment of principal has been made or provided for, payable on each April 15 and October 15, commencing October 15, 2023, except that Series 2023 Bonds which are reissued upon transfer, exchange or other replacement shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, or if no interest has been paid, from the date of the Bonds.

The Series 2023A Bonds shall be issued in the principal amounts of, shall bear interest at the rates and shall mature on the dates as set forth below:

MATURITY DATE (OCTOBER 15)	PRINCIPAL AMOUNT	INITIAL INTEREST RATE
	\$	%

The Series 2023B Bonds shall be issued in the principal amounts of, shall bear interest at the rates and shall mature on the dates as set forth below:

MATURITY DATE (OCTOBER 15)	PRINCIPAL AMOUNT	INITIAL INTEREST RATE
	\$	%

(c) The principal of and premium, if any, on the Bonds shall be payable in lawful money of the United States of America at the designated corporate trust office of the Trustee or at the designated office of its successor in trust. Payment of principal of and any premium on the Bonds shall be payable upon presentation and surrender of the Bonds at the designated corporate trust office of the Trustee; *provided, however*, that except in the case of the final principal payment on the Bonds, the Owner shall not be required to submit the Bonds to the Trustee for payments of principal. Payment of interest on any Bond shall be made to the Registered Owner thereof by check or draft mailed on each Interest Payment Date by the Trustee to the Registered Owner at his or her address as it last appears on the registration records kept by the Trustee at the close of business on the Regular Record Date for such Interest Payment Date (except that the Registered Owners of at least \$500,000 in aggregate principal amount of Bonds Outstanding may, by written request received at least 10 business days prior to the Regular Record Date, receive payment of interest by wire transfer at the address specified in such request, which address must be in the United States), but any such interest not so timely paid or duly provided for shall cease to be payable to the Registered Owner thereof at the close of business on the Regular Record Date and shall be payable to the Registered Owner thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Trustee whenever moneys become available for payment of the defaulted interest and notice of such Special Record Date shall be given to the Registered Owners of the Bonds not less than 10 days prior thereto by first-class mail to each such owner as shown on the registration records on the date selected by the Trustee stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. All such payments shall be made in lawful money of the United States of America.

*Section 2.04. Execution of Bonds.* The Bonds shall be executed in the name and on behalf of the Issuer by the manual or facsimile signature of the Chair or Vice Chair and be attested with the manual or facsimile signature of its Secretary.

In case any officer of the Issuer whose signature or whose facsimile signature shall appear on the Bonds shall cease to be such officer before the authentication of such Bonds, such signature or the facsimile thereof shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until authentication; and any Bond may be signed on behalf of the Issuer by such Persons as are at the time of execution of such Bond proper officers of the Issuer, even though at the date of this Indenture, such Person was not such officer.

*Section 2.05. Registration, Transfer and Exchange of Bonds; Persons Treated as Owners.* The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee. Upon surrender for transfer of any Bond at the designated office of the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Registered Owner or his attorney duly authorized in writing, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds for a like series and aggregate principal amount of the same maturity.

Bonds may be exchanged at the designated corporate trust office of the Trustee for a like series and aggregate principal amount of Bonds of the same maturity in Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds which the Registered Owner making the exchange is entitled to receive, bearing numbers not contemporaneously Outstanding. The execution by the Issuer of any Bond of any Authorized Denomination shall constitute full and due authorization of such denomination and the Trustee shall thereby be authorized to authenticate and deliver such Bond.

The Trustee shall not be required to transfer or exchange any Bond during any period beginning on a Regular Record Date or Special Record Date with respect to such Bond and ending at the close of business on the business day immediately preceding the next Interest Payment Date or Principal Payment Date, as applicable. The Trustee shall not be required to transfer or exchange any Bond subject to redemption during the period of five days next preceding the mailing of notice of redemption as herein provided. After the giving of such notice the Trustee shall not be required to transfer or exchange any Bond, which Bond or portion thereof has been called for redemption.

As to any Bond, the Person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, except to the extent otherwise provided herein with respect to Regular Record Dates and Special Record Dates for the payment of interest and payment of either principal or interest on any Bond shall be made only to or upon the written order of the Owner thereof or his legal representative but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums paid.

The Trustee shall require the payment by any Owner requesting exchange or transfer of any tax or other generally imposed governmental charge required to be paid with respect to such exchange or transfer.

*Section 2.06. Lost, Stolen, Destroyed and Mutilated Bonds.* Upon receipt by the Issuer and the Trustee of evidence satisfactory to them of the ownership of and the loss, theft, destruction or mutilation of any Bond and, in the case of a lost, stolen or destroyed Bond, of indemnity satisfactory to them and upon surrender and cancellation of the Bond, if mutilated, (a) the Issuer shall execute and the Trustee shall authenticate and deliver, a new Bond of the same series, date, maturity and Authorized Denomination in lieu of such lost, stolen, destroyed or mutilated Bond or (b) if such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, in lieu of executing and delivering a new Bond as aforesaid, the Trustee may pay such Bond. Any such new Bond shall bear a number not contemporaneously Outstanding. The applicant for any such new Bond may be required to pay all expenses and charges of the Issuer and of the Trustee in connection with the issuance of such Bond. All Bonds shall be held and

owned upon the express condition that, to the extent permitted by law, the foregoing conditions are exclusive with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds, negotiable instruments or other securities.

*Section 2.07. Delivery of Series 2023 Bonds.* Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver the Series 2023 Bonds to the Trustee and the Trustee shall authenticate the Series 2023 Bonds and deliver them to the Underwriter thereof as directed by the Issuer and as hereinafter in this Section provided.

Prior to the delivery by the Trustee of any of the Series 2023 Bonds, there shall have been filed with or delivered to the Trustee the following:

- (a) a resolution duly adopted by the Issuer, authorizing the execution and delivery of the Loan Agreement, the Bond Purchase Agreement and this Indenture and the issuance of the Series 2023 Bonds;
- (b) a duly executed copy of this Indenture, the Loan Agreement and the Deed of Trust;
- (c) the Promissory Note with respect to the Bonds, duly executed by the Borrower and duly endorsed by the Issuer to the order of the Trustee;
- (d) the written order of the Issuer as to the delivery of the Series 2023 Bonds, signed by an Authorized Issuer Representative;
- (e) an opinion of Bond Counsel substantially to the effect that the Series 2023 Bonds constitute legal, valid and binding obligations of the Issuer, and that the interest on the Series 2023A Bonds will be excludable from gross income for federal income tax purposes to the Owners thereof;
- (f) a binding commitment to issue a lender's policy of title insurance as required by Section 4.02 of the Loan Agreement;
- (g) an opinion of counsel with respect to the Borrower, in substantially the form set forth in the Bond Purchase Agreement for the Series 2023 Bond; and
- (h) such other documents and opinions of counsel as the Issuer, the Underwriter, the Trustee or Bond Counsel may reasonably request.

*Section 2.08. Authentication Certificate.* The authentication certificate upon the Bonds shall be substantially in the form appended to the form of the Bonds attached hereto as *Exhibit A*. No Bond shall be secured hereby or entitled to the benefit hereof, or shall be valid or obligatory for any purpose, unless the certificate of authentication, substantially in such form, has been duly executed by the Trustee; and such certificate of the Trustee upon any Bond shall be conclusive evidence and the only competent evidence that such Bond has been authenticated and delivered hereunder. The certificate of authentication shall be deemed to have been duly executed if manually signed by an authorized signatory of the Trustee, but it shall not be necessary that the

same authorized signatory sign the certificate of authentication on all of the Bonds issued hereunder.

*Section 2.09. Cancellation and Destruction of Bonds.* Whenever any Outstanding Bonds shall be delivered to the Trustee for the cancellation thereof pursuant to this Indenture, upon payment of the principal amount thereof or for replacement pursuant to Section 2.06 hereof, such Bonds shall be promptly cancelled and destroyed by the Trustee and counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer and the Borrower, if requested.

*Section 2.10. Additional Bonds Authorized.* Additional Bonds secured by and payable solely from the Trust Estate may be issued in one or more additional series upon receipt by the Trustee of the following instruments:

- (a) Duly executed counterparts of (i) an amendment or supplement to an existing Loan Agreement relating to the Project to be financed or refinanced from the proceeds of the Additional Bonds to be issued, providing for payments sufficient to pay the debt service charges on the related Additional Bonds and (ii) the supplement to the Indenture providing for the issuance of and the terms and conditions of the Additional Bonds.
- (b) One or more Additional Promissory Notes in an aggregate principal amount equal to the aggregate principal amount of the related Additional Bonds and duly endorsed by the Issuer to the order of the Trustee without recourse or warranty.
- (c) A written order of the Issuer as to the delivery of the Additional Bonds, signed by an Authorized Issuer Representative.
- (d) A copy of the resolution duly adopted by the Issuer, authorizing the issuance of the Additional Bonds and the related supplement to the Loan Agreement and Supplemental Indenture.
- (e) An opinion of Bond Counsel to the effect that (i) the Additional Bonds will be valid and binding special obligations of the Issuer, enforceable, in accordance with their terms, and will be secured under the Indenture by the Trust Estate in accordance with the terms of the Indenture; (ii) the interest on any Additional Bonds that are Tax-Exempt Bonds will be excludable from gross income for federal income tax purposes and (iii) the issuance of the Additional Bonds will not cause the interest on any Tax-Exempt Bonds to remain Outstanding to be includable in gross income for federal income tax purposes.
- (f) A written opinion of counsel to the Borrower, which counsel shall be reasonably satisfactory to the Issuer, to the effect that the Loan Agreement or the amendment or supplement to the Loan Agreement, any Deed of Trust and Additional Promissory Notes have been duly authorized, executed and delivered by the Borrower and that the Loan Agreement or the amendment or supplement to the Loan Agreement, any Deed of Trust and Additional Promissory Notes constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, subject

to exceptions reasonably satisfactory to the Trustee for bankruptcy, insolvency and similar laws and the application of equitable principles.

(g) Evidence satisfactory to the Trustee that, on delivery of the Additional Bonds, there will be or has been paid into the Debt Service Reserve Subaccount any amounts required by the related Supplemental Indenture to be deposited therein.

(h) A certificate of an Authorized Borrower Representative to the effect that the Borrower is not in default under the Loan Agreement or this Indenture, the Borrower is not aware of any Events of Default under the Loan Agreement or this Indenture and that such Indebtedness may be issued in compliance with the Loan Agreement.

(i) The certificate required by Section 8.12 of the Loan Agreement.

(j) Evidence satisfactory to the Trustee that the Borrower is in good standing with the State Charter School Board of the State of Utah, or any successor thereof, and the charter agreement between such entity and the Borrower has not been repealed.

(k) Unless evidence satisfactory to the Trustee is provided that upon issuance of the Additional Bonds the rating on the Outstanding Bonds (including the Additional Bonds) will not be lower than an Investment Grade Rating, an investor letter in the form satisfactory to the Issuer, from each of the purchasers that will be Beneficial Owners of the Additional Bonds.

(l) Evidence satisfactory to the Trustee that the Issuer's Administration Fee has been paid to the Issuer.

The provisions, covenants and agreements herein set forth to be performed by or on behalf of the Issuer and in the Loan Agreement to be performed by the Borrower shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds, all of which, regardless of the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in this Indenture.

Notwithstanding anything to the contrary contained in this Section 2.10, so long as the Series 2023 Bonds or any Additional Bonds issued pursuant to the Credit Enhancement Program remain Outstanding, all Additional Bonds issued hereunder must be issued under the Credit Enhancement Program.

*Section 2.11. Book-Entry System; Limited Obligation of Issuer.* (a) Notwithstanding any other provision hereof, the Bonds shall be initially issued in the form of a separate single certificated fully registered Bond for each of the maturities of each of the Series set forth in Section 2.03 hereof. Unless otherwise provided in a Supplemental Indenture, upon initial issuance, the ownership of each Bond shall be registered in the registration records kept by the Trustee in the name of Cede & Co., as nominee of DTC.

(b) With respect to Bonds registered in the registration records kept by the Trustee in the name of Cede & Co., as nominee of DTC, the Issuer and the Trustee shall have no responsibility or obligation to any Participant or to any Person on behalf of which a Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, none of the Issuer, the Borrower, or the Trustee shall have responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant or any other Person, other than a Registered Owner, as shown in the registration records kept by the Trustee, or any notice with respect to the Bonds, including any notice of redemption or (iii) the payment to any Participant or any other Person, other than a Registered Owner, as shown in the registration records kept by the Trustee, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The Issuer, the Borrower and the Trustee may treat and consider the Person in whose name each Bond is registered in the registration records kept by the Trustee as the absolute owner of such Bond for the purpose of payment of principal, premium and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond and for all other purposes whatsoever. The Trustee shall pay all principal of, premium, if any and interest on the Bonds only to or upon the order of the respective Registered Owners, as shown in the registration records kept by the Trustee, or their respective attorneys duly authorized in writing, as provided in Section 2.05 hereof and all such payments shall be valid and effective to fully satisfy and discharge the obligations with respect to payment of principal of, premium, if any and interest on the Bonds to the extent of the sum or sums so paid. No Person other than a Registered Owner, as shown in the registration records kept by the Trustee, shall receive a certificated Bond evidencing the obligation to make payments of principal, premium, if any and interest pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co. and subject to the provisions herein with respect to Record Dates, the words "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

(c) The Trustee shall take all action necessary for all representations of the Issuer in its Letter of Representations to DTC with respect to the paying agents and the bond registrar, respectively, to at all times to be complied with.

(d) (i) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Issuer, the Borrower and the Trustee and discharging its responsibilities with respect thereto under applicable law.

(ii) The Issuer, in its sole discretion and without the consent of any other Person, may terminate the services of DTC with respect to the Bonds if the Issuer determines that:

(A) DTC is unable to discharge its responsibilities with respect to the Bonds, or

(B) a continuation of the requirement that all of the Outstanding Bonds be registered in the registration records kept by the Trustee in the name of Cede & Co. or any other nominee of DTC, is not in the best interest of the Owners of the Bonds.

(iii) Upon the termination of the services of DTC with respect to the Bonds pursuant to Section 2.11(d)(i) or (ii), after which no substitute securities depository willing to undertake the functions of DTC hereunder can be found which, in the opinion of the Issuer, is willing and able to undertake such functions upon reasonable and customary terms, the Trustee is obligated to deliver Bond certificates at the expense of the Borrower, as described in this Indenture and the Bonds shall no longer be restricted to being registered in the registration records kept by the Trustee in the name of Cede & Co. as nominee of DTC, but may be registered in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

(e) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Letter of Representations from the Issuer to DTC.

*Section 2.12. Non-presentment of Bonds.* In the event any Bonds, or portions thereof, shall not be presented for payment when the principal thereof becomes due, either at maturity, the date fixed for redemption thereof, or otherwise, if funds sufficient for the payment thereof, including accrued interest thereon, shall have been deposited into the Debt Service Account or otherwise made available to the Trustee for deposit therein, then on and after the date said principal becomes due, all interest thereon shall cease to accrue and all liability of the Issuer to the Owner or Owners thereof for the payment of such Bonds, shall forthwith cease, terminate and be completely discharged and thereupon it shall be the duty of the Trustee to hold such fund or funds in a separate trust account for the benefit of the Owner or Owners of such Bonds, who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his, her or their part under this Indenture with respect to said Bond or on, or with respect to, said Bond. Such moneys shall not be required to be invested during such period by the Trustee. If any Bond shall not be presented for payment within the period of three years following the date when such Bond becomes due, whether by maturity or otherwise, the Trustee shall return to the Borrower such funds theretofore held by it for payment of such Bond and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Borrower. The obligations of the Trustee under this Section shall be subject, however, to any law applicable to the unclaimed funds or the Trustee providing other requirements for the disposition of unclaimed property.

### ARTICLE III

#### PLEDGE OF REVENUES; ESTABLISHMENT OF FUNDS AND APPLICATION THEREOF

*Section 3.01. Pledge of Trust Estate.* Subject only to the rights of the Issuer to apply amounts under the provisions of this Article, a pledge of the Trust Estate to the extent provided herein is hereby made and the same is pledged to secure the payment of the principal of, premium, if any and interest on the Bonds. The pledge hereby made shall be valid and binding from and after the time of the delivery by the Trustee of the first Bond authenticated and delivered under

this Indenture. The security so pledged and then or thereafter received by the Issuer shall immediately be subject to the lien of such pledge and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the Issuer with respect to the Trust Estate and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such parties have notice thereof.

*Section 3.02. Establishment of Funds.* The Issuer hereby establishes and creates the following funds, which shall be special trust funds:

- (a) Bond Fund, to be held by the Trustee, consisting of (i) a Debt Service Account and (ii) a Debt Service Reserve Account;
- (b) Project Fund, to be held by the Trustee;
- (c) Repair and Replacement Fund, to be held by the Trustee;
- (d) Revenue Fund, to be held by the Trustee;
- (e) Costs of Issuance Fund, to be held by the Trustee;
- (f) Expense Fund, to be held by the Trustee; and
- (g) Rebate Fund, to be held by the Trustee.

In addition to or within the foregoing Funds, the Issuer may establish one or more additional Funds, accounts or subaccounts. Unless otherwise provided by a Supplemental Indenture, each Fund, account and subaccount to be held by the Trustee shall be held in the name of the Issuer.

*Section 3.03. Application of Proceeds of Series 2023 Bonds.* The proceeds of the Series 2023 Bonds, together with \$\_\_\_\_\_ from of Borrower funds to be transferred to the Trustee for deposit in the Repair and Replacement Fund, shall be applied as follows:

- (i) into the Project Fund, \$\_\_\_\_\_, for the purpose of paying costs of the 2023 Project;
- (ii) \$\_\_\_\_\_ for the purpose of refunding the Refunded Obligations;
- (iv) into the Debt Service Reserve Subaccount for the Series 2023 Bonds, \$\_\_\_\_\_;
- (v) into the Costs of Issuance Fund, \$\_\_\_\_\_;
- (vi) into the Repair and Replacement Fund, \$\_\_\_\_\_; and
- (vii) into the Expense Fund for payment to the Authority, \$\_\_\_\_\_, representing the Issuer's Administration Fee, which shall be paid by the Trustee (without the need for a requisition request) on or about the Closing Date.

*Section 3.04. Project Fund.* (a) Except as otherwise provided herein, amounts in the Project Fund shall be used to pay Costs of the Project in accordance with the terms hereof. The

Trustee is hereby authorized and directed to transfer moneys on deposit in the Project Fund to make each disbursement required by the Borrower upon satisfaction of the requirements set forth in this Section. The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom and shall provide, upon receipt of a written request, periodic statements of transactions to the Borrower.

(b) Except as otherwise provided in the related Tax Certificate or directed by the Borrower, as soon as practicable following the date of completion of the related Project (as such date is certified to the Trustee in writing by the Borrower), any balance remaining in the Project Fund (or applicable account therein) from the proceeds of the Bonds (including interest earnings) shall without further authorization be transferred by the Trustee for deposit in the Debt Service Account and used to pay the principal of or interest on the Series 2023A Bonds or for the redemption of Series 2023A Bonds.

(c) The Issuer authorizes and directs the Trustee to withdraw sufficient funds from the Project Fund (or applicable account therein) for Costs of the Project upon submission by the Borrower of a requisition in the form attached to the Loan Agreement as *Exhibit B* (the "*Project Requisition Form*").

(d) Reference is hereby made to the provisions of the Loan Agreement wherein it is provided that under certain circumstances the Net Proceeds of insurance payments and condemnation awards are to be paid to the Trustee and to be disbursed and paid out as therein provided. The Trustee hereby accepts and agrees to perform such duties and obligations specified in the Loan Agreement. The Trustee shall fully cooperate with the Borrower in the handling and conduct of any prospective or pending insurable event or condemnation proceeding with respect to the Project or any part thereof. The Trustee shall establish temporary accounts, as necessary, within the Project Fund in order to facilitate compliance with the provisions of Section 7.01 of the Loan Agreement.

*Section 3.05. Bond Fund - Debt Service Account.* (a) Except as otherwise provided herein, moneys on deposit in the Debt Service Account shall be used solely for the payment of the principal of and premium, if any, and interest on the Bonds as due, and the Issuer authorizes and directs the Trustee to withdraw sufficient funds from the Debt Service Account for such purposes.

(b) There shall be deposited into the Debt Service Account, as and when received (i) disbursements from the Revenue Fund as provided hereof, (ii) all moneys transferred to the Debt Service Account pursuant to 5.01(a) of the Loan Agreement, (iii) all other moneys deposited into the Debt Service Account pursuant to the Loan Agreement or this Indenture, and (iv) all other moneys received by the Trustee when accompanied by directions from an Authorized Borrower Representative not inconsistent with the Loan Agreement or this Indenture that such moneys are to be paid into the Debt Service Account. If the Trustee does not receive payments into the Debt Service Account by the fifth day after any required payment date pursuant to Section 5.01(a) of the Loan Agreement, the Trustee will immediately notify the Issuer and the Borrower of such nonpayment.

(c) Amounts on deposit in the Debt Service Account shall be held in trust solely for the benefit of the Owners, be applied only in accordance with the provisions of this Indenture, and not

be subject to any legal, equitable or reversionary interest of the Borrower or any other right of the Borrower to such amounts. In the event of any Act of Bankruptcy by the Borrower, the Borrower shall in no event assert, claim or contend that any portion of the Debt Service Account is property of its bankruptcy estate as defined by 11 U.S.C. § 541.

*Section 3.06. Bond Fund - Debt Service Reserve Account.* (a) Pursuant to Section 3.03 hereof there shall be deposited into the Debt Service Reserve Subaccount for the Series 2023 Bonds, proceeds from the sale of the Series 2023 Bonds in an amount equal to the Debt Service Reserve Requirement with respect to the Series 2023 Bonds.

(b) There shall also be deposited into the Debt Service Reserve Subaccount for a Series of Bonds (i) any appropriations made by the State under the Credit Enhancement Program with respect to the Bonds (ii) any other moneys required to be deposited therein pursuant to the Loan Agreement or this Indenture, and (iii) moneys received by the Trustee when accompanied by directions from an Authorized Representative of the Borrower that such moneys are to be paid into the Debt Service Reserve Account.

(c) The Trustee shall notify the Issuer by November 1 of each year if the amount on deposit in any Debt Service Reserve Subaccount for a Series of Bonds falls below the applicable Debt Service Reserve Requirement, and the Issuer shall certify to the governor of the State by December 1 of each year the amount, if any, required to restore amounts on deposit in such Debt Service Reserve Subaccount to the Debt Service Reserve Requirement with respect to such Bonds and request the governor of the State to request from the Legislature an appropriation of the certified amount to restore amounts on deposit in the Debt Service Reserve Subaccount to the applicable Debt Service Reserve Requirement.

(d) With respect to each Series of Additional Bonds there shall be deposited into the applicable Debt Service Reserve Subaccount the amount, if any, required to be deposited therein in respect of the Debt Service Reserve Requirement established with respect to such Additional Bonds, all as specified in the Supplemental Indenture related to such Series of Additional Bonds.

(e) Moneys required to be held in a Debt Service Reserve Subaccount with respect to a Series of Bonds shall be used by the Trustee promptly and solely for the payment of the principal of, premium, if any and interest on such Series of Bonds in the event moneys in the Debt Service Account are insufficient to make such payments when due, whether on an Interest Payment Date, Principal Payment Date, or otherwise in an amount necessary to cure an Event of Default. Upon the occurrence of an Event of Default hereunder and the exercise by the Trustee of the remedy specified in Section 10.02(a) of the Loan Agreement and Section 8.02(a) hereof, any moneys in a Debt Service Reserve Subaccount shall be transferred by the Trustee to the Debt Service Account and applied first to interest on the related Bonds to the extent then owing and then in accordance with Section 8.05 hereof.

(f) On the final maturity date of a Series of Bonds, moneys in the Debt Service Reserve Subaccount for such Series of Bonds may be used to pay the principal of and interest on such Series of Bonds on such final maturity date. In the event of the redemption of a Series of Bonds in whole, any moneys in the related Debt Service Reserve Subaccount shall be transferred upon



receipt of written instruction from the Borrower to the Debt Service Account and applied to the payment of the principal of and premium, if any, on such Bonds.

(g) Within five business days of any transfer of funds from the Debt Service Reserve Account to the Debt Service Account, the Trustee shall notify the Borrower and the Issuer in writing of such transfer and of the amount of the deficiency, if any, of amounts then on deposit in the Debt Service Reserve Account as of such date.

*Section 3.07. Repair and Replacement Fund.* (a) There shall be deposited into the Repair and Replacement Fund, as and when received, (i) all payments by the Borrower pursuant to Section 5.01(d) of the Loan Agreement, (ii) all other moneys deposited into the Repair and Replacement Fund pursuant to the Loan Agreement or this Indenture, and (iii) all other moneys received by the Trustee when accompanied by directions from an Authorized Representative of the Borrower not inconsistent with the Loan Agreement or this Indenture that such moneys are to be paid into the Repair and Replacement Fund. There shall also be retained in the Repair and Replacement Fund, interest and other income received on investment of moneys in the Repair and Replacement Fund. Any amounts on deposit in the Repair and Replacement Fund in excess of the Repair and Replacement Requirement shall be transferred by the Trustee to the Bond Fund and applied to the payment of the interest on the Bonds; provided, however, that the amount remaining in the Repair and Replacement Fund immediately after such transfer shall not be less than the Repair and Replacement Requirement.

(b) Absent an Event of Default hereunder, the Trustee is hereby authorized and directed to make each disbursement required by the provisions of Section 4.03 of the Loan Agreement and to issue its checks therefor. The Trustee shall keep and maintain adequate records pertaining to the Repair and Replacement Fund and all disbursements therefrom and shall annually file an accounting thereof with the Issuer and the Borrower.

(c) The Repair and Replacement Fund shall be in the custody of the Trustee, but in the name of the Issuer, and the Issuer hereby authorizes and directs the Trustee to withdraw sufficient funds from the Repair and Replacement Fund for the purposes authorized in Section 4.03 of the Loan Agreement.

*Section 3.08. Costs of Issuance Fund.* (a) Proceeds of a Series of Bonds deposited into the Costs of Issuance Fund shall be expended to pay issuance expenses relating to the issuance of such Bonds. The Trustee is hereby authorized and directed to disburse funds from the Costs of Issuance Fund for each payment upon receipt of a requisition signed by an Authorized Borrower Representative as set forth on *Exhibit B* hereto.

(b) The Trustee shall keep and maintain adequate records pertaining to the Costs of Issuance Fund and all payments therefrom, which shall be open to inspection by the Borrower, the Issuer or their duly authorized agents upon reasonable notice during normal business hours of the Trustee.

(c) Unless otherwise provided in a Tax Certificate or Supplemental Indenture, amounts remaining on deposit in the Costs of Issuance Fund 90 days after the Closing Date of a Series of Bonds shall be transferred to the Debt Service Account.

*Section 3.09. Rebate Fund.* All amounts in the Rebate Fund, including income earned from investment of such account, shall be held by the Trustee, in trust, free and clear of the lien of this Indenture. Except as provided below in this Section, amounts in any Rebate Fund shall not be used for the payment of debt service on the Bonds. The Issuer authorizes and directs the Trustee to withdraw funds from the Rebate Fund for the purposes set forth in this Section 3.09 and in the provisions of the Tax Certificate relating to the Rebate Fund, which authorization and direction the Trustee hereby accepts.

With respect to each Series of Tax-Exempt Bonds, promptly after each Rebate Year, and not later than 30 days after the redemption, payment at maturity or other retirement of the last bond of any Series of Tax-Exempt Bonds, the Borrower shall engage, and furnish information to, the Rebate Analyst and cause the Rebate Analyst to calculate the Rebate Amount with respect to that Series of Tax-Exempt Bonds. The Issuer and Trustee shall receive a copy of the report of the Rebate Analyst. The Trustee shall determine if the amount in the related subaccount of the Rebate Fund is equal to the calculated Rebate Amount. The Trustee shall notify the Borrower of the amount then on deposit in the applicable subaccount in the Rebate Fund. If the amount in the related subaccount of the Rebate Fund is in excess of the amount required to be therein in accordance with the report of the Rebate Analyst, then such excess shall be transferred to the Debt Service Account. To the extent the moneys in the related subaccount of the Rebate Fund are less than the amount required to be deposited therein, the Trustee shall transfer such amounts necessary to reserve for the anticipated Rebate Amount payment to the United States Treasury from the Revenue Fund in accordance with Section 3.10 of the Indenture.

If at any time the Borrower is required to retain the Rebate Analyst but fails to do so, then the Trustee shall retain a Rebate Analyst, at the expense of the Borrower, to calculate the Rebate Amount. If the Trustee is required to retain or pay the Rebate Analyst, then the Trustee, after delivering to the Borrower a demand for payment of an amount sufficient to pay the Rebate Analyst, shall withdraw such amount as may be needed to pay the Rebate Analyst: first, from the Expense Fund and, second, from the Debt Service Reserve Account (but only to the extent that the amount on deposit therein is in excess of the applicable Debt Service Reserve Requirement), Cost of Issuance Fund, the Repair and Replacement Fund, the Project Fund, and the Debt Service Account.

The Trustee shall have the right, but shall not be obligated, to seek written instructions from any Rebate Analyst as it deems necessary, concerning any payments to be made by it from the Rebate Fund and shall be free from any liability for acting in accordance with such reasonable instructions.

The Trustee, on behalf of the Issuer, is hereby directed to pay to the United States Treasury from time to time the amounts as required by the report of the Rebate Analyst, provided that the Trustee shall pay over to the United States Treasury: (1) at least once each five years after the issuance date of a Series of Tax-Exempt Bonds within 60 days of the date as of which the Rebate Amount was calculated, an amount equal to 90% of the Rebate Amount allocable to that Series of

Tax-Exempt Bonds as of such date (and not theretofore paid to the United States Treasury) and (2) not later than 60 days after the redemption, payment at maturity or other retirement of the last bond of a Series of Bonds, 100% of the Rebate Amount allocable to such Series of Tax-Exempt Bonds.

The Trustee shall retain records of the determination of the amount required to be deposited in the Rebate Fund, of the proceeds of any investments of money in the Rebate Fund, and of the amounts paid to the United States Treasury until the date six years after the discharge of the last of the Tax-Exempt Bonds.

*Section 3.10. Revenue Fund; Flow of Funds.* There shall be deposited in the Revenue Fund as and when received, all Loan Payments and other amounts required to be paid by the Borrower to the Trustee pursuant to Section 5.01 of the Loan Agreement and all other monies deposited into the Revenue Fund pursuant to the Loan Agreement or this Indenture and, to the extent necessary, any other Pledged Revenues.

All monies held on deposit in the Revenue Fund shall be disbursed by the Trustee on the following dates in the following order of priority:

FIRST, on or before the 10th day of each month, an amount equal to the Accrued Debt Service on the Bonds shall be deposited into the Debt Service Account;

SECOND, on or before the 10th day of each month, (i) first, to the Debt Service Reserve Account, the amount required to restore the balance in the Debt Service Reserve Account to the Debt Service Reserve Requirement prior to November 1 of each year, in equal installments and (ii) *second*, to the Issuer, the amount required, if any, to reimburse the State for appropriations made or other amounts paid to or by the Issuer under the Credit Enhancement Program for the benefit of the Borrower with respect to the Bonds;

THIRD, on the last Business Day of every Rebate Year, and continuing until the full amount is so paid, to the Rebate Fund, any amount, as calculated by the Rebate Analyst, required of the Borrower to be deposited in the Rebate Fund;

FOURTH, on or before the 10th day of each month, to the Expense Fund, (i) an amount equal to a fraction of the Trustee's Fees and Trustee's Expenses where the numerator is the Trustee's Fees and Trustee's Expenses and the denominator is the number of Monthly Disbursement Dates that will occur during the period between the last date on which such fees were paid or, if such fees have not yet been paid, the Closing Date and the next Interest Payment Date, plus (ii) an amount equal to one-twelfth of the Issuer's Annual Fee due on the next invoiced date (or such other fraction, so as to cause the amount of the Issuer's Annual Fee to be on deposit in the Expense Fund on the next invoiced date), plus (iii) any amount previously due as described above in this paragraph but that remains unpaid because of an insufficiency in Pledged Revenues available therefore;

FIFTH, on or before the 10th day of each month, the Repair and Replacement Monthly Deposit (defined below under the caption, "Repair and Replacement Fund");

SIXTH, on or before the 10th day of each month to the Expense Fund, an amount equal to a fraction of any amount owed as payment for the services of the Rebate Analyst where the numerator is such amount and the denominator is the number of Monthly Disbursement Dates that will occur during the period between the last date on which such amounts were paid or, if such fees have not yet been paid, the Closing Date and the next Principal Payment Date;

SEVENTH, on or before the 10th day of each month to any third-party lender, any amount, as directed by Borrower to the Trustee, to make principal and interest payments on any outstanding Short-Term Debt; and

EIGHTH, all amounts remaining on deposit in the Revenue Fund after the Trustee has made the disbursements required in FIRST through SIXTH above, to the Borrower, if not in default under the Agreement.

The Trustee shall apply the funds comprising the Loan Payments as set forth in this Section. Any Loan Payments remaining on deposit with the Trustee after all monthly payments required by this Section have been made shall be transferred within one Business Day by the Trustee to the operations account of the Borrower, which account information shall be provided to the Trustee by the Borrower.

*Section 3.11. Expense Fund.* (a) There shall be deposited into the Expense Fund, as and when received (i) all moneys transferred from the Revenue Fund to the Expense Fund pursuant to Section 3.10 hereof, (ii) all other moneys required to be deposited therein pursuant to the Agreement or this Indenture, and (iii) all other moneys received by the Trustee when accompanied by directions from an Authorized Representative of the Borrower not inconsistent with the Agreement or this Indenture that such moneys are to be paid into the Expense Fund.

(b) The Issuer hereby authorizes and directs the Trustee to withdraw sufficient funds from the Expense Fund to pay the following expenses as invoiced in the following order of priority: (i) to the Trustee, an amount equal to the annual Trustee's Fees and Trustee's Expenses; (ii) to the Issuer, an amount equal to the Annual Issuer's Fee; and (iii) to the Rebate Analyst, its Rebate Analyst fee.

*Section 3.12. Moneys to Be Held in Trust.* All moneys required to be deposited with or paid to the Trustee under any provision of this Indenture shall be held by the Trustee in trust for the purposes specified in this Indenture.

*Section 3.13. Disbursement to the Borrower from the Funds.* Any amounts remaining in the Funds after payment in full of the Bonds (or the establishment of an irrevocable trust for such payment), the fees and expenses of the Trustee, and all other amounts required to be paid hereunder and under the Loan Agreement to the Issuer and the Trustee (including payments into any Rebate Fund and to the United States) and discharge of this Indenture under Article VII hereof, shall be paid to the Borrower.

## ARTICLE IV

### COVENANTS OF THE ISSUER

*Section 4.01. Performance of Covenants.* The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond and in all proceedings of the Issuer pertaining thereto. The Issuer covenants, represents, warrants and agrees that it is duly authorized under the constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds and to execute this Indenture, to pledge the Trust Estate in the manner and to the extent herein set forth, that all actions on its part required for the issuance of the Bonds and the execution and delivery of the Issuer Documents have been duly and effectively taken or will be duly taken as provided herein and that this Indenture is a valid and enforceable instrument of the Issuer and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the Issuer according to the terms thereof, except as the enforceability thereof may be limited by insolvency, bankruptcy, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally or against public corporations such as the Issuer and by the application of general principles of equity.

The Issuer covenants that it will take no action and permit no action within its control to be taken which would adversely affect the exemption from federal income tax of interest on the Tax-Exempt Bonds. In furtherance of such covenant, the Issuer and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Indenture and made a part of this Indenture (which incorporation shall not be construed as imposing additional duties or obligations on the Trustee in addition to those contained herein and in the Tax Certificate), and by its acceptance of this Indenture, the Trustee acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Indenture by this reference.

*Section 4.02. Payment of Principal, Premium, if any and Interest.* The Issuer will promptly pay or cause to be paid the principal of, premium, if any and interest on all Bonds issued hereunder according to the terms hereof. The principal, premium, if any and interest payments are payable solely from the Trust Estate, which is hereby specifically pledged to the payment thereof in the manner and to the extent herein specified. Nothing in the Bonds or in this Indenture shall be considered or construed as pledging any funds or assets of the Issuer other than those pledged hereby or creating any liability of the Issuer's officers, directors, counsel, employees or other agents.

*Section 4.03. Security Instruments.* The Trustee has received a recorded Deed of Trust and filed financing statements, as filed with the County Recorder of the county in which the Facilities financed with the Series 2023 Bonds are located. The Trustee, at the expense of the Borrower, shall cause any continuation statements to be filed as required by law to the extent the Borrower does not provide evidence of timely filings required to be made by it pursuant to Section 12.08 of the Loan Agreement.

*Section 4.04. Rights under the Loan Agreement.* The Issuer will observe all of the obligations, terms and conditions required on its part to be observed or performed under the Loan

Agreement. The Issuer agrees that to the extent the Loan Agreement gives the Trustee some right or privilege, or in any way attempts to confer upon the Trustee the ability for the Trustee to protect the security for payment of the Bonds, that such part of the Loan Agreement shall be as though they were set out in this Indenture in full.

The Issuer agrees that the Trustee, as assignee of the Loan Agreement, may enforce, in its name or in the name of the Issuer, all rights of the Issuer and all obligations of the Borrower under and pursuant to the Loan Agreement (except for the Issuer's Unassigned Rights as set forth in the definition of Trust Estate) for and on behalf of the Owners, whether or not the Issuer is in default hereunder.

*Section 4.05. Performance Obligations.* Any performance by the Issuer of all duties and obligations imposed upon it hereby, the exercise by it of all powers granted to it hereunder, the carrying out of all covenants, agreements and promises made by it hereunder and the liability of the Issuer for all covenants hereunder, shall be limited solely to the Trust Estate, including revenues and receipts derived from the Loan Agreement, the Promissory Notes and the Deed of Trust and the Issuer and its officers and directors shall not be responsible for its or their duties, obligations, powers or covenants hereunder except to the extent of the Trust Estate.

Subject to Section 4.02 hereof, the Issuer shall have no liability or obligation with respect to the payment of the principal of, premium, if any, or interest on the Bonds. None of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from the revenues pledged hereunder, or the Issuer shall first have been adequately indemnified to its satisfaction against the cost, expense and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder to perform any record keeping, it being understood that such services shall be performed or provided by the Trustee or the Borrower. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions expressly contained in this Indenture, in every Bond executed, authenticated and delivered hereunder, in the Loan Agreement and in all of its proceedings pertaining thereto; *provided, however*, that (a) the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower or the Trustee and (b) the Issuer shall have received the instrument to be executed and, at the Issuer's option, shall have received from the Borrower assurance satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument.

The Loan Agreement sets forth covenants and obligations of the Issuer and the Borrower and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Issuer agrees to cooperate in the enforcement of all covenants and obligations of the Borrower under the Loan Agreement and agrees that the Trustee, in its name, may enforce all rights of the Issuer (except the Issuer's unassigned rights as set forth in the definition of the Trust Estate) and all obligations of the Borrower under and pursuant to the Loan Agreement and on behalf of the Owners, whether or not the Issuer has undertaken to enforce such rights and obligations.

## ARTICLE V

### REDEMPTION OF BONDS PRIOR TO MATURITY

*Section 5.01. Optional Redemption of Bonds.* (a) The Series 2023 Bonds maturing on or after October 15, \_\_\_\_\_, shall be subject to optional redemption by the Issuer, at the written direction of the Borrower, in whole or in part, on any business day, on or after \_\_\_\_\_, at the redemption price equal to 100% of the principal amount thereof, plus accrued interest, if any, to the date fixed for redemption. Additional Bonds shall be subject to optional redemption at such times and upon such terms as shall be fixed by the related Supplemental Indenture.

(b) In case of optional redemption of the Bonds, the Borrower shall, at least 45 days prior to the redemption date (unless a shorter notice shall be satisfactory to the Trustee), deliver a written request to the Issuer and the Trustee notifying the Issuer and the Trustee of such redemption date, of the principal amount of Bonds to be redeemed.

*Section 5.02. Mandatory Sinking Fund Redemption.*

The Series 2023A Bonds maturing on October 15, \_\_\_\_\_ are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15	
DUE	AMOUNT

\_\_\_\_\_  
\* Stated maturity

The Series 2023A Bonds maturing on October 15, \_\_\_\_\_ are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15	
DUE	AMOUNT

\_\_\_\_\_  
\* Stated maturity

The Series 2023A Bonds maturing on October 15, \_\_\_\_\_ are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15	
DUE	AMOUNT

\_\_\_\_\_  
\* Stated maturity

The Series 2023B Bonds maturing on October 15, \_\_\_\_\_ are subject to mandatory sinking fund redemption on the dates and in the amounts set forth below, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date:

OCTOBER 15	
DUE	AMOUNT

\_\_\_\_\_  
\* Stated maturity

(b) Unless otherwise provided by Supplemental Indenture, Bonds that are subject to mandatory sinking fund redemption and that are redeemed, other than pursuant to the related mandatory sinking fund redemption schedule, or canceled pursuant to Section 5.07 shall be credited to such sinking fund installments as the Borrower shall direct the Trustee.

(c) Additional Bonds may be subject to mandatory sinking fund redemption at such times and upon such terms as shall be fixed by the related Supplemental Indenture relating to such Bonds.

*Section 5.03. Redemption of Bonds upon Damage, Destruction or Condemnation.* (a) The Bonds are redeemable at the option and upon the direction of the Borrower, in whole or in part on any business day from and to the extent of funds on deposit under this Indenture and available for this purpose at a redemption price equal to the principal amount of each such Bond to be redeemed plus accrued interest to the redemption date, upon the occurrence of any of the following events:

(i) The Facilities shall have been damaged or destroyed in whole or in part and (A) the Facilities cannot reasonably be restored within a period of 12 consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations for a period of 12 consecutive months, (C) the cost of restoration thereof would exceed the Net Proceeds of insurance carried thereon pursuant to the requirements of Section 6.03 of the Loan Agreement, or (D) the final maturity of the Bonds is within five years of the date of such damage or destruction; or

(ii) Title to, or the temporary use of, all or any substantial part of the Facilities shall have been taken under the exercise of the power of eminent domain by any governmental issuer, or Person, firm or corporation acting under a governmental issuer or because of a defect in title.

Only Net Proceeds of insurance or a condemnation award shall be used for a partial redemption of Bonds pursuant to the foregoing Sections 5.03(a)(i) or 5.02(a)(ii).

*Section 5.04. Method of Selecting Bonds; Credit to Sinking Fund Installments.* In the event that less than all of the Bonds of a Series shall be redeemed, the Bonds will be selected from such maturities as the Borrower shall direct the Trustee. If less than all Bonds of a maturity shall be redeemed, the Bonds or portions thereof to be redeemed shall be selected by the Trustee by lot or by such other method as the Trustee shall deem fair and equitable. Unless otherwise provided in the Supplemental Indenture providing for a Series of Bonds, in the event of an optional redemption of a portion of the Bonds, the redemption price shall be credited to such sinking fund installments as the Borrower shall direct the Trustee.

*Section 5.05. Notice of Redemption.* (a) All or a portion of the Bonds shall be called for optional redemption by the Trustee as herein provided upon receipt by the Trustee at least 45 days prior to the redemption date (unless a shorter period shall be satisfactory to the Trustee) of a written direction of the Borrower specifying the principal amount of the Bonds to be called for redemption, the applicable redemption price or prices and the provision or provisions of this Indenture pursuant to which such Bonds are to be called for redemption, *provided* that such certificate shall not be required with respect to a sinking fund redemption pursuant to Section 5.02 hereof and Bonds shall be called for redemption by the Trustee pursuant to such Section without the necessity of any action by the Borrower. The Trustee shall cause notice of redemption by mailing by first class mail a copy of the redemption notice to the Owners of the Bonds designated for redemption in whole or in part, at their addresses as the same shall last appear upon the registration records, in each case not more than 60 nor less than 30 days prior to the redemption date, *provided, however*, that failure to give such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds for which notice has been properly given in accordance with the terms hereof.

(b) Each notice of redemption shall specify conditions precedent to redemption, if any, the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of the Bonds to be redeemed, that interest accrued to the date fixed for redemption will be paid as specified in said notice and that on and after said date interest thereon will cease to accrue. If less than all the Outstanding Bonds of a Series are to be redeemed, the notice of redemption shall specify the numbers of the Bonds or portions thereof to be redeemed.

(c) With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds shall be deemed to have been paid within the meaning of Article VII hereof, such notice may state that such redemption shall be conditioned upon the receipt by the Trustee on or prior to the date fixed for such redemption of money sufficient to pay the Redemption Price of and interest on the Bonds to be redeemed and that if such money shall not have been so received, such notice shall be of no force and effect and the Issuer shall not be required to redeem

such Bonds. In the event that such notice of redemption contains such a condition and such money is not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such money was not so received and that such redemption was not made.

*Section 5.06. Effect of Redemption.* On the redemption date the principal amount of each Bond to be redeemed, together with the accrued interest thereon to such date and redemption premium, if any, shall become due and payable; and from and after such date, notice having been given and deposit having been made in accordance with the provisions of this Article, then, notwithstanding that any Bonds called for redemption shall not have been surrendered, no further interest shall accrue on any of such Bonds. From and after such date of redemption (such notice having been given and such deposit having been made) the Bonds to be redeemed shall not be deemed to be Outstanding hereunder and the Issuer shall be under no further liability in respect thereof.

*Section 5.07. Cancellation.* All Bonds which have been redeemed and all Bonds delivered to the Trustee by the Borrower for cancellation shall be cancelled by the Trustee and destroyed as provided in Section 2.09 hereof.

*Section 5.08. Partial Redemption of Bonds.* Upon surrender of any Bond for redemption in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the Owner thereof, the cost of which shall be paid by the Borrower, a new Bond or Bonds of the same maturity and of Authorized Denominations, in an aggregate principal amount equal to that portion of the Bond not redeemed.

*Section 5.09. Redemption Upon Failure to Reimburse the Issuer Under the Credit Enhancement Program.* The Bonds are subject to redemption, in whole, at a price equal to the principal amount of the Bonds, plus accrued interest, from amounts deposited by or on behalf of the Issuer as soon as is practicable following the Trustee's receipt of notice from the Issuer of an uncured default under the Loan Agreement for failure by the Borrower to reimburse the Issuer for any appropriation received on behalf of the Charter School from the State under the Credit Enhancement Program. In such event, the Bonds, in an amount equal to the Borrower's loan obligation shall be called for redemption as set forth in Section 5.05 hereof.

## ARTICLE VI

### INVESTMENTS

*Section 6.01. Investment of Funds.* (a) So long as no Event of Default exists, on written instructions received by the Trustee from an Authorized Borrower Representative on which instructions the Trustee may conclusively rely, any moneys held as part of the Funds shall be invested by the Trustee in Permitted Investments maturing in the amounts and at the times necessary to provide funds to make the payments to which such moneys are applicable. All such Permitted Investments purchased shall mature or be redeemable on a date or dates prior to the time when the moneys so invested will be required for expenditure. The Trustee shall value the Permitted Investments held within the Funds on each Interest Payment Date and, in the case of the Debt Service Reserve Account, upon withdrawal of any amounts from such Fund. The Trustee

shall sell and reduce to cash a sufficient portion of such investments whenever the cash balance in a Fund is insufficient for the purposes of such Fund. Investments of funds held in the Debt Service Reserve Account may not be invested in investments having a maturity (no penalty for withdrawal) date of more than six months.

(b) The Trustee shall retain the documentation with respect to investments of moneys in the Funds.

(c) The Issuer acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Issuer the right to receive brokerage confirmations of security transactions, the Issuer waives receipt of such confirmations. The Trustee shall furnish to the Issuer and the Borrower periodic statements which include detail of all investment transactions made by the Trustee.

(d) Any investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the Fund from which the investment was made. Any loss resulting from such investments shall be charged to such Fund or appropriate account therein.

## ARTICLE VII

### DISCHARGE OF INDENTURE

*Section 7.01. Discharge of Indenture.* (a) If the Bonds secured hereby shall be paid in accordance with their terms (or payment of the Bonds has been provided for in the manner set forth in the following paragraph), and all other sums payable hereunder, all amounts payable to the Issuer and the Trustee under the Loan Agreement, and all amounts payable to the United States pursuant to Section 148 of the Code, have been paid, then this Indenture and the Trust Estate and all rights granted hereunder shall thereupon cease, terminate and become void and be discharged and satisfied and the Trustee shall transfer to the Borrower all moneys and property then held by the Trustee hereunder (other than amounts on deposit to provide for the payment of Bonds, as provided below).

(b) Payment of any Outstanding Bond shall, prior to the maturity or redemption date thereof, be deemed to have been provided for within the meaning and with the effect expressed in this Section if (i) in the event such Bond is to be redeemed on any date prior to its maturity, the Borrower shall have given to the Trustee in form satisfactory to it irrevocable instructions to give notice of redemption of such Bond on said redemption date, such notice to be given in accordance with the provisions of Section 5.05 hereof, (ii) there shall have been deposited with the Trustee either cash in an amount which shall be sufficient, or Government Obligations which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Trustee at the same time, shall be sufficient to pay when due the principal of and premium, if any, and interest due and to become due on said Bond on and prior to the redemption date or maturity date thereof, as the case may be, (iii) there shall have been delivered to the Trustee a certificate from a firm of certified public accountants or other financial services firm acceptable to the Trustee certifying as to the sufficiency of the deposit made pursuant to the preceding clause (ii), provided that no such

certificate shall be required in the event the deposit is made with cash and is sufficient to pay the principal of, premium, if any, and interest on the Bonds, without investment of such amounts deposited, an opinion of Bond Counsel satisfactory to the Trustee and the Issuer that said Bond is deemed paid within the meaning of this Indenture, (iv) an opinion of Bond Counsel satisfactory to the Trustee and the Issuer that such payment does not adversely affect the excludability from gross income of interest on the Tax-Exempt Bonds, and (v) in the event said Bond is not by its terms subject to redemption within the next 45 days, the Borrower shall have given the Trustee in form satisfactory to it irrevocable instructions to give, as soon as practicable in the same manner as the notice of redemption is given pursuant to Section 5.05 hereof, a notice to the Owner of such Bond that the deposit required by (ii) above has been made with the Trustee and that payment of said Bond has been provided for in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of and premium, if any and interest on said Bond. Neither such securities nor moneys deposited with the Trustee pursuant to this Section or principal or interest payments on any such securities shall be withdrawn or used for any purpose other than and shall be held in trust for, the payment of the principal of and premium, if any and interest on said Bond; *provided* any cash received from such principal or interest payments on such securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities of the type described in clause (b) of this paragraph maturing at times and in amounts sufficient to pay when due the principal of and premium, if any and interest to become due on said Bond on or prior to such redemption date or maturity date thereof, as the case may be. At such time as payment of a Bond has been provided for as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purpose of any payment from such moneys or securities deposited with the Trustee.

(c) The release of the obligations of the Issuer and Borrower under this Section shall be without prejudice to the right of the Trustee or the Issuer to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and other disbursements incurred on or about the administration of the trust hereby created and the performance of its powers and duties hereunder.

(d) The provisions contained in this Section 7.01 apply to the discharge of the lien of this Indenture for all of the Bonds or for any portion thereof.

(e) Notwithstanding the payment in full of the Bonds, the discharge of this Indenture as set forth above in this Section 7.01, and the termination or expiration of the Loan Agreement and the Deed of Trust, all provisions in this Indenture concerning (a) the tax-exempt status of the Tax-Exempt Bonds (including, but not limited to provisions concerning arbitrage rebate), (b) the interpretation of this Indenture, (c) the governing law, (d) the forum for resolving disputes, (e) the Issuer's right to rely on facts or certificates, (f) the indemnity of the Issuer's directors, officers, counsel, advisors, and agents from liability, (g) the Issuer's lack of pecuniary liability, and (h) the indemnity of the Trustee and the rights, powers and duties of the Trustee as may be necessary and convenient for the payment of amounts due or to become due on the Bonds and the registration, transfer, exchange and replacement of Bonds, shall survive and remain in full force and effect.

## ARTICLE VIII

### DEFAULTS AND REMEDIES

*Section 8.01. Events of Default.* (a) Each of the following is hereby defined as and shall be deemed an “Event of Default” under this Indenture:

(i) Failure to pay the principal of or premium, if any, on any Bond when the same shall become due and payable, whether at the stated maturity thereof, on a sinking fund payment date or upon proceedings for redemption.

(ii) Failure to pay any installment of interest on any Bond when the same shall become due and payable.

(iii) Failure to observe or perform any other covenant, agreement, contract or other provision of the Bonds or this Indenture (other than as referred to in (i) and (ii) above) and such default shall continue for a period of 30 days after written notice to the Issuer and the Borrower by the Trustee specifying such default and requiring the same to be remedied, provided, with respect to any such failure described by this subsection (iii), no Event of Default will be deemed to have occurred so long as within such 30 day period the Borrower shall have informed the Trustee of the plan to cure and, if such plan is acceptable to the Trustee a course of action adequate to remedy such failure is commenced within 30 days of the written notification and shall thereafter be diligently prosecuted to completion and the failure shall be remedied thereby within 90 days of the written notification. The Borrower shall deliver a written report to the Trustee at least once every 30 days setting forth the status of all attempts to cure such default(s).

(iv) The occurrence of an “Event of Default” under the Loan Agreement or the Deed of Trust.

(b) Upon the occurrence of an Event of Default with respect to Bonds under this Indenture, the Trustee shall promptly notify the Borrower by facsimile, confirmed by overnight mail or courier, of such occurrence. Each notification of the occurrence of an Event of Default shall set forth the specific nature of the Event of Default or Events of Default. No Notice of an Event of Default shall be given to the Bondholders.

(c) The time periods for cure set forth in (a)(iii) above shall not be applicable to any events or actions which cause or might cause a Determination of Taxability.

*Section 8.02. Remedies for Events of Default under This Indenture.* Upon the occurrence of an Event of Default hereunder, the Trustee may exercise and, at the direction of the Beneficial Owners of a majority of the aggregate principal amount of all the Bonds Outstanding, shall exercise the following rights and remedies:

(a) *Acceleration.* The Trustee (i) may by notice in writing given to the Issuer and the Borrower, or (ii) shall, upon the written request of the Owners of a majority of all Bonds Outstanding, declare the principal amount of all Bonds then Outstanding and the

interest accrued thereon to be immediately due and payable and said principal and interest shall thereupon become immediately due and payable at a price equal to the principal amount due plus accrued interest (the “*Acceleration Price*”). Upon any declaration of acceleration hereunder, the Trustee shall immediately declare all Loan Payments under the Loan Agreement to be immediately due and payable as provided in Section 10.02 of the Loan Agreement. The Owners of a majority of the Bonds Outstanding shall have the right to annul such declaration of acceleration by providing notice in writing to the Trustee, the Issuer and the Borrower.

(b) *Receivership.* Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners, the Trustee shall be entitled as a matter of right to the appointment of a receiver or receivers (acceptable to the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding), with respect to the Borrower, of the rents, revenues, income, products and profits related to the Borrower and the Facilities, pending such proceedings, but, notwithstanding the appointment of any receiver, trustee or other custodian, the Trustee shall be entitled to the possession and control of any cash, securities or other instruments at the time held by, or payable or deliverable under the provisions of this Indenture to, the Trustee.

(c) *Foreclosure.* The Trustee shall have the right to foreclose on all or any portion of the property subject to the Deed of Trust or any interest of the Issuer therein with the power of sale as and to the extent permitted of a mortgagee by the laws of the State and exercise all of the rights and remedies of a secured party under the Uniform Commercial Code of the State with respect thereto and to realize upon the security interest in the Pledged Revenues and to exercise all of the rights and remedies of a secured party under the Uniform Commercial Code of the State with respect thereto. Notwithstanding any provision herein to the contrary, the Trustee shall have the absolute right, regardless of direction from the Owner or group of Owners, to refuse to foreclose on the property subject to the Deed of Trust or any interest of the Issuer as stated above unless a determination has been made of the potential environmental indemnification satisfactory to it for any such potential liability.

(d) *Suit for Judgment on the Bonds.* The Trustee shall be entitled to sue for and recover judgment, either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture, for the enforcement of any of its rights, or the rights of the Owners, but any such judgment against the Issuer shall be enforceable only against the Trust Estate. No recovery of any judgment by the Trustee shall in any manner or to any extent affect the lien of this Indenture or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the Owners of the Bonds, but such lien, rights, powers and remedies of the Trustee and of the Owners shall continue unimpaired as before.

(e) *Additional Remedies.* Subject to State law, including without limitation the Charter School Act, and subject to any available cure periods, the Trustee, at the direction of the Beneficial Owners of not less than a majority in aggregate principal amount of the

Bonds then Outstanding, shall have the right to (i) replace the manager(s) of the Borrower, if any, or (ii) replace any or all of the members of the Borrower's governing board.

No right or remedy is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute.

If any Event of Default hereunder shall have occurred, the Beneficial Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, shall direct the Trustee as to the preferred remedy of such Beneficial Owners. The Trustee, after being indemnified or receiving other assurances as provided in Section 9.01 hereof, shall be obligated to exercise such one or more of the rights and powers conferred by this section as directed by the Beneficial Owners of a majority in aggregate principal amount of Bonds Outstanding.

*Section 8.03. Direction of Remedies.* Anything in this Indenture to the contrary notwithstanding, the Owners of a majority of the Bonds Outstanding shall have the right, at any time, to the extent permitted by law, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver, or any other proceedings or remedies hereunder provided that such direction shall not be otherwise than in accordance with the provisions hereof. The Trustee shall not be required to act on any direction given to it pursuant to this Section unless indemnified and receiving other assurances as provided in Section 9.01 hereof.

*Section 8.04. Rights and Remedies of Bondholders.* No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in Section 9.01 hereof, or of which by Section 9.01 hereof it is deemed to have notice, nor unless such default shall have become an Event of Default and the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless they have also offered to the Trustee indemnity or other assurances as provided in Section 9.01 hereof nor unless the Trustee shall thereafter fail or refuse to exercise within a reasonable period of time (not to exceed 30 days) the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity or other assurances are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Owners of the Bonds shall have the right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by his, her or their action or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of the Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner of Bonds to enforce

the payment, by the institution of any suit, action or proceeding in equity or at law, of the principal of, premium, if any or interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of, premium, if any and interest on each of the Bonds to the respective Owners of the Bonds at the time and place, from the source and in the manner herein and in the Bonds expressed.

*Section 8.05. Application of Moneys.* All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys, including the costs and expenses of the Beneficial Owners, if applicable, and the expenses, liabilities and advances incurred or made by the Trustee, be held or deposited into the Bond Fund during the continuance of an Event of Default and shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST, to the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

SECOND, to the payment to the Persons entitled thereto of unpaid principal of and premium, if any, on any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the Persons entitled thereto, without any discrimination or privilege.

(b) If the principal of all Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied first to the payment of the interest then due and unpaid upon all of the Bonds and then to principal then due and payable upon the Bonds, without preference or priority of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or privilege.

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



Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit of any such moneys and of the fixing of any such date and shall not be required to make payment to the Owner of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all of the Bonds, the premium, if any and interest thereon have been paid under the provisions of this Section and all expenses and fees of the Trustee and the Issuer, including the Issuer's Administration Fee and the Issuer's Annual Fee, in connection with the issuance of Bonds and all other amounts to be paid to the Issuer or the Trustee hereunder or under the Loan Agreement have been paid, any balance remaining in the Funds shall be transferred to the Borrower.

*Section 8.06. Trustee May Enforce Rights Without Bonds.* All rights of action and claims under this Indenture or any of the Bonds Outstanding may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or proceedings relative thereto; and any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Owners of the Bonds.

*Section 8.07. Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Issuer or the Borrower or any other obligor upon the Bonds or the property of the Issuer, the Trustee (irrespective of whether the principal of the Bonds shall then be due and payable, from prepayment on the Promissory Notes, as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Issuer and/or the Borrower for the payment of overdue principal or interest) shall be entitled and empowered, by intervention of such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal, premium, if any and interest owing and unpaid in respect of the Bonds then Outstanding and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel) and of the Owners allowed in such judicial proceeding; and to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and

(b) any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Owner to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Owners, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and its agent and counsel.

So long as any Bonds are Outstanding the Trustee is hereby appointed and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee, the true and lawful attorney-in-fact of the respective Owners of the Bonds, with authority to make or file, in the respective names of the Owners of the Bonds or on behalf of all Owners of the Bonds, as a class, any proof of debt, amendment to proof of debt, petition or other documents and to execute any other papers and documents and to do and perform any and all acts and things for and on behalf of all Owners of the Bonds as a class, as may be necessary or advisable in the opinion of the Trustee, in order to have the respective claim of the Owners of the Bonds against the Issuer, the Borrower or any other obligor allowed in receivership, insolvency, liquidation, bankruptcy or other proceeding, to which the Issuer, the Borrower or any other obligor, as the case may be, shall be a party. The Trustee shall have full power of substitution and delegation in respect of any such powers.

*Section 8.08. Delay or Omission No Waiver.* No delay or omission of the Trustee or any Owner to exercise any right or power accruing upon any default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Indenture may be exercised from time to time and as often as may be deemed expedient.

*Section 8.09. No Waiver of One Default to Affect Another.* No waiver of any Event of Default hereunder, whether by the Trustee or the Beneficial Owners, shall extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon.

*Section 8.10. Discontinuance of Proceedings on Default; Position of Parties Restored.* In case the Trustee or the Owners shall have proceeded to enforce any rights under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or the Owners, then and in every such case the Issuer, the Trustee and the Owners shall be restored to their former position and rights hereunder with respect to the Trust Estate and all rights, remedies and powers of the Issuer, the Trustee and the Owners shall continue as if no such proceedings had been taken.

*Section 8.11. Waivers of Events of Default.* The Trustee, upon prior written consent of the Beneficial Owners of a majority in aggregate principal amount of the Bonds Outstanding, may, and at the direction of the Beneficial Owners of a majority in aggregate principal amount of the Bonds Outstanding shall, waive any Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal of and interest on the Bonds, *provided, however*, that there shall not be waived (a) any Event of Default in the payment of the principal of or premium on any Outstanding Bonds at the date of maturity or redemption thereof or any default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest or all arrears of payments of the principal and premium, if any, and all fees and expenses of the Trustee, and all amounts to be paid to the Issuer and the Trustee hereunder and under the Loan Agreement, in connection with such default shall have been paid or provided for or, (b) any default in the payment of amounts set forth in Section 5.01(e) of the Loan Agreement. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined

adversely to the Trustee, then and in every such case the Issuer, the Trustee and the Owners shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to or affect any subsequent or other default, or impair any rights or remedies consequent thereon.

## ARTICLE IX

### TRUSTEE

*Section 9.01. Appointment of Trustee.* (a) The Trustee is hereby appointed as Trustee to act as the legal depository of the Issuer for the purpose of receiving all moneys which the Issuer is required to pay to the Trustee hereunder, and to hold, allocate, use and apply the same as provided in this Indenture, and the Trustee hereby accepts the duties and obligations imposed on it hereby.

(b) The Trustee may at any time resign or be discharged of its duties and obligations hereby created by giving not less than 60 days' written notice to the Issuer and the Borrower, specifying the date when such resignation shall take effect, and mailing notice thereof by first class mail, postage prepaid, to the Owners of all Bonds then Outstanding. Such resignation shall take effect on the day specified in such notice unless previously a successor shall have been appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor; *provided, however*, that such resignation of the Trustee shall in no event take effect until such successor shall have been appointed and accepted the duties of Trustee.

(c) The Issuer may at any time remove the Trustee initially appointed or any successor thereto by the adoption of a Board resolution providing for such removal, for the appointment of a successor, and for the effective date of the removal of the Trustee. The Trustee may also be removed at any time by an instrument or concurrent instruments in writing, filed with the Trustee, and signed by the Owners representing a majority of the principal amount of the Bonds then Outstanding or their attorneys-in-fact duly authorized. Any such removal of the Trustee shall in no event take effect until such successor shall have been appointed and shall have accepted the duties of Trustee in writing.

(d) In case the present or any future Trustee shall at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed by the Registered Owners of a majority in aggregate principal amount of the Bonds Outstanding by an instrument or concurrent instruments signed by such Registered Owners, or their attorneys-in-fact duly appointed; provided that the Issuer may appoint a successor until a new successor shall be appointed by the Registered Owners as herein authorized. The Issuer upon making such appointment shall forthwith give notice thereof to the Registered Owners and the Borrower, which notice may be given concurrently with the notice of resignation given by any resigning Trustee. Any successor so appointed by the Issuer shall immediately and without further act be superseded by a successor appointed in the manner above provided by the Registered Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

(e) Notice of the resignation or removal of the Trustee and the appointment of a successor shall be given by first class mail, postage prepaid, to the Owners of all Bonds then Outstanding, within 30 days after execution and delivery of the Board resolution providing for such

appointment. Any successor Trustee appointed by Issuer resolution shall be a bank or trust company in good standing incorporated under the laws of the United States of America or any state, duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$50,000,000.

*Section 9.02. Terms and Conditions of the Trusts.* The Trustee shall perform the trusts contained in this Indenture as a corporate trustee ordinarily would perform said trusts under a corporate indenture, only upon and subject to the following express terms and conditions:

(a) The Trustee shall perform such duties and only such duties as are specifically set forth in this Indenture. The duties and obligations of the Trustee shall be determined solely by the express provisions of the Indenture, and this Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall not be answerable for the conduct of any of the same who have been selected by it with ordinary care in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney for the Issuer or any other attorneys, if, in the case of such other attorneys, they are approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice. The Trustee shall not be liable for any error of judgment made in good faith by any of its officers or employees unless it shall be proved that the Trustee was negligent in ascertaining pertinent facts.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except in respect to the certificate of authentication of the Trustee endorsed on the Bonds), or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby. The Trustee shall have no obligation to perform any of the duties of the Issuer under this Indenture.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the owner or pledgee of Bonds secured hereby with the same rights which it would have if not Trustee. To the extent permitted by law, the Trustee may also receive tenders and purchase in good faith Bonds from itself, including any department, affiliate or subsidiary, with like effect as if it were not Trustee.

(e) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture, upon the request or authority or

consent of any person who at the time of making such request or giving such authority or consent is an Owner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of Owners of not less than a majority in principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a written certificate of an Authorized Issuer Representative or an Authorized Borrower Representative, as appropriate, as sufficient evidence of the facts therein contained and shall also be at liberty to accept a similar written certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of an Authorized Issuer Representative or Authorized Borrower Representative to the effect that a resolution in the form therein set forth has been adopted by the Issuer or the Borrower, as applicable, as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable with respect to such permissive rights for other than its negligence or willful default.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder except failure by the Borrower to cause to be made any of the payments to the Trustee required to be made hereunder, under the Loan Agreement, or under the Deed of Trust, or the failure by the Issuer or the Borrower to file with it any of the documents required, or to deposit with it the insurance coverage report required, hereunder, under the Loan Agreement or the Deed of Trust, unless an officer in the trust department of the Trustee has actual notice thereof or the Trustee shall be specifically notified in writing of such Event of Default by the Issuer, the Borrower, or the Beneficial Owners of any Bonds then Outstanding, and all notices or other instruments required by this Indenture to be delivered to the Trustee, must, in order to be effective, be delivered at the address of the Trustee provided for in Section 11.06 hereof, and, in the absence of such notice so delivered, the Trustee may conclusively assume that there is no Event of Default except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all books, papers and records of the Issuer and the Borrower pertaining to the Facilities, the Bonds and the Loan Agreement, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of this authentication of any Bonds or any action whatsoever within the purview of the Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee reasonably deemed desirable by it for the purpose of establishing the right of the Issuer to the authentication of any Bonds or the taking of any other action by the Trustee.

(l) The Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this Indenture at the request, order or direction of any of the Bondholders pursuant to the provisions of this Indenture, unless such Bondholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by mandatory provisions of law.

(n) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, Bond or other paper or document, unless requested in writing so to do by Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding; *provided*, that, if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expenses or liabilities as a condition to so proceeding. The reasonable expense of every such inquiry or examination shall be paid by the Issuer or, if paid by the Trustee, shall be repaid by the Issuer.

(o) The Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within the discretion, rights or powers conferred upon it by this Indenture.

(p) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it.

(q) The Trustee shall not be obligated to take or omit to take any action hereunder if, upon the basis of advice of counsel selected by it, the Trustee determines it would be unlawful to take or omit to take such action.

(r) The books of record and accounts maintained by the Trustee in connection with its duties hereunder shall at all times during business hours of the Trustee be subject to the inspection by the Issuer and the Borrower.

(s) The Trustee hereby waives any right to set off and shall apply any and all deposits (general or special, time or demand, provisional or final) or collateral at any time held or any other indebtedness at any time owing by the Trustee, to or for the funds and accounts created hereunder or under any Supplemental Indenture, for the payment of the principal of and interest on any Bonds.

*Section 9.03. Intervention by the Trustee.* In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee has a substantial bearing on the interests of Owners of the Bonds, the Trustee may intervene on behalf of Bondholders and shall do so if requested in writing by the Owners of a majority of the aggregate principal amount of Bonds then Outstanding. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

*Section 9.04. Successor Trustee.* Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business or assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and vested with all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of the Trustee, the Issuer or the Borrower, anything herein to the contrary notwithstanding.

*Section 9.05. Concerning Any Successor Trustee.* Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to the Issuer and the Borrower a Supplemental Indenture or other written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estate, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, at the written request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its or his successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

*Section 9.06. Fees and Expenses of Trustee.* The Trustee shall be entitled to payment and reimbursement for its reasonable fees for its services rendered hereunder as and when the same

become due and all expenses reasonably and necessarily made or incurred by the Trustee in connection with such services, including reasonable legal fees and expenses, as and when the same become due as provided in Section 5.01(f) of the Loan Agreement.

## ARTICLE X

### SUPPLEMENTAL INDENTURES AND AMENDMENTS OF THE AGREEMENT AND THE DEED OF TRUST

*Section 10.01. Supplemental Indentures Not Requiring Consent of Owners.* The Issuer and the Trustee may, without the consent of or notice to the Owners, enter into Supplemental Indentures (which Supplemental Indentures shall thereafter form a part hereof) for any one or more or all of the following purposes:

(a) To add to the covenants and agreements of the Issuer contained in this Indenture for the protection or benefit of the Owners, other covenants and agreements thereafter to be observed for the protection or benefit of the Owners, or to surrender or limit any right or power herein reserved or conferred upon the Issuer;

(b) To cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained in this Indenture, or to make any provisions with respect to matters arising under this Indenture or for any other purpose if such provisions are necessary or desirable and do not materially adversely affect the interests of the Owners of the Bonds;

(c) To subject to the lien of this Indenture additional revenues, properties or collateral;

(d) To modify, alter, amend or supplement this Indenture in such a manner as shall permit the qualification hereof under the Indenture of Trust Act of 1939, as from time to time amended; or

(e) To provide for the issuance of Additional Bonds in accordance with Section 2.10 hereof.

*Section 10.02. Supplemental Indentures Requiring Consent of Owners.* Except for Supplemental Indentures authorized by Section 10.01 hereof, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution by the Issuer and the Trustee of such Supplemental Indentures as shall be deemed necessary or desirable by the Issuer for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Indenture; *provided, however*, that without the consent of the Owners of not less than all of the Bonds at the time Outstanding and adversely affected thereby nothing herein contained shall permit, or be construed as permitting:

(a) an extension of the maturity of, or a reduction of the principal amount of, or a reduction of the rate of, or extension of the time of payment of interest on, or a reduction of a premium payable upon any redemption of, any Bond;

(b) the deprivation of the Owner of any Bond then Outstanding of the lien or the priority of the lien created pursuant to the terms of this Indenture;

(c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds;

or

(d) a reduction in the aggregate principal amount of the Bonds, if any, required for consent to such Supplemental Indenture or amendment to the Loan Agreement.

If at any time the Issuer shall request the Trustee to enter into such Supplemental Indenture for any of the purposes of this Section, the Trustee shall, upon being reasonably indemnified by the Borrower (to the extent reasonably required by the Trustee) with respect to expenses, mail by first-class mail notice of the proposed execution of such Supplemental Indenture to the Owners of the Bonds at their addresses as the same shall last appear upon the registration records. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated office of the Trustee for inspection by all Owners. If, within 60 days following the mailing of such notice, the Owners of the requisite principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

*Section 10.03. Execution of Supplemental Indentures.* The Trustee is authorized to join with the Issuer in the execution of any such Supplemental Indenture and to make further agreements and stipulations which may be contained therein, but the Trustee shall not be obligated to enter into any such Supplemental Indenture which materially adversely affects its rights, duties, or immunities under this Indenture. The Trustee may, and for Supplemental Indentures under Section 10.02, shall require delivery of an opinion of Bond Counsel acceptable to the Trustee to the effect that each such Supplemental Indenture (a) has been validly authorized and duly executed by the Issuer and is enforceable against the Issuer in accordance with its terms and (b) will not adversely affect the qualification of the Bonds as obligations which may be issued pursuant to the Act, (c) will not adversely affect the excludability from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes, and (d) is permitted pursuant to the terms of this Indenture. Any Supplemental Indenture executed in accordance with the provisions of this Article shall thereafter form a part of this Indenture and all the terms and conditions contained in any such Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be part of this Indenture for any and all purposes. In case of the execution and delivery of any Supplemental Indenture, express reference may be made thereto in the text of the Bonds issued thereafter, if any.

*Section 10.04. Consent of Borrower.* Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article shall not become effective unless and until the Borrower shall have consented to the execution and delivery of such Supplemental Indenture.

*Section 10.05. Amendments of the Loan Agreement or Deed of Trust Not Requiring Consent of Owners.* The Issuer and the Borrower may, without the consent of or notice to the Owners, execute any amendment, change or modification of the Loan Agreement or the Deed of Trust as may be required in connection with the issuance of Additional Bonds pursuant to the terms of this Indenture, for the purpose of curing any ambiguity or formal defect or omission, or to make any other change therein which is not to the adverse prejudice of the Trustee or the Owners of the Bonds.

*Section 10.06. Amendments of the Loan Agreement or Deed of Trust Requiring Consent of Owners.* Except for the amendments, changes or modifications referred to in Section 10.05 hereof, there may not be executed any other amendment, change or modification of the Loan Agreement or the Deed of Trust without the giving of notice and the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, subject to the same limitations set forth in Section 10.02 hereof. Such notice and consent shall be given and procured as provided in Section 10.02 hereof. If at any time the Issuer, in the case of the Loan Agreement, or the Borrower, in the case of the Deed of Trust, shall request the consent of the Trustee to any such proposed amendment, change or modification of the Loan Agreement or the Deed of Trust, the Trustee shall, upon being reasonably indemnified by the Borrower with respect to expenses, and, if requested by the Trustee, upon delivery of an opinion of Bond Counsel acceptable to the Trustee to the effect that the proposed amendment (a) has been validly authorized and duly executed by the Issuer (in the case of the Loan Agreement) and is enforceable against the Issuer (in the case of the Loan Agreement) in accordance with its terms and (b) is permitted pursuant to the terms of this Indenture, cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 10.02 hereof. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the designated office of the Trustee for inspection by all Owners. If, within 60 days following the mailing of such notice, the Owners of the requisite principal amount of the Bonds Outstanding at the time of the execution of any such amendment, change or modification shall have consented to and approved the execution of the agreement reflecting such amendment, change or modification thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

*Section 10.07. Copies of Supplements and Amendments to the Rating Agency.* A copy of any supplement or amendment entered into pursuant to this Article X shall be sent to any Rating Agency promptly upon execution thereof if any Rating Agency currently rates any Series of Bonds.

## ARTICLE XI

### MISCELLANEOUS

*Section 11.01 Execution of Documents by Bondholders.* (a) Any request, declaration or other instrument which the Indenture may require or permit to be executed by Bondholders may be in one or more instruments of similar tenor, and shall be executed by Bondholders in person or by their attorneys appointed in writing.

(b) Except as otherwise expressly provided, the fact and date of the execution by any Bondholder or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

(c) The ownership of Bonds and the amount, maturity, number and date of holding the same shall be proved by the Bond register.

(d) Any request, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the Issuer or the Trustee in good faith and in accordance therewith or in reliance thereon.

*Section 11.02. Limitation of Liability of Officials of Issuer.* (a) Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer.

(b) No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Indenture, any other Issuer Documents or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any of the Issuer Indemnified Parties, whether by virtue of any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any of the Issuer Indemnified Parties, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into by the Issuer with the Borrower or the Trustee, or to be implied therefrom as being supplemental hereto or thereto and that all personal liability of that character against each of the Issuer Indemnified Parties is, by the execution of the Bonds, this Indenture and the other Issuer Documents and as a condition of and as part of the consideration for, the execution of the Bonds, this Indenture and the other Issuer Documents, is expressly waived and released.

(c) No agreements or provisions contained herein, nor any agreement, covenant, or undertaking by the Issuer in connection with the Project or the issuance, sale and/or delivery of

the Bonds, or breach thereof, shall constitute an indebtedness of the Issuer within the meaning of any State constitutional or statutory limitation or give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way, except as may be payable from the Trust Estate pledged hereby for the payment of the Bonds and its application as provided in this Indenture. No failure of the Issuer to comply with any term, covenant, or agreement contained in the Bonds, this Indenture or the Loan Agreement, or in any document executed by the Issuer in connection with the Project or the issuance and sale of the Bonds, shall subject the Issuer to liability for any claim for damages, costs, or other financial or pecuniary charge, except to the extent the same can be paid or recovered from the Trust Estate. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein; *provided* that no costs, expenses, or other monetary relief shall be recoverable from the Issuer, except as may be payable from the Trust Estate. In making the agreements, provisions and covenants set forth in this Indenture, the Issuer has not obligated itself, except with respect to the application of the Trust Estate.

*Section 11.03. No Personal Liability of Officials of the Issuer or the Trustee.* No covenant or agreement contained in the Bonds or in this Indenture shall be deemed to be the covenant or agreement of any elected or appointed official, officer, agent, servant or employee of the Issuer in his or her individual capacity or any officer, agent, servant or employee of the Trustee in his or her individual capacity and neither the members of the governing body of the Issuer nor any official executing the Bonds, including any officer or employee of the Trustee, shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

*Section 11.04. Parties Interested Herein.* With the exception of rights herein expressly conferred on the Borrower, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon or to give to, any Person other than the Issuer, the Trustee and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Trustee and the Owners of the Bonds.

*Section 11.05. Undertaking to Provide Ongoing Disclosure.* Pursuant to the Loan Agreement, the Borrower has undertaken all responsibility for compliance with continuing disclosure requirements and the Issuer and the Trustee shall have no liability to the Owners of the Bonds or any other Person with respect to Securities Exchange Commission Rule 15c2-12, as amended.

*Section 11.06. Notices.* Except as otherwise provided herein, all notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified mail, facsimile (confirmed by certified mail), return receipt requested, postage prepaid, or overnight courier, addressed as follows:

If to the Issuer: Utah Charter School Finance Authority  
350 North State Street, Suite 180  
Salt Lake City, Utah 84114-2315  
Attention: Chief Deputy State Treasurer  
Telephone: (801) 538-1472

If to the Borrower: of Expeditionary Learning School  
1051 W. 2700 S.  
Perry, Utah 84302  
Attention: Director  
Telephone: (435) 919-1900

If to the Trustee: U.S. Bank Trust Company, National  
Association  
170 South Main Street, Suite 200  
Salt Lake City, Utah 84101  
Telephone: (801) 534-6083

*Section 11.07. Right to Inspect.* Following reasonable notice to the Borrower, at any and all reasonable times, the Trustee and the Issuer and their duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right during regular business hours fully to inspect the Facilities, including all books and records of the Borrower (excluding records the confidentiality of which may be protected by law) and to make such copies and memoranda from and with regard thereto as may be desired.

Additionally, at the direction of the Borrower, the Issuer hereby appoints the Trustee to keep or cause to be kept proper books of record and account in which complete and correct entries shall be made of all transactions relating to the receipts and disbursements received or disbursed according to this Indenture and such books shall be available for inspections by the Owner of any of the Bonds and by the Borrower during normal business hours of the Trustee and under reasonable conditions.

*Section 11.08. Provisions Relating to the Credit Enhancement Program.* The Series 2023 Bonds are issued pursuant to this Indenture under the Credit Enhancement Program. Notwithstanding any other provision of the Indenture or Loan Agreement to the contrary, so long as any Bonds remain outstanding under this Indenture and there has not been a Non-Appropriation that is continuing, the following provisions shall apply:

(a) The maturity of any Bonds issued under this Indenture shall not be accelerated, nor shall any Bonds be redeemed pursuant to Section 5.09 hereof, nor shall the maturity of the Loan be accelerated pursuant to the Loan Agreement, in each case, without the prior written consent of the Issuer.

(b) If there has been an appropriation under the Credit Enhancement Program with respect to Bonds that has not been reimbursed by the Borrower, the Issuer shall be deemed to be the sole Owner of all Bonds issued under this Indenture for the purpose of exercising any voting right or privilege, giving any consent or direction or taking any other

action that the Owners of the Bonds are entitled to take pursuant to the Loan Agreement, the Deed of Trust and any other document related thereto, and receiving notices required to be given to Owners.

(c) In addition to reimbursing the Issuer for amounts paid with respect to the Credit Enhancement Program, as provided in Section 5.01(g) of the Loan Agreement, the Borrower shall pay or reimburse the Issuer for any and all charges, fees, costs and expenses which the Issuer may reasonably pay or incur in connection with (i) the administration, enforcement, defense, or preservation of any rights or security in the Indenture, Loan Agreement, or the Deed of Trust, (ii) the pursuit of any remedies under the Indenture, Loan Agreement, or the Deed of Trust or any other related document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Indenture, Loan Agreement, or the Deed of Trust or any other related document whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Indenture, Loan Agreement, or the Deed of Trust or the transactions contemplated thereby.

(d) The Indenture shall not be discharged and the Loan Agreement shall not be terminated until all obligations of the Borrower owing to the Issuer or the State under the Credit Enhancement Program or otherwise shall have been paid in full. The Borrower's obligation to pay such amounts shall expressly survive payment in full of the Bonds.

*Section 11.09. Article and Section Headings.* All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture, and the words "hereby," "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, are solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

*Section 11.10. Severability.* In the event any provision of this Indenture shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 11.11. Third Party Beneficiaries.* The Borrower and each of the Issuer Indemnified Parties (other than the Issuer) shall be considered to be intended third party beneficiaries of this Indenture. Nothing in this Indenture shall confer any right upon any Person other than the parties hereto and the specifically designated third party beneficiaries of this Indenture.

*Section 11.12. Governing Law.* This Indenture shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations and laws applicable to the Issuer.

*Section 11.13. Execution in Counterparts.* This Indenture 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 11.14. Electronic Signatures.* Delivery of an executed counterpart of a signature page of this Indenture by electronic means shall be effective as delivery of a manually executed counterpart of this Indenture.

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

UTAH CHARTER SCHOOL FINANCE AUTHORITY,  
as Issuer

By \_\_\_\_\_  
Chair

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Vice President



# EXHIBIT A

## FORM OF SERIES 2023 BONDS

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Owner hereof, Cede & Co., has an interest herein.

### UTAH CHARTER SCHOOL FINANCE AUTHORITY [TAXABLE] CHARTER SCHOOL REVENUE BONDS (PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING), SERIES 2023[A][B]

REGISTERED

REGISTERED

No. R- \_\_\_\_\_

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

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP
_____%	October 15, ____	_____, 2023	_____

Owner:

Principal Amount: ----- DOLLARS -----

UTAH CHARTER SCHOOL FINANCE AUTHORITY (the "Issuer"), a body politic and corporate duly organized and existing under the laws of the State of Utah, for value received, hereby promises to pay, from the sources hereinafter described, the principal amount stated above in lawful money of the United States of America to the Owner named above, or registered assigns, on the maturity date stated above, upon the presentation and surrender hereof at the designated corporate trust office of U.S. Bank Trust Company, National Association, as trustee (the "Trustee") under an Indenture of Trust, dated as of May 1, 2023 (the "Indenture"), by and between the Issuer and the Trustee and to pay, from such sources, to the Owner hereof as of the Regular Record Date specified in the Indenture, by check or draft mailed to such Owner (except that Owners of at least \$500,000 in aggregate principal amount of the Bonds (as defined below) Outstanding may, by written request received by the Trustee at least 10 business days prior to the Regular Record Date, receive payment of interest by wire transfer at the address specified in such request, which address must be in the United States) at his or her address as it last appears on the registration books kept for that purpose at the offices of the Trustee, interest on said sum in like

coin or currency from the Dated Date at the interest rate set forth above, payable semiannually on April 15 and October 15 of each year, commencing October 15, 2023 until payment of the principal hereof has been made or provided for. Any such interest not so timely paid or duly provided for shall cease to be payable to the Owner hereof at the close of business on the Regular Record Date and shall be payable to the Owner hereof at the close of business on a Special Record Date for the payment of any defaulted interest. Such Special Record Date shall be fixed by the Trustee whenever moneys become available for payment of the defaulted interest and notice of the Special Record Date shall be given to the Owners of the Bonds not less than 10 days prior thereto.

Initially-capitalized terms used and not defined herein have the meanings assigned to such terms in the Indenture.

This Bond is one of the Issuer's [Taxable] Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023[A][B] (the "Bonds") duly authorized by the Issuer in the aggregate principal amount of \$\_\_\_\_\_, issued under and equally and ratably secured by the Indenture. The Bonds have been issued under the Act for the purpose of (i) refunding certain outstanding obligations of the Borrower (the "Refunded Obligations"), which financed the costs of the Borrower's charter school facilities (the "Existing Facilities"), (ii) financing the acquisition and construction of improvements to the Existing Facilities, (iii) funding a debt service reserve, and (iv) paying costs of issuance of the Bonds.

As provided in the Indenture, Additional Bonds of the Issuer may be issued and secured on a parity basis with the Bonds. Such Additional Bonds may be issued from time to time in one or more series, in various principal amounts, may mature at different times, may bear interest at different rates and may otherwise vary as provided in the Indenture and the aggregate principal amount of such Additional Bonds to be issued under the Indenture is limited only as provided in the Indenture.

The Bonds are special, limited obligations of the Issuer payable solely from and secured by (a) a pledge of certain rights of the Issuer under and pursuant to the Loan Agreement dated as of May 1, 2023 (the "Loan Agreement"), between the Issuer and the Borrower, (b) a pledge of the Funds (other than the Rebate Fund and the Costs of Issuance Fund) and Pledged Revenues (each as defined in the Indenture) and (c) an assignment of the Issuer's security interest in the Pledged Revenues (subject to the Loan Agreement) of the Borrower to the extent permitted by law. The Loan Payments required by the Borrower under the Loan Agreement constitute general obligations of the Borrower and are secured by a Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing, dated as of May 1, 2023 (the "Deed of Trust"), on the land and improvements comprising the Facilities as described therein.

THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE, DO NOT GIVE RISE TO A GENERAL OBLIGATION OR LIABILITY OF THE ISSUER OR CHARGE AGAINST ITS GENERAL CREDIT AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER. THE BONDS DO NOT CONSTITUTE A DEBT, LIABILITY OR LOAN OF CREDIT OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE STATE OF UTAH OR THE ISSUER OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF UTAH. THE ISSUANCE OF THE BONDS SHALL NOT DIRECTLY, INDIRECTLY OR CONTINGENTLY OBLIGATE THE ISSUER, THE STATE OF

UTAH OR ANY AGENCY, INSTRUMENTALITY OR POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT.

NOTWITHSTANDING ANY OTHER PROVISION OF THE INDENTURE OR THE BONDS, NONE OF THE BORROWER, THE TRUSTEE OR ANY BONDHOLDER SHALL LOOK TO THE ISSUER FOR DAMAGES SUFFERED BY THE BORROWER, THE TRUSTEE OR SUCH BONDHOLDER AS A RESULT OF THE FAILURE OF THE ISSUER TO PERFORM, FAIL TO PERFORM OR INSUFFICIENTLY PERFORM ANY COVENANT, UNDERTAKING OR OBLIGATION UNDER THE ISSUER DOCUMENTS OR ANY OF THE OTHER DOCUMENTS REFERRED TO IN THE INDENTURE, NOR AS A RESULT OF THE INCORRECTNESS OF ANY REPRESENTATION MADE BY THE ISSUER IN ANY OF SUCH DOCUMENTS, NOR FOR ANY OTHER REASON.

The Bonds are subject to redemption on the dates, at the redemption prices and following such notice as set forth in the Indenture.

None of the members of the governing board of the Issuer or any Person executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No covenant or agreement contained in the Bonds or in the Indenture shall be deemed to be the covenant or agreement of any appointed official, officer, agent, servant or employee of the Issuer in his or her individual capacity or of any officer, agent, servant or employee of the Trustee in his or her individual capacity and neither the members of the governing body of the Issuer nor any official executing the Bonds, including any officer or employee of the Trustee, shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

It is hereby certified, recited and declared that all conditions, acts and things required by the Constitution or statutes of the State or by the Act or the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed.

Copies of the Indenture, the Loan Agreement, the Deed of Trust and other documents relating to the Bonds are on file at the designated office of the Trustee and reference is made to those instruments for the provisions relating, among other things, to the limited liability of the Issuer, the terms of and security for the Bonds, the custody and application of the proceeds of the Bonds, the rights and remedies of the Owners of the Bonds, amendments and the rights, duties and obligations of the Issuer and the Trustee to all of which the Owner hereof, by acceptance of this Bond, assents.

This Bond shall not be entitled to any benefit under the Indenture or any indenture supplemental thereto, or become valid or obligatory for any purpose until the Trustee shall have signed the certificate of authentication hereon.

IN WITNESS WHEREOF, Utah Charter School Finance Authority has caused this Bond to be signed in its name and on its behalf by the manual or facsimile signature of its Chair.

UTAH CHARTER SCHOOL FINANCE AUTHORITY

By \_\_\_\_\_  
Chair

**[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]**

This is one of the [Taxable] Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023[A][B] described in the within mentioned Indenture.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Authorized Signature

Date of Authentication: \_\_\_\_\_, 2023

**[FORM OF ASSIGNMENT]**

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM	—	as tenants in common	UNIF TRAN MIN ACT—
TEN ENT	—	as tenants by the entirety	_____ Custodian _____
JT TEN	—	as joint tenants with right	(Cust) (Minor)
		of survivorship and not as	under Uniform Transfers to Minors Act of
		tenants in common	_____
			(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto  
INSERT SOCIAL SECURITY OR  
OTHER IDENTIFYING NUMBER OF ASSIGNEE

\_\_\_\_\_  
(Please Print or Typewrite Name and Address of Assignee)

the within Bond of the UTAH CHARTER SCHOOL FINANCE AUTHORITY, and hereby irrevocably constitutes and appoints \_\_\_\_\_ Attorney, to register the transfer of said Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

Signature Guaranteed: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Trustee, which requirements include membership or participation in STAMP or such other “signature guarantee program” as may be determined by the Trustee in addition to, or in substitution for, STAMP, all in accordance with the Securities and Exchange Act of 1934, as amended.

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

**EXHIBIT B**

**[FORM OF COSTS OF ISSUANCE REQUISITION]**

U.S. Bank Trust Company, National Association,  
as Trustee

REQUISITION NO.: \_\_\_\_

DATE OF REQUISITION: \_\_\_\_\_, 2023

\$\_\_\_\_\_  
Charter School Revenue Bonds  
(Promontory School of Expeditionary Learning),  
Series 2023A

\$\_\_\_\_\_  
Taxable Charter School Revenue Bonds  
(Promontory School of Expeditionary Learning),  
Series 2023B

You are requested to disburse funds from the Costs of Issuance Fund (the “*Fund*”) pursuant to the Indenture of Trust (the “*Indenture*”), dated as of May 1, 2023, by and between Utah Charter School Finance Authority and U.S. Bank Trust Company, National Association, as trustee, securing the above referenced Bonds, in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “*Requisition*”). The terms used in this Requisition shall have the meaning given to those terms in the Indenture.

The undersigned, on behalf of the Borrower, hereby requests disbursement from the Fund for payment to or reimbursement of the following payees, in the following amounts and for the following purposes:

PAYEE	AMOUNT	PURPOSE
-------	--------	---------

The Borrower certifies that:

(a) the expenditures for which moneys are requisitioned by this Requisition represent proper charges against the Fund, have not been included in any previous requisition and are set forth in above; and

(b) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for the purposes described above.

PROMONTORY SCHOOL OF EXPEDITIONARY  
LEARNING

By \_\_\_\_\_  
Authorized officer

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LOAN AGREEMENT

Dated as of May 1, 2023

Between

UTAH CHARTER SCHOOL FINANCE AUTHORITY,  
as Issuer

and

PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING,  
as Borrower

\$ \_\_\_\_\_  
Utah Charter School Finance Authority  
Charter School Revenue Bonds  
(Promontory School of Expeditionary Learning),  
Series 2023A

\$ \_\_\_\_\_  
Utah Charter School Finance Authority  
Taxable Charter School Revenue Bonds  
(Promontory School of Expeditionary Learning),  
Series 2023B

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## LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of May 1, 2023 (this “*Loan Agreement*”), entered into by and between the Utah Charter School Finance Authority (the “*Issuer*”), a body politic and corporate duly organized and validly existing under the laws of the State, and Promontory School of Expeditionary Learning (the “*Borrower*”), a Utah nonprofit corporation designated as a charter school by the State;

## WITNESSETH:

WHEREAS, pursuant to the Utah Industrial Facilities and Development Act, Title 11, Chapter 17, Utah Code Annotated 1953, as amended, and Title 53G, Chapter 5, Part 6, Utah Code Annotated 1953, as amended (collectively, the “*Act*”), the Issuer is authorized to issue revenue bonds to finance or refinance the acquisition, construction or rehabilitation of buildings, structures, facilities, improvements and equipment owned, or to be acquired by, a charter school for any of its business purposes or to provide educational services to the general public; and

WHEREAS, the Borrower has requested that the Issuer issue its bonds and loan the proceeds therefrom to the Borrower for the purpose of (i) refunding certain outstanding obligations of the Borrower (the “*Refunded Obligations*”), which financed the costs of acquiring the Borrower’s charter school facilities (the “*Existing Facilities*”), (ii) financing the acquisition and construction of improvements to the Existing Facilities (the “*2023 Project*”), (iii) funding a debt service reserve, and (iv) paying costs of issuance of the Series 2023 Bonds; and

WHEREAS, the Issuer has determined to issue its \$\_\_\_\_\_ aggregate principal amount of Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023A (the “*Series 2023A Bonds*”) and \$\_\_\_\_\_ aggregate principal amount of Taxable Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023B (the “*Series 2023B Bonds*” and, collectively with the Series 2023A Bonds, the “*Series 2023 Bonds*”), pursuant to an Indenture of Trust dated as of May 1, 2023 (the “*Indenture*”), between the Issuer and U.S. Bank Trust Company, National Association, as trustee (the “*Trustee*”), and loan the proceeds thereof to the Borrower for the purposes set forth above, upon the terms and conditions hereinafter in this Loan Agreement set forth;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto formally covenant, agree and bind themselves as follows:

## ARTICLE I

### DEFINITIONS

*Section 1.01. Definitions.* All terms defined in Article I of the Indenture and not otherwise defined herein shall have the same meaning in this Loan Agreement.

“*Authorizer*” means the State Charter School Board of the State of Utah, or any successor thereof.

“*Consulting Architect*” means an independent architect, contractor or other consultant.

“*Debt Service Coverage Requirement*” is defined in Section 2.08 of this Loan Agreement.

“*Dissemination Agent*” means U.S. Bank Trust Company, National Association, Salt Lake City, Utah, and its successors and assigns or any successor Dissemination Agent appointed by the Borrower pursuant to the provisions of the Continuing Disclosure Undertaking.

“*Environmental Damages*” means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, Liens, privileges, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys’ fees and expert consultants’ fees and disbursements, any of which are incurred at any time as a result of the existence of Regulated Chemicals upon, about, beneath or migrating, or threatening to migrate, onto or from the Facilities, or the existence of a violation of Environmental Requirements pertaining to the Facilities, regardless of whether or not such Environmental Damages were caused by or within the control of the Borrower.

“*Environmental Report*” means any environmental report or environmental audit conducted at the Facilities for any reason.

“*Environmental Requirements*” means all applicable federal, State, regional or local laws, statutes, rules, regulations or ordinances, concerning public health, safety or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601, *et seq.*, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§ 6901, *et seq.*, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251, *et seq.*, the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601, *et seq.*, the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001, *et seq.*, the Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401, *et seq.*, the National Environmental Policy Act of 1975, 42 U.S.C. § 4321, the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401 *et seq.*, the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531, *et seq.*, the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651, *et seq.*, the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(t), *et seq.* and all rules, regulations, policies and guidance documents promulgated or published thereunder and any State, regional, parish or local statute, law, rule, regulation or ordinance relating to public health, safety or the environment, including, without limitation those relating to releases, discharges, emissions or disposals to air, water, land or groundwater; the withdrawal or use of groundwater; the use, handling, or disposal of polychlorinated biphenyls, asbestos or urea formaldehyde; the transportation, treatment, storage, disposal, release or management of hazardous substances or materials (including, without limitation, petroleum, its derivatives,

by-products or other hydrocarbons) and any other solid, liquid, or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Facilities or any property adjacent to or surrounding the Facilities; the exposure of persons to toxic, hazardous, or other controlled, prohibited or regulated substances; and any chemicals regulated by such Environmental Requirements.

“*Hazardous Material*” means: (a) any substances defined as “hazardous substances,” “pollutants,” “contaminants,” “hazardous materials,” “hazardous wastes,” or “hazardous or toxic substances” or related materials as now or hereafter defined in any Environmental Requirement; (b) those substances listed or otherwise identified as substances of the type referred to in the preceding subsection (a) in the regulations adopted and publications issued pursuant to any Environmental Requirement, as the same may be amended, modified or supplemented; (c) any friable asbestos, airborne asbestos in excess of that generally found in the atmosphere, respectively, where the Facilities are located, or any substance or material containing asbestos, excluding any such materials located on the Facilities prior to the date hereof so long as such materials are contained, maintained, abated or removed in compliance with all applicable Environmental Requirements; and (d) any substance the presence of which on the Facilities is prohibited by any applicable Environmental Requirement; provided that Hazardous Material shall not include any such substances used in or resulting from the ordinary operation of the Facilities or for the cleaning of the Facilities, provided that such substances are stored, handled and disposed of in compliance with all applicable Environmental Requirements and other applicable laws and regulations.

“*Liabilities*” means any causes of action (whether in contract, tort or otherwise), claims, costs, damages, demands, judgments, liabilities, losses, suits and expenses (including, without limitation, reasonable costs of investigation and attorney’s fees and expenses) of every kind, character and nature whatsoever.

“*Loan*” means the loan made by the Issuer to the Borrower of the proceeds from the sale of the Bonds pursuant to this Loan Agreement.

“*Management Consultant*” means a firm of independent professional management consultants, an independent school management organization or an independent financial advisor, knowledgeable in the operation of public or private schools and having a favorable reputation for skill and experience in the field of public or private school management consultation.

“*Regulated Chemicals*” means any substance, the presence of which requires investigation, permitting, control or remediation under any federal, State or local statute, regulation, ordinance or order, including without limitation:

(a) any substance defined as “hazardous waste” under the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.);

(b) any substance defined as a “hazardous substance” under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. §§ 9601 et seq.);

(c) any substance defined as a “hazardous material” under the Hazardous Materials Transportation Act (49 U.S.C. §§ 1800 et seq.);

(d) any substance defined under any State statute analogous to (a), (b) or (c), to the extent that said statute defines any term more expansively;

(e) asbestos;

(f) urea formaldehyde;

(g) polychlorinated biphenyls;

(h) petroleum, or any distillate or fraction thereof;

(i) any hazardous or toxic substance designated pursuant to the laws of the State; and

(j) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

*Section 2.01. Representations by the Issuer.* The Issuer represents that:

(a) The Issuer is a body politic and corporate duly organized and existing under the Constitution and laws of the State;

(b) The Issuer has found and hereby declares that the issuance of the Bonds is in furtherance of the public purposes set forth in the Act;

(c) The Issuer has duly authorized the execution, delivery, and performance on its part of the Bond Purchase Agreement, the Indenture and this Loan Agreement in connection with the issuance of the Series 2023 Bonds;

(d) The Issuer proposes to issue the Series 2023 Bonds immediately following the execution and delivery of this Loan Agreement in order to accomplish the purposes set forth in the foregoing recitals. The date, denomination or denominations, interest rate or rates, maturity schedule, redemption provisions and other pertinent provisions with respect to the Series 2023 Bonds are set forth in the Indenture;

(e) The Issuer makes no representation or warranty that the amount of the Loan will be adequate or sufficient for the purposes for which the Series 2023 Bonds are issued;



(f) The Issuer has not pledged, assigned, or granted, and will not pledge, assign, or grant any of its rights or interest in or under this Loan Agreement for any purpose other than as provided for in the Indenture; and

(g) The Bonds are limited obligations of the Issuer payable solely from the Trust Estate, do not give rise to a general obligation or liability of the Issuer or charge against its general credit and shall never constitute nor give rise to a pecuniary liability of the Issuer. The Bonds do not constitute a debt, liability or loan of credit or a pledge of the full faith and credit or taxing power of the State or of any political subdivision thereof. The Issuer shall have no liability to pay the Series 2023 Bonds except from the amounts that it receives under this Loan Agreement.

*Section 2.02. Representations by the Borrower.* The Borrower represents and covenants that:

(a) As of the date of this Agreement, the Borrower is an organization organized and operated (A) exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Code, (B) not for pecuniary profit, and (C) in a manner that no part of the net earnings of which inures to the benefit of any person, private stockholder or individual, all within the same meaning, respectively, of 15 U.S.C. Section 77(c)(a)(4), Section 3(a)(4) of the Securities Act of 1933, as amended, and of 15 U.S.C. Section 78 1(g)(2)(D), Section 12(g)(2)(d) of the Securities Exchange Act of 1934, as amended, and (ii) the Borrower shall not perform any act or enter into any agreement which shall adversely affect such status as set forth in this paragraph (b) which would cause the Borrower to lose its exemption from federal income taxes.

(b) The Borrower is duly organized and existing as a nonprofit corporation under the laws of the State, it is in good standing and authorized to transact business in the State, it will maintain, extend and renew its nonprofit corporate existence under the laws of the State, and it will not do, suffer or permit any act or thing to be done whereby its right to transact its functions might or could be terminated or its activities restricted.

(c) So long as any Bonds are Outstanding, the Borrower covenants and agrees to manage the Facilities in a manner that permits it to meet its obligations under this Loan Agreement.

(d) The Borrower is organized and operated for the purpose of providing educational services under the Charter Schools Act, and is authorized to own, develop, construct, rehabilitate, operate, equip, and maintain its charter school facilities. The Borrower has been duly authorized to execute each of the Borrower Documents and consummate all of the transactions contemplated thereby, and the execution, delivery, and performance of the Borrower Documents will not conflict with or constitute a breach of or default by the Borrower under any other instrument or agreement to which the Borrower is a party or to which its property is bound.

(e) The Borrower's execution, delivery, and performance of the Borrower Documents shall not constitute a violation of any order, rule, or regulation of any court or governmental agency having jurisdiction over the Borrower.

(f) There are no pending or, to the best of Borrower's knowledge, threatened actions, suits, or proceedings of any type whatsoever affecting the Borrower, the Borrower's property, or the Borrower's ability to execute, deliver, and perform with respect to any of the Borrower's Documents, except as otherwise set forth in the Offering Document.

(g) None of the representations of the Borrower contained in the Borrower Documents, the Offering Document or any oral or written statements, furnished by the Borrower, or written statements furnished on behalf of the Borrower to the Issuer, Bond Counsel or the Underwriter in connection with the transactions contemplated hereby, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein not misleading. There are no facts that the Borrower has not disclosed to the Issuer and the Underwriter in writing that materially and adversely affect or in the future may (so far as the Borrower can now reasonably foresee) materially and adversely affect the properties, business, prospects, profits, or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under the Borrower Documents or any documents or transactions contemplated hereby or thereby.

(h) The Facilities will constitute and shall be used as a public charter school, and the Project is a permissible project within the provisions of the Act.

(i) The use of the Facilities, as operated, complies with all presently applicable zoning, development, pollution control, water conservation, environmental, and other material laws, regulations, rules, and ordinances of any federal, state, county, city or other governmental authority having jurisdiction over the Facilities or their use and operation.

(j) The Facilities, as designed and operated or caused to be operated by the Borrower, and when constructed or rehabilitated in accordance with such design, will meet all material requirements of law, including requirements of any federal, state, county, city or other governmental authority having jurisdiction over the Facilities or its use and operation.

(k) The Borrower has obtained, or will obtain before they are required, all necessary approvals of and licenses, permits, consents, and franchises from federal, state, county, municipal, or other governmental authorities having jurisdiction over the Facilities to acquire, construct, improve, equip, rehabilitate, and operate the Facilities, and to enter into, execute, and perform its obligations under this Loan Agreement and the other Borrower Documents.

(l) None of the Issuer Indemnified Parties has any significant or conflicting interest (financial, employment, or otherwise), in the Borrower, the Facilities, or in any of the transactions contemplated under the Borrower Documents.

(m) As of the Closing Date, there has been no material adverse change in the financial condition, prospects, or business affairs of the Borrower or the feasibility or physical condition of the Facilities subsequent to the date on which the Issuer adopted its resolution approving the issuance of the Series 2023 Bonds.

(n) The Borrower (i) understands the nature of the structure of the transactions related to the financing of the Facilities; (ii) is familiar with all the provisions of the documents and instruments related to such financing to which the Borrower or the Issuer is a party or which the Borrower is a beneficiary; (iii) understands the risk inherent in such transactions, including, without limitation, the risk of loss of the Facilities; and (iv) has not relied on the Issuer for any guidance or expertise in analyzing the financial consequences of such financing transactions or otherwise relied on the Issuer in any manner, except to issue the Bonds in order to provide funds for the Loan.

(o) The Borrower hereby acknowledges receipt of the Indenture, agrees to be bound by its terms, and accepts all obligations and duties imposed thereby.

(p) The Borrower covenants and agrees that it will not use or permit the use of any funds provided by the Issuer hereunder or any other funds of the Borrower directly or indirectly, in a manner which would, or enter into, or allow any “related person” (as defined in Code Section 147(a)(2)) to enter into, any arrangement, formal or informal, for the purchase of the Bonds that would, or take or omit to take any action that would, to the knowledge of the Borrower, cause any Bond to be an “arbitrage bond” within the meaning of Code Section 148 or “federally guaranteed” within the meaning of Code Section 149(b) and the applicable regulations promulgated from time to time thereunder. The Borrower further covenants to comply with the covenants and procedures set forth in Section 3.09 of the Indenture and to deposit in the Rebate Fund such amount as may be necessary to maintain the Rebate Amount on deposit in the Rebate Fund. Notwithstanding any provisions of this Section 2.02, if the Borrower shall provide to the Issuer and the Trustee an opinion of Bond Counsel that any specified action required under this Section or Section 3.09 of the Indenture is no longer required or that some further or different action is required to maintain the excludability from federal income tax of interest on any Tax-Exempt Bonds, the Issuer, the Trustee and the Borrower may conclusively rely on such opinion in complying with the requirements of this Section and Section 3.09 of the Indenture and be protected in so doing, and the covenants hereunder shall be deemed to be modified to that extent.

(q) All representations of the Borrower contained herein or in any certificate or other instrument delivered by the Borrower pursuant hereto, to the Indenture, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale, and delivery of the Bonds as representations of facts

existing as of the date of execution and delivery of the instrument containing such representation.

(r) The Borrower covenants and agrees to pay, when due, all costs and expenses of the Issuer incurred in connection with the Bonds or the Facilities not paid from the Costs of Issuance Fund, including, without limitation, each and all of the following:

(i) all indemnity payments;

(ii) all expenses incurred by the Issuer in connection with the Facilities, the Bonds, the Indenture, or any of the Borrower Documents, including, without limitation, attorneys’ fees and expenses and advisors’ fees and expenses;

(iii) the fees and expenses of the Rebate Analyst; and

(iv) any costs, fees, or expenses incurred by the Issuer as a result of any audit, contest of a determination of taxability, investigation, or any type of inquiry, random or otherwise, of the Internal Revenue Service, the Securities and Exchange Commission, or any other state, federal, or local agency with respect to the Bonds, the Borrower, or the Project.

(s) The Borrower will not grant any Liens on all or any portion of the Facilities or the Pledged Revenues (other than the Lien against the Pledged Revenues effected by this Loan Agreement and Permitted Encumbrances) without the written consent of the Issuer and the Beneficial Owners of at least a majority of the aggregate principal amount of the Bonds then Outstanding.

(t) Upon the execution by the Borrower of the Deed of Trust and its subsequent recording, and upon the filing of UCC-1 financing statements or amendments thereto, the Trustee will have a valid first Lien on the Facilities and a valid security interest in the personal property subject to no Liens, charges or encumbrances other than the Permitted Encumbrances, and the Borrower will take all necessary actions including filing continuation statements to preserve such Lien and security interest. The Borrower shall not change its name unless prior to the effective date of such change the Borrower has notified the Trustee of such change and has filed and taken, or assisted the Trustee in filing and taking, all actions necessary under the Uniform Commercial Code and other applicable law in order to preserve and protect such Lien and security interest following such name change have been made and taken.

(u) The Borrower’s property is the land, buildings, facilities, and/or equipment for a public charter school and is a “project” within the meaning of the Act.

*Section 2.03. Borrower’s Tax Covenants.* The Borrower represents and covenants that it shall comply with all representations, warranties, covenants and agreements contained in the Tax Certificate relating to the Bonds.

The Borrower shall retain a Rebate Analyst on or before the Closing Date, and provide to the Rebate Analyst and the Trustee copies of all of the Borrower's accounting records relating to the accounts and subaccounts in the Funds, for at least six years after the later of the final maturity (whether at stated maturity or earlier prepayment) of the related Promissory Note or the first date on which no Bonds of the related Series are Outstanding.

*Section 2.04. Borrower's Covenant to Comply with Charter School Laws.* The Borrower covenants to comply fully and in all respects with the provisions of the Charter Schools Act and its Charter so long as any Bonds remain Outstanding.

*Section 2.05. Representations by Borrower to Provide Ongoing Disclosure.* The Borrower hereby covenants to enter into the Continuing Disclosure Undertaking for the benefit of the holders of the related Series of Bonds required by Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the "Rule") contemporaneously with the issuance of such Series of Bonds.

*Section 2.06. Borrower's Use of State Payments.* The Borrower hereby covenants and agrees that, in connection with the issuance of the Bonds, it shall use its State Payments as necessary to make Loan Payments in the amounts necessary to pay principal and interest due on the Bonds and all of its other obligations under this Loan Agreement and the Promissory Notes. On or prior to the Closing Date, the Borrower shall direct the Treasurer of the State and the Utah State Board of Education to disburse all State Payments directly to the Trustee, and the Borrower shall not modify or revoke such direction so long as any obligation of the Borrower remains outstanding under this Loan Agreement.

In the event any State Payments are disbursed directly to the Borrower, the Borrower shall immediately transfer such State Payments to the Trustee for deposit in the Revenue Fund.

*Section 2.07. Environmental Representations.* The Borrower and its successors and assigns hereby represents and warrants:

(a) *Condition of Facilities.* To the best of its knowledge, and after review of the Phase I Report, the Facilities, including all personal property, is free from contamination by Regulated Chemicals, including, but not limited to, friable asbestos, and there has not been thereon a release, discharge or emission, or a threat of release, discharge or emission, of any Regulated Chemical on, under, in, or about the Facilities, nor has any such Regulated Chemical migrated or threatened to migrate from other properties upon, about or beneath the Facilities except for de minimis amounts in the ordinary course of business in compliance with all Environmental Requirements.

(b) *Previous Use of Facilities.* Neither the Borrower nor any previous owner, tenant, occupant or user of the Facilities, nor any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Facilities, or any portion thereof, whether legal or illegal, accidental or intentional, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Regulated Chemical, on, under, in or about

the Facilities, nor has any such party transported any Regulated Chemical to, from or across the Facilities except for de minimis amounts in the ordinary course of business in compliance with all Environmental Requirements.

(c) *Property Adjoining Facilities.* To the best of its knowledge, and after due inquiry, any adjoining property has not been used as a manufacturing, storage or disposal site for Regulated Chemicals nor is any other property adjoining the Facilities affected by a violation of Environmental Requirements.

(d) *Compliance with Environmental Requirements.* To the best of its knowledge, and after due inquiry, the Facilities owned by the Borrower are in compliance with and have at all times been in compliance with all applicable Environmental Requirements and the Borrower has all permits and licenses required to be issued under the Environmental Requirements and is in full compliance with the terms and conditions of such permits and licenses; such permits and licenses are in full force and effect; and no changes exist in the facts or circumstances reported or assumed in the application for or granting of such permits or licenses.

(e) *No Notice of Violations of Environmental Requirements.* The Borrower has not received any notice, whether written or oral, concerning the Facilities owned by the Borrower, for any alleged violation or requiring compliance of Environmental Requirements, whether or not corrected to the satisfaction of the appropriate authority, or notice or other communication concerning alleged liability for Environmental Damages in connection with the Facilities owned by the Borrower, and to the best of Borrower's knowledge there exists no investigation, administrative order, consent order and agreement, litigation, settlement or judgment, whether proposed, threatened, anticipated or in existence with respect to the Facilities owned by the Borrower.

(f) *Survival of Representations and Warranties.* The representations and warranties set forth in this Section 2.07 shall survive the expiration or termination of the Borrower Documents, the payment of the Bonds, and the discharge of any obligations owed by the parties to each other and will survive any transfer of title to the Facilities, whether by foreclosure, or otherwise and shall not be affected by any investigation by or on behalf of the Issuer or any information which the Issuer or the Trustee may have or obtain with respect thereto.

Moreover, the Borrower does hereby and specifically represent and warrant that it has no affirmative knowledge or reason to believe that any condition, previous use, compliance or violation of Environmental Requirements are contrary to the description in Section 2.07(a), (b), (c), (d), and (e).

*Section 2.08. Debt Service Coverage Requirement.* (a) In order to assure full and continuous performance of the covenants contained in Section 5.01, with a margin for contingencies and temporary unanticipated reduction in Pledged Revenues, the Borrower covenants and agrees to budget and set Operating Expenses and operate its Facilities in such a manner as will enable it to reasonably expect Net Income Available for Debt Service to equal at

least 115% of the annual Debt Service for the applicable Fiscal Year on Indebtedness then Outstanding (the “*Debt Service Coverage Requirement*”).

(b) The Borrower shall deliver to the Trustee and the Issuer, no later than the date the Borrower’s audited annual financial statements are required to be submitted pursuant to Section 8.04, a certificate of an Authorized Borrower Representative confirming that the Borrower satisfied the Debt Service Coverage Requirement for such fiscal year; *provided, however*, that no Event of Default shall occur, except as provided in (d), if the Borrower complies with paragraph (c). In the event the Borrower’s Net Income Available for Debt Service is less than the Debt Service Coverage Requirement for any fiscal year, the Borrower shall report the Debt Service coverage calculation to the Issuer and the Trustee immediately upon completion of such calculation and, in no event, later than the date by which the certification described above in this paragraph is required.

(c) If Borrower fails to maintain Net Income Available for Debt Service at least equal to the Debt Service Coverage Requirement for any fiscal year, the Borrower shall, within 60 days after the date required for the delivery of the certificate in paragraph (b), (1) obtain recommendations from a Management Consultant as to revisions of the Borrower’s budget for the then-current fiscal year necessary to provide for Net Income Available for Debt Service sufficient to satisfy the Debt Service Coverage Requirement, and (2) on the basis of such recommendations, revise its budget and Operating Expenses for the then-current fiscal year to provide for Net Income Available for Debt Service sufficient to satisfy the Debt Service Coverage Requirement for such year.

(d) Failure to maintain Net Income Available for Debt Service equal to at least 100% of Debt Service for the applicable period shall constitute an Event of Default hereunder.

### ARTICLE III

#### TERM OF THIS LOAN AGREEMENT

This Loan Agreement shall remain in full force and effect from the date of delivery hereof until such time as all of the payments on the Promissory Notes shall have been fully paid or provision is made for such payment pursuant to the Indenture and all reasonable and necessary fees and expenses of the Trustee and the Issuer accrued and to accrue through final payment of the Promissory Notes and all other liabilities of the Borrower accrued and to accrue through final payment of the Promissory Notes under this Loan Agreement and the Indenture have been paid or provision is made for such payments pursuant to the Indenture; *provided, however*, notwithstanding any other provision hereof (a) the indemnification provisions of Sections 6.06 and 8.06 hereof and agreements contained in Section 10.04 hereof shall survive after the termination of the term of this Loan Agreement; (b) all agreements, representations and certifications by the Borrower as to the excludability from gross income of interest on the Tax-Exempt Bonds shall survive termination of the term hereof until the expiration of statutes of limitation applicable to the liability of the Owners of the Tax-Exempt Bonds for federal and state income taxes with respect to interest on the Tax-Exempt Bonds; and (c) upon the defeasance of the Indenture, all such indemnification provisions shall be enforceable by the Issuer Indemnified Parties, and all such

agreements, representations and certifications regarding the excludability from gross income of the interest on the Tax-Exempt Bonds shall be enforceable by the Owners of the Tax-Exempt Bonds, directly against the Borrower.

### ARTICLE IV ISSUANCE OF THE SERIES 2023 BONDS

*Section 4.01. Agreement to Issue Series 2023 Bonds; Application of Series 2023 Bond Proceeds and Other Moneys.* In order to provide funds to make the Loan to the Borrower for the purposes describe in the recitals to this Loan Agreement, the Issuer will sell and cause to be delivered to the Underwriter the Series 2023 Bonds and will make such Loan and direct the Trustee to deposit the proceeds of the Series 2023 Bonds as provided in Section 3.03 of the Indenture.

*Section 4.02. Title Insurance; Lien and Security Interest.* (a) On the date of recordation of the Deed of Trust, the Trustee shall be provided with a commitment to issue an extended ALTA mortgagee’s title insurance policy insuring the Trustee’s interest in and Lien against the Land, and the other property subject to the Deed of Trust, as described on *Exhibit A* hereto, subject to Permitted Encumbrances, in an amount not less than the principal amount of the Bonds, a copy of which shall be delivered to the Trustee. Each such policy shall be in the form of a standard or extended American Land Title Association Policy, as applicable, and may not permit the title insurer to purchase any Bonds in lieu of providing payment under the policy unless, upon purchase, such Bonds are cancelled. Upon the date of issuance of the Bonds, the Deed of Trust shall be recorded in the real property records of the county in which the Facilities are located and provide the Trustee with a perfected first priority Lien interest in the Facilities and the other property subject to the Deed of Trust, subject to any Permitted Encumbrances.

(b) Upon the execution by the Borrower of the Deed of Trust and its subsequent recording, and upon the execution and filing of UCC-1 financing statements or amendments thereto, the Trustee will have a valid first priority Lien on the Facilities and a valid security interest in the personal property, subject to no Liens, charges or encumbrances other than the Permitted Encumbrances, and the Borrower will take all necessary actions including filing continuation statements to preserve such Lien and security interest.

*Section 4.03. Disbursements from the Project Fund.* A portion of the amount on deposit in the Project Fund shall, with the approval of the Issuer, be disbursed by the Trustee on the Closing Date of the Series 2023 Bonds for the purpose of refinancing the Refunded Obligations. In addition, the Issuer has, in the Indenture, authorized and directed the Trustee to disburse the moneys in the Project Fund on behalf of the Borrower to pay Costs of the Project. Except as otherwise set forth in the Indenture, the Trustee shall make disbursements from the Project Fund within three (3) days of receipt by the Trustee of a completed requisition, in the form attached hereto as *Exhibit B*, upon which instruction the Trustee may conclusively rely), signed by an Authorized Representative of the Borrower.

## ARTICLE V

### PAYMENT PROVISIONS

*Section 5.01. Loan Payments and Other Amounts Payable.* (a) The Borrower shall pay, as repayment of the Loan, until the principal of, premium, if any, and interest on the Bonds shall have been paid or provision for the payment thereof shall have been made in accordance with the Indenture, into the Revenue Fund on each Monthly Disbursement Date during the term of this Loan Agreement, commencing with the Monthly Disbursement Date immediately following the issuance of the Series 2023 Bonds, an amount equal to the Accrued Debt Service on the Bonds.

Notwithstanding anything to the contrary in this Loan Agreement, the Borrower shall pay or cause to be paid to the Trustee amounts necessary to ensure that the Trustee has sufficient funds available under the Indenture to pay principal of and interest on the Bonds as such becomes due under the terms of the Indenture.

(b) On or before the redemption of any Bonds, the Borrower shall pay as repayment of the Loan for deposit into the Debt Service Account an amount of money which, together with the payments made by the Borrower on its Promissory Notes then on deposit in the Debt Service Account, is sufficient to pay (i) the principal of and premium, if any, on the Bonds called for redemption in an amount equivalent to the principal amount of the Promissory Notes being prepaid and (ii) the interest accrued to the redemption date of Bonds called for redemption in an amount equivalent to interest then due on the principal amount of the Promissory Notes being prepaid.

(c) During the term of this Loan Agreement, the Borrower shall pay or provide for the payment of (i) all taxes and assessments, general or special, concerning or in any way related to the Facilities or any part thereof, and any other governmental charges and impositions whatsoever related to the Facilities, and premiums for insurance policies maintained on the Facilities as required by this Loan Agreement, (ii) the reasonable and necessary fees and expenses of the Trustee, including its attorney fees and expenses, as and when the same become due, upon submission of a statement therefore, *provided* that the Borrower may, without creating a default hereunder, contest in good faith any such fees or expenses, (iii) all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, (iv) all other Operating Expenses and (v) the Issuer's Administration Fee and the Issuer's Annual Fee payable in connection with the issuance of the Bonds, plus any amounts required to reimburse the Issuer for any expenses incurred by the Issuer, whether out-of-pocket or internal, in connection with this Loan Agreement, the Indenture, the Bonds, the Tax Certificate, the Bond Purchase Agreement, the Facilities or any other instrument or action relating thereto including fees and disbursements of attorneys of the Issuer.

(d) Commencing on the second Monthly Disbursement Date next succeeding the date of a withdrawal from, or valuation by the Trustee pursuant to Section 3.06(c) of the Indenture of the Permitted Investments in, the Debt Service Reserve Account and on each Monthly Disbursement Date thereafter, the Borrower shall, within the period, and in the amounts, set forth in clause "Second" of Section 3.10 of the Indenture, deposit or cause to be deposited moneys into the Debt Service Reserve Account which installments together shall equal the amount required to cause the

total amount in the Debt Service Reserve Account to equal the Debt Service Reserve Requirement; *provided, however*, that if the Issuer or the State has made an appropriation to the Debt Service Reserve Account, the Borrower shall cause the Debt Service Reserve Account to be replenished as provided in paragraph (f).

(e) The Borrower agrees to pay or cause to be paid to the Trustee the reasonable and necessary fees and expenses of the Trustee, including their attorney fees and expenses, as and when the same become due, upon submission of a statement thereof; *provided* that the Borrower may, without creating a default hereunder, contest in good faith any such fees or expenses.

(f) The Borrower shall reimburse the Issuer for any appropriation made or any other amounts paid on behalf of the Borrower by the State or the Issuer under the Credit Enhancement Program to restore amounts on deposit in the Debt Service Reserve Account to the Debt Service Reserve Requirement or for any other purpose. Upon such appropriation or payment by the State or Issuer, the Trustee shall notify the Borrower and the Issuer, and the Borrower shall be required to immediately reimburse the Issuer the amount appropriated or paid on its behalf.

(g) The Borrower shall pay to the Trustee an amount necessary to pay the fees and expenses of the Rating Agency, if any, required in connection with Bonds, including the annual surveillance fee, if applicable.

In the event the Borrower should fail to make or fail to cause to be made any of the payments required by this Section, the item or installment in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest at the highest rate of interest borne by any of the Bonds, or the maximum rate permitted by law if less than such rate.

*Section 5.02. Pledge by Borrower.* In fulfillment of its obligations hereunder, the Borrower hereby pledges to the payment of the Loan and the Promissory Notes securing such Loan, the following:

(i) all of the Borrower's right, title and interest in and to the Facilities, including all related additions, replacements, substitutions and proceeds for the purposes of securing such Loan;

(ii) all Pledged Revenues; and

(iii) any and all other interests in real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind specifically mortgaged, pledged or hypothecated, as and for additional security for the Loan by the Borrower or by anyone on its behalf.

The Borrower hereby covenants and agrees that it shall direct the Treasurer of the State and the Utah State Office of Education to disburse all State Payments directly to the Trustee, and the Borrower shall not modify or revoke such direction so long as any obligation of the Borrower remains outstanding under this Loan Agreement. If for any reason State Payments are,

notwithstanding the requirements of Section 2.06 and this Section 5.02, disbursed by the State to the Borrower instead of directly to the Trustee, the Borrower shall at all times, including during an Event of Default, deposit all State Payments and other revenues of the Borrower with the Trustee for deposit in the Revenue Fund immediately upon receipt.

*Section 5.03. Obligations of Borrower Hereunder Unconditional.* The obligations of the Borrower to make the payments required hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional and are a recourse and general obligation of the Borrower. The Borrower (a) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for herein, (b) will perform and observe all of its other agreements contained in this Loan Agreement, the Deed of Trust and the Promissory Notes, and (c) except as provided in Article XI hereof, will not terminate this Loan Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure to complete the Facilities, failure of consideration, eviction or constructive eviction, destruction of or damage to the Facilities, commercial frustration of purpose, or change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Loan Agreement, whether express or implied, or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture, whether express or implied. The Borrower may at its own cost and expense and in its own name or in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving third persons which the Borrower deems reasonably necessary in order to secure or protect its or its lessees' rights of possession, occupancy and use of the Facilities.

## ARTICLE VI

### MAINTENANCE, TAXES AND INSURANCE

*Section 6.01. Maintenance and Modifications of Facilities by Borrower.* The Borrower agrees that during the term of this Loan Agreement the Facilities shall be operated and maintained, in compliance with all governmental laws, building codes, ordinances, and regulations and zoning laws as shall be applicable to the Facilities, unless the same are being contested in good faith by appropriate proceedings which operate to stay any action to foreclose or otherwise realize on any property of the Borrower if, in the Opinion of Counsel, the Facilities shall not be subject to loss or forfeiture as a result of such contest. In the event the Borrower is not able to obtain such Opinion of Counsel, the Facilities shall be operated and maintained in compliance with all governmental laws, building codes, ordinances and regulations and zoning laws applicable to the Facilities.

The Borrower agrees that during the term of this Loan Agreement it will at its own expense (a) keep the Facilities in a safe condition required by law and (b) except to the extent the Borrower has determined that any portion of the Facilities is obsolete or not useful in its operations, keep the Facilities in good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof all of which shall be accomplished in a workmanlike manner in accordance with all applicable

laws. The Borrower may also, at its own expense, make from time to time any additions, modifications or improvements to the Facilities (including modifications to the Facilities, if any) it may deem desirable for its purposes that do not substantially reduce its value; *provided* that all such additions, modifications and improvements made by the Borrower which are affixed to the Facilities shall become a part of the Facilities.

The Borrower will not permit the removal of any personal property from the Facilities unless such personal property is obsolete, sold for fair market value or will be replaced with personal property of an equal or greater value. The Borrower will not permit any Liens, security interests or other encumbrances other than Permitted Encumbrances to be established or to remain against the Facilities for labor or materials furnished in connection with the Facilities or any additions, modifications, improvements, repairs, renewals or replacements made by it to the Facilities; *provided* that if the Borrower first notifies the Trustee of its intention to do so, the Borrower may, so long as no Event of Default has occurred and is continuing, diligently prosecute, in good faith, at its own expense, a contest of any mechanics' or other Liens filed or established against the Facilities and in such event may permit the items contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Facilities or any part thereof will, in the Opinion of Counsel, be subject to loss or forfeiture, in which event the Borrower shall promptly pay and cause to be satisfied and discharged all such unpaid items. The Issuer will, at the expense of the Borrower, cooperate fully with the Borrower in any such contest.

In the event that the Borrower shall fail to pay any of the expenses required by this Section to be paid by the Borrower, the Issuer or the Trustee may (but shall be under no obligation to) pay the same, and any amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Borrower under this Loan Agreement to the one making the advance, which amount the Borrower agrees to pay on demand together with interest thereon at a rate which shall be 3% per annum above the highest rate of interest borne by any of the Bonds or the maximum rate permitted by law if less than such rate.

*Section 6.02. Taxes, Other Governmental Charges and Utility Charges.* The Borrower will pay, as the same become due, (a) all taxes and governmental charges of any kind whatsoever or payments in lieu of taxes that may at any time be lawfully assessed or levied against or with respect to the Facilities or any interest therein, or any machinery, equipment, or other property installed or brought by the Borrower therein or thereon which, if not paid, will become a Lien on the Facilities or a charge on the Pledged Revenues prior to or on a parity with the charge thereon under this Loan Agreement, (b) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Facilities and (c) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a Lien on the Facilities *provided* that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as may have become due during the term of this Loan Agreement.

The Borrower may, at its own expense, but only if no Event of Default hereunder has occurred and is continuing, diligently prosecute and in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges contested to remain unpaid during the period of such contest and any

appeal therefrom if, in the Opinion of Counsel, the Facilities shall not be subject to loss or forfeiture. In the event that the Borrower is not able to obtain such Opinion of Counsel, such taxes, assessments or charges shall be paid promptly or secured by posting a bond with the Trustee in form satisfactory to the Trustee. The Issuer, at the expense of the Borrower, shall cooperate fully with the Borrower in any such contest. In the event that the Borrower shall fail to pay any of the foregoing items required by this Section to be paid by the Borrower, the Issuer or the Trustee may (but shall be under no obligation to) pay the same and any amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Borrower payable to the one making the advance, which amount the Borrower agrees to pay on demand together with interest thereon at a rate which shall be 3% per annum above the highest rate of interest borne by the Bonds or the maximum rate permitted by law if less than such rate.

The Borrower will do, or cause to be done, all things required by the appropriate government authority to obtain and maintain exemption from payment of real property taxes.

*Section 6.03. Insurance Required.* Throughout the term of this Loan Agreement, the Borrower shall keep, or cause to be kept, the following insurance, paying as the same become due and payable all premiums with respect thereto:

(a) A lender's title insurance policy in an amount equal to the original principal amount of the Bonds in a form acceptable to the Issuer and the Trustee, as required by Section 4.02 herein.

(b) Insurance against loss or damage to the Facilities and all improvements therein (including, during any period of time when the Borrower is making alterations, repairs or improvements to the Facilities, improvements and betterments coverage), all subject to standard form exclusions, with uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State, in an amount equal to the full replacement value of the Building.

(c) Commercial general liability, professional liability and automobile liability insurance against claims arising in, on or about the Facilities, including in, on or about the sidewalks or premises adjacent to the Facilities, providing coverage limits not less than the coverage limits customarily carried by owners or operators of facilities of similar size and character within the State.

(d) Fidelity insurance or bonds on those of its officers and employees who handle funds of the Borrower, both in such amounts and to such extent as are customarily carried by organizations similar to the Borrower and operating properties similar in size and character to the Facilities of the Borrower.

(e) If the Facilities are in an area which has been, or is at any time during the term of this Loan Agreement, identified by the Director of the Federal Emergency Management Agency (or a like successor agency) as being in a special flood or mud slide hazards area, and in which area the sale of flood insurance has been made available under

The National Flood Insurance Act of 1968 (a "Flood Zone"), flood insurance shall be provided in an amount not less than the greater of the aggregate amount of (i) the aggregate principal amount of all of the Outstanding Bonds or (ii) one hundred percent (100%) of the insurable replacement value of the Facilities (but in no event more than the amount of such flood insurance which is reasonably available to the Borrower). If any Building or other improvement comprising part of the Facilities is not in an area identified as a Flood Zone, the Borrower shall provide or cause to be provided evidence of the same to the Trustee in a form satisfactory to the Trustee.

(f) Such other forms of insurance as are customary in the industry or as the Borrower is required by law to provide with respect to the Facilities, including, without limitation, any legally required worker's compensation insurance and disability benefits insurance.

All the insurance coverage required by this Section may be subject to deductible clauses in such amounts as are customary for facilities of similar size, type and character within the State.

All policies maintained (or caused to be maintained) by the Borrower pursuant to this Section 6.03 shall be issued by and maintained with the Utah Division of Risk Management or with generally recognized, responsible insurance companies rated not less than "A" by A.M. Best, authorized in the State, which may include "captive" insurance companies or governmental insurance pools, selected by the Borrower. The insurance policies required by subsections (a), (b) and (c) of this Section shall name the Trustee, the Issuer and the Borrower as insureds as their respective interests may appear (*provided* that with respect to insurance maintained pursuant to subsections (b) of this Section and Section 4.02 herein, the Trustee shall also be named as a mortgagee under the terms of a standard State mortgagee loss payable endorsement), and the Trustee shall also be named as an additional insured on the policy required by subsection (c) of this Section, and, *provided further* that all insurance proceeds for losses, and except for worker's compensation, fidelity insurance and liability insurance, shall be paid directly to the Trustee. Such policies or certificates of insurance shall (i) provide that (except as to insurance required pursuant to subsection (d) of this Section) the insurer will mail 30 days' written notice to the Issuer and the Trustee of any reduction in amount, material change in coverage or cancellation prior to expiration of such policy, and (ii) be satisfactory in all other respects to the Issuer.

The Borrower shall deliver or cause to be delivered to the Trustee (a) upon the commencement of the term of this Loan Agreement, the certificate of insurance which the Borrower is then required to maintain pursuant to this Section, together with evidence as to the payment of all premiums then due thereon, (b) at least 30 days prior to the expiration of any such policies evidence as to the renewal thereof, if then required by this Section, and the payment of all premiums then due with respect thereto, and (c) promptly upon request by the Issuer or the Trustee, but in any case within 30 days after the end of each Fiscal Year, a certificate of an Authorized Borrower Representative setting forth the particulars as to all insurance policies maintained by the Borrower pursuant to this Section and certifying that such insurance policies are in full force and effect, that such policies comply with the provisions of this Section and that all premiums then due thereon have been paid.

*Section 6.04. Application of Net Proceeds of Insurance.* The Net Proceeds of the insurance carried pursuant to Sections 6.03(a), (b) and (f) hereof shall be applied as provided in Section 7.01 hereof. The Net Proceeds of insurance carried pursuant to Sections 6.03(c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid.

*Section 6.05. Advances by Issuer or Trustee.* In the event the Borrower shall fail to maintain the full insurance coverage required by this Loan Agreement or shall fail to keep the Facilities in the condition required hereby (except as otherwise herein permitted), the Issuer or the Trustee may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same, or make the required repairs, renewals and replacements; and all amounts advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Borrower under this Loan Agreement to the one making the advance, which amounts the Borrower agrees to pay on demand together with interest thereon at a rate which shall be 3% per annum above the highest interest rate borne by any of the Bonds or the maximum rate permitted by law if less than such rate.

*Section 6.06. Environmental Requirements; Indemnity.* (a) The Borrower shall carry on the business and operations at the Facilities to comply in all respects and will continue to remain in compliance with all applicable Environmental Requirements and maintain all permits and licenses required thereunder. The Borrower will not conduct, or allow to be conducted, any business, operation, or activity on, under, or in the Facilities, or employ or use the Facilities or allow for it to be employed or used, to manufacture, transport, treat, store, or dispose of Regulated Chemicals which would violate or potentially violate Environmental Requirements. The Borrower shall maintain the Facilities free from contamination by Regulated Chemicals and shall not intentionally or unintentionally allow a release, discharge or emission, or threat of release, discharge or emission, of any Regulated Chemical on, under, in or about the Facilities, and shall not permit the migration or threatened migration from other properties upon, about or beneath the Facilities except de minimis amounts in the ordinary course of business in compliance with all Environmental Requirements. The Borrower shall take all appropriate responsive action, including any removal and remedial action, in the event of a release, emission, discharge or disposal of any Regulated Chemical in, on, under or about the Facilities, so as to remain in compliance with the above, and to keep the Facilities free from, and unaffected by, Regulated Chemicals.

(b) The Borrower and its successors, heirs and assigns shall, and do hereby, indemnify and hold harmless the Issuer, the Trustee, the Registered Owners, the Beneficial Owners, and their successors, assigns, trustees, directors, officers, employees, agents, contractors, subcontractors, licensees, and invitees (collectively referred to in this Section 6.06 as "*Indemnified Parties*"), for, from and against any and all Environmental Damages that such parties may incur as a result of the existence of a violation of Environmental Requirements pertaining to the Facilities, regardless of whether or not such Environmental Damages were caused by or within the control of the Borrower. Without prejudice to the survival of any other agreements of the Borrower hereunder, this indemnification shall survive any termination, payment, or satisfaction of the indebtedness and the termination of this Loan Agreement, and any foreclosure or any other transfer of any kind of the Facilities. Notwithstanding anything to the contrary contained in this Section 6.06, no

indemnification shall be required for any Environmental Damage incurred solely as the result of the gross negligence or willful misconduct of the party seeking indemnification.

## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

*Section 7.01. Damage, Destruction and Condemnation.* In the event of a casualty or condemnation with respect to the Facilities, and so long as no Event of Default exists and is continuing, the proceeds from any insurance policy or the proceeds of any condemnation award resulting from such casualty or condemnation, shall be used as follows:

(a) Whenever such proceeds from any insurance policy or condemnation award are less than or equal to \$100,000, such proceeds shall be paid directly to the Borrower and used for the repair, replacement or restoration of the Facilities to substantially the same condition as it was prior to such damage, destruction or condemnation or, if applicable, for the prepayment of the Loan as provided in Section 7.02.

(b) Whenever such Net Proceeds from any insurance policy or condemnation award are greater than \$100,000, such Net Proceeds shall be paid to the Trustee to be applied to repair, replace or restore the Facilities or, if applicable, to the prepayment of the Loan as provided in Section 7.02.

(c) If the proceeds are used to repair, replace or restore the Facilities, the Net Proceeds from such insurance policy or condemnation award shall be disbursed by the Trustee or the Borrower, as applicable, for the repair, restoration or replacement of the Facilities. The Trustee shall disburse such Net Proceeds upon the receipt by the Trustee from the Borrower of (i) a certificate of a Consulting Architect which substantially states that such repairs, replacements or restorations will restore the Facilities to substantially its original condition, will be completed in accordance with plans and specifications previously provided to the Trustee, and that such repairs, replacements or restorations when completed in accordance with the plans and specifications previously furnished to the Trustee will comply with all applicable statutes, codes and regulations; (ii) a certificate of an Authorized Borrower Representative stating that sufficient moneys are available to pay for such repair, restoration or replacements to be completed and together with available business interruption insurance and other available Pledged Revenues, to pay debt service on the related Series of Bonds and Operating Expenses of the Facilities during the restoration period; (iii) requisitions and certificates from the Borrower substantially similar to that set forth in *Exhibit B* attached hereto; (iv) applicable Lien waivers or conditional Lien waivers; (v) a guaranteed maximum price construction contract; (vi) evidence of the existence of performance and payment bonds therefor; and (vii) evidence that the Borrower has acquired all permits and licenses necessary for such construction. The Trustee shall retain 10% of the requested disbursements to be disbursed upon final completion of the repairs, replacements, restorations or improvements as certified by the Consulting Architect and receipt of certificates of occupancy and waivers of Liens. If at any time during the restoration, the insurance or casualty proceeds are less than the estimated costs



to restore, repair or replace the Facilities, the Borrower shall provide or cause to be provided to the Trustee with cash or cash equivalents in an amount equal to the shortfall. After completion of any such repairs, replacements, or improvements, the remaining funds shall be transferred by the Trustee to the Debt Service Account, accordingly, and used to prepay the Loan and to redeem Bonds pursuant to the provisions of Section 7.02 of this Loan Agreement and Section 5.03 of the Indenture. Notwithstanding the above provisions, all proceeds of business interruption insurance shall be paid to the Trustee and deemed to be Pledged Revenues for purposes of this Loan Agreement, including, without limitation, Section 5.01 hereof. Upon at least 10 days' notice to the Borrower, the Trustee may, at the Borrower's expenses, hire or appoint a construction manager or monitor to verify compliance with the requirements of this section.

(d) Notwithstanding any of the foregoing, if net proceeds from the casualty or condemnation of all or any portion of the Facilities exceed \$100,000, and the Loan is not otherwise to be prepaid pursuant to Section 7.02 hereof, the Borrower shall immediately notify the Trustee regarding such casualty or condemnation and shall, no later than 30 days following the occurrence of the events resulting in the casualty or condemnation, notify the Trustee in writing. Said notice from Borrower shall contain the following additional information, together with a statement from the Borrower certifying to the accuracy of such information:

- (i) a description of the damaged, destroyed or taken portion of the Facilities;
- (ii) the estimated time to complete repair, replacement or restoration of the damaged, destroyed or taken portion of the Facilities, as determined by a qualified independent contractor retained by the Borrower;
- (iii) the total estimated cost of such replacement, repair or restoration, as determined by a qualified independent contractor retained by the Borrower; and
- (iv) the source of funds the Borrower has available (including, but not limited to, insurance proceeds), to complete the repair, replacement or restoration and to make payments due under this Loan Agreement during the period of repair, replacement or restoration.

*Section 7.02. Optional Prepayment from Insurance or Condemnation Proceeds.* The Promissory Notes are subject to optional prepayment as a whole or in part at a price of 100% of the principal amount thereof plus accrued interest thereon to the date of prepayment, but without premium, from the Net Proceeds of any insurance policy or condemnation award, if one or more of the events set forth in Section 5.03 of the Indenture are applicable. The prepayment date shall be the date selected by the Borrower and any such prepayment shall be applied as provided in Section 5.03 of the Indenture.

*Section 7.03. No Change in Loan Payments; No Liens.* All buildings, improvements and equipment acquired in the repair, rebuilding or restoration of the Facilities shall be deemed a part

of the Facilities and shall be available for use and occupancy by the Borrower, without the payment of any payments hereunder other than the Loan Payments and other payments required to be made under this Loan Agreement, to the same extent as if they were specifically described herein; *provided* that no buildings, improvements or equipment shall be acquired subject to any Lien or encumbrance other than Permitted Encumbrances.

*Section 7.04. Investment of Net Proceeds.* Any Net Proceeds of insurance payments or condemnation awards held by the Trustee pending restoration, repair or rebuilding shall be invested in Permitted Investments in the same manner as provided in Section 6.01 of the Indenture. Any earnings or profits on such investments shall be considered part of the Net Proceeds.

## ARTICLE VIII

### SPECIAL COVENANTS

*Section 8.01. No Warranty of Condition or Suitability by the Issuer.* The Issuer makes no warranty, either express or implied, as to the Facilities or that it will be suitable for the Borrower's purposes or needs or that the proceeds of the Bonds will be sufficient to pay the Cost of the Facilities.

*Section 8.02. Consolidation, Merger, Sale or Conveyance.* The Borrower agrees that during the term of this Loan Agreement, it will maintain its corporate existence, will continue to be a nonprofit corporation duly qualified to do business in the State, will not merge or consolidate with, or sell or convey, all or substantially all of its assets to, any Person, unless the following conditions shall be satisfied:

(a) With respect to the Borrower:

- (i) no Event of Default has occurred and is continuing;
- (ii) The Borrower shall acquire the consent of the Issuer to such transaction and provide to the Trustee notice of its intent at least 90 days in advance of such consolidation, merger, sale or conveyance;
- (iii) The Borrower shall provide the Issuer and the Trustee with an opinion of Bond Counsel acceptable to the Issuer to the effect that such merger, consolidation, sale or conveyance, would not adversely affect the validity of any of the Bonds, the excludability from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds;
- (iv) The Borrower shall provide the Issuer and the Trustee with an Opinion of Counsel to the Borrower (which may be rendered in reliance upon the Opinion of Counsel to such other corporation), stating that none of the other corporations which are a party to such consolidation, merger or transfer has any pending litigation other than that arising in the ordinary course of business or, has any pending litigation which might reasonably result in a substantial adverse judgment. For the purposes of the preceding sentence, the term "substantial adverse judgment" shall mean a judgment in an amount which exceeds the

insurance or reserves therefor by a sum which is more than 2% of the aggregate net worth of the resulting, surviving or transferee corporation immediately after the consummation of such consolidation, merger or transfer and after giving effect thereto; and

(v) The Borrower, in the case of a consolidation, merger, sale or conveyance, shall provide evidence to the Trustee and the Issuer that the entity can continue to operate the Facilities as a charter school in accordance with the Charter Schools Act, as amended and that the entity is entitled to receive the State Payments.

(b) with respect to the acquirer of such assets or the entity with which it shall be consolidated or the resulting entity in the case of a merger (the "Successor"):

(i) the Successor provides to the Trustee a certificate of an authorized representative, accompanied by a confirming certificate of an independent certified public accountant, to the effect that:

(A) the combined Maximum Annual Debt Service for outstanding Long-Term Indebtedness of the Successor immediately following the merger, consolidation, or acquisition is equal to or less than 10% of the Pledged Revenues of the Borrower and the acquirer of such assets or the entity with which it shall be consolidated or the resulting entity in the case of a merger, as the case may be, as determined in their most recent budget(s); or

(B) the Net Income Available for Debt Service of the Borrower and the acquirer of such assets or the entity with which it shall be consolidated or the resulting entity in the case of a merger, as the case may be, as determined in their most recent budget(s) must be sufficient to pay an amount representing not less than 120% of the combined Maximum Annual Debt Service for currently outstanding Long-Term Indebtedness of the Successor.

(ii) the Successor shall assume in writing the performance and observance of all covenants and conditions of this Agreement; and

(iii) the Successor shall deliver to the Trustee within 30 days of the close of such transaction, copies of all documents executed in connection therewith, one document of which shall include an Opinion of Counsel to the Borrower that all conditions in this Agreement have been satisfied and that all liabilities and obligations of the Borrower under the Borrower Documents shall become obligations of the Successor; provided, however, the Borrower shall not be released from the same.

*Section 8.03. Further Assurances.* The Issuer and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Loan Agreement, subject to the terms and conditions of Section 10.06 of the Indenture.

*Section 8.04. Audits.* The Borrower agrees that it will have its books and records audited annually by an independent accountant, as soon as practicable after the close of such Fiscal Year, and shall cause to be furnished to the Issuer, the Dissemination Agent, and the Trustee simultaneously with submission to the Office of the State Auditor within 120 days after the end of each Fiscal Year, a copy (which may be sent electronically) of the annual audited financial report (together with any management letter delivered by the auditors) accompanied by the independent accountant's certification of compliance stating that the Borrower is in compliance with the debt service coverage and Cash on Hand covenants set forth in Sections 2.08 and 8.13 herein and a certificate signed by an Authorized Borrower Representative setting forth whether or not the Borrower currently is, or has been during such Fiscal Year, in default of the performance of any covenant contained in the Borrower Documents and if so, specifying such default.

*Section 8.05. Financial Statements; Reports; Annual Certificate.*

(a) *Maintenance of Books and Accounts.* The Borrower agrees that it will maintain and make available to each Owner, the Issuer and the Trustee proper books of records and accounts of all of its operations with full, true and correct entries of all of its dealings substantially in accordance with practices generally used for public school accounting and such other data and information as may reasonably be requested by the Issuer and the Trustee from time to time.

(b) *Financial Reports.* The Borrower shall provide the Dissemination Agent, the Trustee, and the Issuer the following information as applicable:

(i) a copy (which may be sent electronically) of the Borrower's adopted annual budget for the present Fiscal Year within 30 days of its adoption by the governing board;

(ii) a copy of revisions, if any, to the Borrower's annual budget as approved by its governing board within 30 days of adoption by the governing board;

(iii) any information provided to the Rating Agency as part of such Rating Agency's ongoing surveillance; and

(iv) a copy of the Charter School's quarterly unaudited financials within 60 days following the end of each calendar quarter.

The Trustee shall transmit the information contained in (i) through (iv) above to any Beneficial Owner requesting such in writing and certifying to the Trustee its beneficial ownership of Bonds. The Trustee shall have no duty hereunder regarding such information other than to retain any such information that it receives and to transmit same in accordance herewith.

(c) *Charter Compliance.* The Borrower will deliver to the Trustee and the Issuer, within 30 days of receipt, any notice or report with respect to charter compliance that would allow the commencement of any process or proceedings towards charter revocation or non-renewal.

(d) *Reports.* The Borrower shall provide the Issuer, the Dissemination Agent and the Trustee with a copy (which may be by electronic transfer) of each of the following:

(i) by the date(s) specified in the Continuing Disclosure Undertaking, a copy of each filing submitted pursuant to the Continuing Disclosure Undertaking (including, but not limited to, updated enrollment and waiting list information);

(ii) within 60 days of the end of each Fiscal Year, Bond payment and Debt Service Reserve summary statements from the Trustee with respect to such Fiscal Year;

(iii) within 120 days following the end of each Fiscal Year, a certificate of the Borrower's auditor as to whether the Borrower is in compliance with the Debt Service coverage requirement of Section 2.08 of this Loan Agreement; and

(iv) within 120 days after the end of the Borrower's Fiscal Year a certificate executed by the Borrower's president or chief financial officer stating that:

(A) A review of the activities of the Borrower during such Fiscal Year and of performance hereunder has been made under his/her supervision; and

(B) He/She is familiar with the provisions of the Borrower Documents and to the best of his/her knowledge, based on such review and familiarity, the Borrower has fulfilled all of its obligations thereunder throughout the Fiscal Year, and there have been no defaults under the Borrower Documents or, if there has been a default in the fulfillment of any such obligation in such Fiscal Year, specifying each such default known to him/her and the nature and status thereof and the actions taken or being taken to correct such default.

(e) *Charter Contract Report.* Within two weeks of receipt from the Authorizer, the Borrower will deliver to Trustee and Issuer any notice or report with respect to charter compliance that would allow the Authorizer to begin any process or proceedings towards charter revocation or non-renewal.

(f) *Educational Testing Report.* Simultaneously with delivery to the Authorizer or the State, and in any event within 30 days of delivery, the Borrower will deliver to the Trustee and the Issuer the result of any educational testing required by State or federal law.

The Trustee shall have no duty regarding information received pursuant to this Section 8.05 other than to retain any such information and to transmit the same at the Borrower's cost to the Issuer and to an Owner at the request of the Issuer or such Owner, to the extent not already provided by the Borrower.

*Section 8.06. Release and Indemnification Covenants.* (a) The Borrower agrees to pay, defend, protect, indemnify, and hold each of the Issuer Indemnified Parties, the Trustee, and their officers, directors, employees and agents (the "Trustee Indemnified Parties") harmless for, from and against (i) any and all Liabilities directly or indirectly arising from or relating to the Loan, this Loan Agreement, the Facilities, the Deed of Trust, the Credit Enhancement Program, and the Tax Certificate, and (ii) any and all Liabilities directly or indirectly arising from or relating to the

Bonds, the Indenture, or any document related to the issuance and sale of the Bonds, including, but not limited to, the following:

(i) Any injury to or death of any person or damage to property in or upon the Facilities or growing out of or connected with the use, nonuse, condition, or occupancy of the Facilities or any part thereof;

(ii) Violation of any agreement, covenant, or condition of any of the Borrower Documents;

(iii) Violation of any agreement, contract, or restriction relating to the Facilities;

(iv) Violation of any law, ordinance, or regulation affecting the Facilities or any part thereof or the ownership, occupancy, or use thereof;

(v) The issuance and sale of the Bonds or any of them;

(vi) Any statement, information, or certificate furnished by the Borrower to the Issuer or the Trustee which is misleading, untrue, incomplete, or incorrect in any respect; and

(vii) Any action taken in a fiduciary capacity with respect to the giving of approvals and consents and the exercise of any remedies, including without limitation, acceleration and foreclosure.

(b) The Borrower also agrees to pay, defend, protect, indemnify, and hold each of the Issuer Indemnified Parties and Trustee Indemnified Parties harmless for, from, and against any and all Liabilities directly or indirectly arising from or relating to (i) any errors or omissions of any nature whatsoever contained in any legal proceedings or other official representation or inducement made by or to the Issuer pertaining to the Bonds, and (ii) any fraud or misrepresentations or omissions contained in the proceedings of the Issuer relating to the issuance of the Bonds or pertaining to the financial condition of the Borrower which, if known to the Underwriter, might be considered a factor in such Person's decision to purchase the Bonds; *provided, however*, nothing in this subsection shall be deemed to provide the Issuer with indemnification for the Issuer's omissions or misstatements contained in the Offering Document under the captions "THE ISSUER" and "LEGAL MATTERS—No Proceedings Against the Issuer" as it relates to the Issuer.

(c) Nothing in paragraphs (a) and (b) above shall be deemed to provide indemnification to any Issuer Indemnified or Trustee Indemnified Party with respect to any Liabilities arising from the successful allegation of fraud, gross negligence, or willful misconduct of such party.

(d) Any party entitled to indemnification hereunder shall notify the Borrower of the existence of any claim, demand, or other matter to which the Borrower's indemnification obligation applies, and shall give the Borrower a reasonable opportunity to defend the same at its own expense and with counsel satisfactory to the Issuer Indemnified Party and Trustee Indemnified

Party, as applicable, *provided* that the Issuer Indemnified Party and Trustee Indemnified Party shall at all times also have the right to fully participate in the defense. If the Issuer Indemnified Party or Trustee Indemnified Party is advised in an Opinion of Counsel that there may be legal defenses available to either of them which are different from or in addition to those available to the Borrower or if the Borrower shall, after receiving notice of the Borrower's indemnification obligation and within a period of time necessary to preserve any and all defenses to any claim asserted, fails to assume the defense or to employ counsel for that purpose satisfactory to the Issuer Indemnified Party and Trustee Indemnified Party, as applicable, the Issuer Indemnified Party and Trustee Indemnified Party, as applicable, shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf of, for the account of, and at the risk of, the Borrower. The Borrower shall be responsible for the reasonable counsel fees, costs, and expenses of the Issuer Indemnified and Trustee Indemnified Party in conducting its defense.

(e) The Borrower shall be responsible for the reasonable counsel fees, costs, and expenses of the Issuer Indemnified Parties and the Trustee Indemnified Parties in conducting its defense.

(f) Notwithstanding the foregoing, the Borrower shall not be considered an "Indemnified Party" for purposes of this Section.

*Section 8.07. Authority of Authorized Representative.* Whenever under the provisions of this Loan Agreement or the Indenture the approval of the Borrower or the Issuer is required, or the Issuer, the Trustee or the Borrower, as applicable, is required to take some action at the request of the Borrower or the Issuer, such approval or such request shall be made by the Authorized Borrower Representative or Authorized Issuer Representative, as applicable, unless otherwise specified in this Loan Agreement or the Indenture. The Issuer, the Trustee or the Borrower shall be authorized to act on any such approval or request and the Borrower or the Issuer, as applicable, shall have no complaint against the Issuer, the Trustee or the Borrower, as applicable, as a result of any such action taken in accordance with such approval or request. The execution of any document or certificate required under the provisions of this Loan Agreement or the Indenture by an Authorized Borrower Representative or the Authorized Issuer Representative shall be on behalf of the Borrower or the Issuer, respectively, and shall not result in any personal liability of such representative.

*Section 8.08. Licenses and Qualifications.* The Borrower will do, or cause to be done, all things necessary to obtain, renew and secure all permits, licenses and other governmental approvals and to comply, or cause its lessees to comply, with such permits, licenses and other governmental approvals necessary for operation of the Facilities as a charter school (as defined in the Act).

*Section 8.09. Right to Inspect.* Following reasonable notice to the Borrower (and in any event at least two business days prior to such visit), at any and all reasonable times during business hours, the Trustee, the Issuer and their duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect the Facilities, including all books and records of the Borrower (excluding records the confidentiality of which may be

protected by law), and to make such copies and memoranda from and with regard thereto as may be desired; *provided, however*, that they shall maintain these books and records in confidence unless required by applicable law to do otherwise and it is necessary to distribute the information to some other third party under applicable law.

*Section 8.10. Lease or Other Disposition of the Facilities.* The Borrower shall have the right to lease all or any part of the Facilities; *provided, however*, that the terms and provisions of any future leases will allow the Borrower to comply with the provisions of this Loan Agreement, the Tax Certificate, the Deed of Trust and contain the restrictions upon the use of the Facilities contained in Section 8.11 of this Loan Agreement; and *provided* that any future leases will provide for rental payments to be made directly to the Trustee to the extent of then current payments required under Section 5.01(a) hereof, and *provided* that the Borrower shall first deliver to the Trustee an opinion of Bond Counsel to the effect that such lease will not cause interest on the Bonds to be includible in gross income for federal income tax purposes. Other than leases permitted by this Section or as provided in Section 8.02 hereof, the Borrower agrees that it will not sell or otherwise dispose of the Facilities other than (i) not more than \$4,000 aggregate book value of property, plant and equipment per year without fair market value consideration and (ii) property, plant or equipment sold or transferred for not less than fair market value, as determined by an appraiser or other qualified professional.

*Section 8.11. Nonsectarian Use.* The Borrower acknowledges that in order for Tax-Exempt Bonds to be validly issued and to comply with the Charter Schools Act, it is necessary that the requirements of the United States Constitution and the Constitution of the State with respect to the establishment and free exercise of religion be satisfied. The Borrower covenants that it will not operate the charter school in a sectarian manner for so long as the Tax-Exempt Bonds are outstanding and will not use the proceeds of the Tax-Exempt Bonds to acquire, construct, install, or refinance any facilities which are intended to be used for sectarian purposes. The Borrower will comply with all applicable state and federal laws concerning discrimination on the basis of race, creed, color, sex, national origin, or religious belief and will respect, permit, and not interfere with the religious beliefs of persons working for the Borrower. The Borrower may rely upon the opinion of Bond Counsel acceptable to the Issuer in order to determine whether it is in compliance from time to time with the covenants contained in this paragraph.

*Section 8.12. Limitations on Incurrence of Long-Term Indebtedness.* The Borrower shall not incur, assume, guarantee, or otherwise become liable for any Long-Term Indebtedness (other than Long-Term Indebtedness that is payable on a basis subordinate to the Borrower's obligations with respect to the Bonds) other than upon satisfaction of the following requirements:

(i) Delivery to the Trustee of a certificate signed by an Authorized Representative of the Borrower stating that no Event of Default is then existing under the Indenture or any debt outstanding or any agreement entered into by the Borrower in conjunction with such debt;

(ii) Delivery to the Trustee of the certificate signed by an Authorized Representative of the Borrower described in subsection (A) or (B) below:

(A) *Projected Coverage for Additional Debt.* A certificate signed by an Authorized Representative of the Borrower stating that, for each of the Borrower's first two full Fiscal Years beginning (i) the first full Fiscal Year following the estimated date of completion and initial use of all revenue producing facilities to be financed with such Long-Term Indebtedness, or (ii) if no new facilities are being financed with the proposed Debt, the first full Fiscal Year following the issuance of the proposed Long-Term Indebtedness investment income thereon or from other appropriated sources (other than Available Revenues), estimated Net Income Available for Debt Service equals at least 1.15 times the Maximum Annual Debt Service on all Indebtedness to be outstanding upon the issuance of the proposed Long-Term Indebtedness (including the additional annual Debt Service requirements for the Long-Term Indebtedness to be issued); or

(B) *Refunding Debt.* If Long-Term Indebtedness is being issued for the purpose of refunding any outstanding Indebtedness, such Indebtedness may be issued (as an alternative to satisfying the requirements of paragraph (A) above) upon the delivery of a certificate signed by an Authorized Representative of the Borrower stating that the annual Debt Service requirement of the Borrower will be reduced after the refunding of such Indebtedness for each year in which the proposed Long-Term Indebtedness is scheduled to be outstanding.

The Trustee shall have no duty regarding such information delivered in accordance with this Section other than to retain any such information that it receives and transmit same in accordance herewith.

*Section 8.13. Covenant as to Cash on Hand.* The Borrower shall maintain a cash, liquid investment (including amounts on deposit in the Repair and Replacement Fund), and accounts receivable balance (provided such accounts receivable are from the State) (collectively, "Cash on Hand") sufficient to cover at least 40 days of the sum resulting from the Operating Expenses. The covenant made in this Section shall be tested annually based upon the results included in the annual audited financial statements of the Borrower distributed pursuant to Section 8.4.

In the event that the Borrower is unable to comply with the requirements of the above covenant within 12 months of the initial non-compliance, then the Beneficial Owners of at least a majority of the Outstanding Bonds or the Issuer have the right to direct the Trustee to require the Borrower to engage, at the Borrower's expense, a Management Consultant, which shall deliver a written report within 75 days of engagement to the Trustee, the Beneficial Owners, the Issuer and the Borrower containing recommendations as to the operation and administration of the Borrower and its facilities as such Management Consultant deems appropriate, including any recommendation as to the revisions of the methods of operation thereof.

Upon submission of the Management Consultant's report, the Borrower is required to arrange for payment of the amount owed to the Management Consultant and issue a written certificate to the Trustee and the Issuer indicating its acceptance or rejection of all or any material portion of the recommendations of the consultant within 30 days of receiving the report of the Management Consultant. The Beneficial Owners of 2/3rds of the Outstanding Bonds or the Issuer

shall have the right to require the Borrower to comply with any reasonable recommendation of the Management Consultant. The Borrower shall work with the Beneficial Owners or the Issuer to follow the recommendations.

*Section 8.14. Repair and Replacement Fund Deposits.* (a) The Repair and Replacement Fund Requirement shall initially be funded at the time of issuance of the Series 2023 Bonds by a \$100,000 transfer of Charter School funds to the Trustee.

(b) Except as provided in (a) above, the Borrower hereby covenants that, unless the amount on deposit in the Repair and Replacement Fund equals or exceeds the Repair and Replacement Requirement (in which case no additional deposits are required), the Borrower shall pay or cause to be paid to the Trustee, for deposit to the Repair and Replacement Fund, Repair and Replacement Monthly Deposits on each Monthly Disbursement Date; *provided*, that, in no instance shall any deposit be required which would result in the balance in the Repair and Replacement Fund exceeding the Repair and Replacement Requirement.

(c) If, after initially funding the Repair and Replacement Fund to an amount equal to the Repair and Replacement Requirement, the Trustee notifies Borrower that the amount on deposit in the Repair and Replacement Fund is less than the Repair and Replacement Requirement, the Borrower shall restore the required balance in not more than 24 equal installments beginning with the next succeeding Monthly Disbursement Date.

## ARTICLE IX

### ASSIGNMENT AND PLEDGE; REDEMPTION OF BONDS

*Section 9.01. Creation of Security Interest.* With respect to the Pledged Revenues and any other collateral pledged hereunder governed by the UCC, this Loan Agreement shall constitute a security agreement between the Borrower as debtor and the Trustee as assignee of the Issuer's right and interests in and under this Loan Agreement and the Borrower hereby grants to the Trustee a security interest in the Pledged Revenues.

*Section 9.02. Assignment and Pledge by Issuer.* The Issuer shall assign certain of its rights and interests in and under this Loan Agreement, including the Pledged Revenues, to the Trustee pursuant to the Indenture as security for payment of the principal of, premium, if any, and interest on the Bonds. The Borrower hereby consents to such assignment.

*Section 9.03. Redemption of Bonds.* Upon the agreement of the Borrower to deposit moneys into the Debt Service Account in an amount sufficient to redeem Bonds subject to redemption, the Trustee, at the written request of the Borrower, shall forthwith take all steps (other than the payment of the money required for such redemption) permitted and necessary under the applicable redemption provisions of the Indenture to effect redemption of all or part of the then Outstanding Bonds on the redemption date.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

*Section 10.01. Events of Default Defined.* The following shall be “Events of Default” under this Loan Agreement (subject to the notice requirements of Section 12.19 herein) and the term “Event of Default” shall mean, whenever it is used in this Loan Agreement, any one or more of the following events:

(a) Failure by the Borrower to pay the Loan Payments required to be paid under Section 5.01 hereof when due.

(b) Except as otherwise set forth in this Section 10.01, failure by the Borrower to observe or perform any covenant, condition or agreement on its part to be observed or performed herein other than as set forth in subsection (a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied, shall have been given to the Borrower by the Issuer or the Trustee; provided, with respect to any such failure covered by this subsection (b), no Event of Default shall be deemed to have occurred so long as within such 30 day period the Borrower shall have informed the Trustee of the plan to cure and, if such plan is acceptable to the Trustee, a course of action adequate in the judgment of the Trustee to remedy such failure is commenced within 30 days of the written notification and shall thereafter be diligently prosecuted to completion and the failure shall be remedied thereby within 90 days of the written notification. The Borrower shall deliver a written report to the Trustee at least once every 30 days setting forth the status of all attempts to cure such Events of Default.

(c) The dissolution or liquidation of the Borrower, or failure by the Borrower promptly to contest and have lifted any execution, garnishment, or attachment of such consequence as will impair its ability to meet its obligations with respect to the Facilities or to make any payments under this Loan Agreement. The phrase “dissolution or liquidation of the Borrower,” as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another domestic corporation or a dissolution or liquidation of the Borrower following a transfer of all or substantially all of its assets under the conditions permitting such actions contained in Section 8.02 hereof.

(d) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Borrower in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Borrower or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days.

(e) The commencement by the Borrower of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state

bankruptcy, insolvency or other similar law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Borrower or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the failure of the Borrower generally to pay its debts as such debts become due, or the taking of corporate action by the Borrower in furtherance of any of the foregoing.

(f) Failure of the Borrower to comply with any covenants contained in the Tax Certificate.

(g) The occurrence of an Event of Default under the Indenture, the Deed of Trust or any of the Borrower Documents.

(h) Any representation or warranty made by the Borrower herein or made by the Borrower in any statement or certificate furnished by the Borrower either required hereby or in connection with the execution and delivery of this Loan Agreement and the sale and the issuance of the Bonds, shall prove to have been untrue in any material respect as of the date of the issuance or making thereof.

(i) Judgment for the payment of money in excess of \$25,000 (which is not covered by insurance) is rendered by any court or other governmental body against the Borrower, and the Borrower does not discharge same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within 60 days from the date of entry thereof, and within said 60-day period or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefor as may be required under Generally Accepted Accounting Principles.

(j) A writ or warrant of attachment or any similar process shall be issued by any court against the Facilities of the Borrower, and such writ or warrant of attachment or any similar process is not released or bonded within 60 days after its entry.

(k) The occurrence and continuation of any event of default under any other parity Indebtedness of the Borrower, or subordinate Indebtedness of the Borrower secured by a Lien on the Facilities or the Pledged Revenues, or any agreement in connection with or securing such parity or subordinate Indebtedness, if as a result of such event of default the holder of such parity or subordinate Indebtedness would have the right to declare the principal thereof to be immediately due and payable.

(l) A termination of the Borrower’s charter by the chartering entity pursuant to the Charter Schools Act.

(m) Any of the Borrower’s representations and warranties herein or in any of the other Borrower Documents with respect to environmental matters are false in any material respect.

(n) Failure of the Borrower to observe or perform its obligations under Section 2.08.

The foregoing provisions of subsection (b) of this Section are subject to the following limitations: if by reason of force majeure the Borrower is unable in whole or in part to carry out its agreements herein contained, other than the obligations on the part of the Borrower contained in Article V and in Sections 6.02, 6.03 and 8.06 hereof, the Borrower shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of the State or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricane; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities, including, without limitation, communications facilities; or any other cause or event not reasonably within the control of the Borrower. The Borrower agrees, however, if possible, to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; *provided*, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Borrower, and the Borrower shall not be required to make settlement of strikes, lockouts or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Borrower unfavorable to the Borrower.

*Section 10.02. Remedies on Default.* If an Event of Default occurs hereunder, then the holders of a majority of Bonds Outstanding may direct the Trustee to pursue a remedy unless such Event of Default is waived as contemplated in Section 10.05 hereof. Whenever an Event of Default referred to in Section 10.01 hereof shall have occurred and is continuing, the Issuer, or the Trustee where so provided herein, may, and at the direction of the Beneficial Owners of a majority of all Bonds Outstanding shall, take any one or more of the following remedial steps:

(a) The Trustee (acting as assignee of the Issuer) or the Issuer (in the event of a failure of the Trustee to act under this subsection), as and to the extent provided in the Indenture, may declare the Loan Payments payable hereunder for the remainder of the term of this Loan Agreement to be immediately due and payable, whereupon the same shall become due and payable.

(b) The Trustee (acting as assignee of the Issuer) or the Issuer (in the event of a failure of the Trustee to act under this subsection), as and to the extent provided in the Indenture may require the Borrower to retain, at its expense, a Management Consultant to submit a written report and make recommendations regarding the operations of the Facilities (a copy of such report and recommendations shall be filed with the Trustee) with respect to the Borrower until such time as the Event of Default is cured or the Management Consultant is no longer required by Owners of not less than a majority of the Outstanding principal amount of the Bonds. Except as prohibited by law or the terms of the Borrower Documents, the Borrower will adopt and follow all reasonable recommendations of the Management Consultant. Any contract entered into between the Borrower and any

Management Consultant must comply with the terms of this Loan Agreement and the Tax Certificate.

(c) The Trustee (acting as assignee of the Issuer) or the Issuer (in the event of a failure of the Trustee to act under this subsection), as and to the extent provided in the Indenture, may exercise the power of sale or foreclosure under the Deed of Trust on the property subject thereto and may exercise all the rights and remedies of a secured party under the Utah Uniform Commercial Code with respect thereto and with respect to the Pledged Revenues.

(d) The Trustee (acting as assignee of the Issuer) or the Issuer (in the event of a failure of the Trustee to act under this subsection), as and to the extent provided in the Indenture, may take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance or observance of any obligations, agreements, or covenants of the Borrower under this Loan Agreement and the Borrower Documents.

(e) The Trustee may (A) replace the manager(s) of the Borrower, if any, and/or (B) replace any or all members of the Borrower's Board of Trustees.

Notwithstanding the foregoing, prior to the exercise by the Issuer or the Trustee of any remedy that would prevent the application of this paragraph, the Borrower may, at any time, pay all accrued payments hereunder (exclusive of any such payments accrued solely by virtue of declaration pursuant to subsection (a) of the first paragraph of this Section) and fully cure all defaults, and in such event, the Borrower shall be fully reinstated to its position hereunder as if such Event of Default had never occurred.

In the event that the Borrower fails to make any payment required hereby, the payment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid.

Whenever any Event of Default has occurred and is continuing under this Loan Agreement, the Trustee may, but except as otherwise provided in the Indenture shall not be obligated to, exercise any or all of the rights of the Issuer under this Article, upon notice as required to the Issuer. In addition, the Trustee shall have available to it all of the remedies prescribed in the Indenture. If the Trustee is not enforcing the Issuer's rights in a manner to protect the Issuer or is otherwise taking action that brings adverse consequences to the Issuer, then the Issuer may, without the consent of the Trustee, take whatever action at law or in equity may appear necessary or appropriate to enforce the Issuer's Unassigned Rights and to collect all sums then due and thereafter to become due to the Issuer under this Loan Agreement.

Any amounts collected pursuant to action taken under the immediately preceding paragraph (other than sums collected for the Issuer on account of the Issuer's Unassigned Rights, which sums shall be paid directly to the Issuer), after reimbursement of any costs incurred by the Issuer, the Trustee in connection therewith shall be applied in accordance with the provisions of the Indenture.

If the Issuer or the Trustee shall have proceeded to enforce their rights under this Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Issuer or the Trustee, then and in every such case, the Borrower, the Issuer and the Trustee shall be restored to their respective positions and rights hereunder, and all rights, remedies and powers of the Borrower, the Issuer and the Trustee shall continue as though no such proceedings had been taken.

*Section 10.03. No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required herein or by applicable law. Such rights and remedies given the Issuer hereunder shall also extend to the Trustee, the Beneficial Owners and the Registered Owners of the Bonds, subject to the Indenture.

*Section 10.04. Agreement to Pay Attorneys' Fees and Expenses.* In the event the Borrower should breach any of the provisions of this Loan Agreement and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of Loan Payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein contained, the Borrower agrees that it will on demand therefor pay to the Issuer and the Trustee, as the case may be, the reasonable fees of such attorneys and such other reasonable expenses incurred by the Issuer and the Trustee. The obligations of the Borrower arising under this Section shall continue in full force and effect notwithstanding the final payment of the Bonds or the termination of this Loan Agreement for any reason.

*Section 10.05. Waiver.* In the event any agreement contained in this Loan Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder. In view of the assignment of the Issuer's rights in and under this Loan Agreement to the Trustee under the Indenture, the Issuer shall have no power to waive any Event of Default hereunder without the consent of the Trustee and the Beneficial Owners of at least a majority of the Outstanding principal amount of the Bonds. Notwithstanding the foregoing, a waiver of an Event of Default under the Indenture or a rescission of a declaration of acceleration of the Bonds and a rescission and annulment of its consequences shall constitute a waiver of the corresponding Event of Default under this Loan Agreement and a rescission and annulment of its consequences; *provided*, that no such waiver or rescission shall extend to or affect any subsequent or other default hereunder or impair any right consequent thereon.

*Section 10.06. Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Issuer or the Borrower or any other obligor upon the Bonds or the property of the Issuer and the Trustee (irrespective of whether the principal of the Bonds shall then

be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Issuer and/or the Borrower for the payment of overdue principal or interest) shall be entitled and empowered, by intervention of such proceeding or otherwise,

(i) to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Bonds then Outstanding and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Owners allowed in such judicial proceeding; and to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and

(ii) any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Owner to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Owners, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and its agent and counsel.

So long as Bonds are outstanding the Trustee is appointed under the terms of the Indenture, and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee, the true and lawful attorney in fact of the respective Owners of the Bonds, with authority to make or file, in the respective names of the Owners of the Bonds or on behalf of all Owners of the Bonds, as a class, any proof of debt, amendment to proof of debt, petition or other documents and to execute any other papers and documents and to do and perform any and all acts and things for and on behalf of all Owners of the Bonds as a class, as may be necessary or advisable in the opinion of the Trustee, in order to have the respective claim of the Owners of the Bonds against the Issuer, the Borrower or any other obligor allowed in receivership, insolvency, liquidation, bankruptcy or other proceeding, to which the Issuer, the Borrower or any other obligor, as the case may be, shall be a party. The Trustee shall have full power of substitution and delegation in respect of any such powers.

*Section 10.07. Treatment of Funds in Bankruptcy.* The Borrower acknowledges and agrees that in the event Borrower commences a case under the United States Bankruptcy Code located at 11 U.S.C. §§ 101 *et seq.* (the "*Bankruptcy Code*") or is the subject of an involuntary case that results in an order for relief under the Bankruptcy Code: (i) amounts on deposit in any of the Funds are not, nor shall they be deemed to be, property of Borrower's bankruptcy estate as defined by § 541 of the Bankruptcy Code; (ii) that in no event shall Borrower assert, claim or contend that amounts on deposit in any of the Funds are property of Borrower's bankruptcy estate; and (iii) that amounts on deposit in any of the Funds are held in trust solely for the benefit of the Registered Owners and Beneficial Owners, shall be applied only in accordance with the provisions of the Indenture and the Borrower has no legal, equitable nor reversionary interest in, or right to, such amounts.



## ARTICLE XI

### PREPAYMENT OF THE LOAN

*Section 11.01. General Option to Prepay the Loan.* So long as no Event of Default pursuant to Section 10.01 hereunder exists, the Borrower shall have and is hereby granted the option exercisable at any time to prepay all or any portion of the Loan by depositing with the Trustee an amount of money or securities to the extent permitted by Section 7.01 of the Indenture representing the principal amount, the premium, if any, and interest on the Loan to be paid at maturity, with respect to one or more Series of Bonds, or prepaid to the date a corresponding amount of such Series of Bonds are redeemed. The exercise of the option granted by this Section shall not be cause for redemption of Bonds unless such redemption is permitted at that time under the provisions of the Indenture and the Borrower specifies the date for such redemption. Prior to the date a specific Series of Bonds is subject to redemption as provided in the Indenture, the corresponding Promissory Note is prepayable at any time in an amount sufficient to defease a related amount of such Series of Bonds in accordance with Section 7.01 of the Indenture. In the event the Borrower prepays all of the Loan evidenced by the Promissory Note pursuant to this Section, pays all reasonable and necessary fees and expenses of the Trustee accrued and to accrue through final payment of the Bonds as a result of such prepayment, and all of its liabilities accrued and to accrue hereunder to the Issuer through final payment of the Bonds as a result of such prepayment, and all other amounts payable by the Borrower hereunder, including payments of any rebate amount, this Loan Agreement shall terminate except as otherwise provided herein.

*Section 11.02. Prepayment Credits.* In the event of prepayment by the Borrower of the Loan in whole, and premium, if any, the amounts related to each Series of Bonds then contained in the Costs of Issuance Fund, the Project Fund, the Debt Service Reserve Account and any other Fund or account, and the amounts of the Borrower's payments on each Promissory Note contained in the Debt Service Account shall be credited first to the Rebate Fund, if any, or otherwise in respect of moneys required to be rebated to the United States of America pursuant to Section 148(f) of the Code, so that such obligation is fully funded for the final payment to the United States Treasury, and then against the Borrower's prepayment obligation.

*Section 11.03. Notice of Prepayment.* In order to exercise the option granted by this Article, the Borrower shall give written notice to the Trustee, which notice shall specify therein the prepayment date and the prepayment amount. In the case of any prepayment pursuant to this Article, the Borrower shall make arrangements with the Trustee for giving notice of redemption as required by the Indenture, if any, with respect to any Bonds to be redeemed.

*Section 11.04. Use of Prepayment Moneys.* By virtue of the assignment of the rights of the Issuer under this Loan Agreement to the Trustee, the Borrower agrees to and shall pay any amount required to be paid by it under this Article directly to the Trustee (other than amounts to be paid to the Issuer for its own account). The Trustee shall use the moneys so paid to it by the Borrower (other than amounts to be paid to the Trustee for its own account) as provided in this Loan Agreement and in the Indenture.

## ARTICLE XII

### MISCELLANEOUS

*Section 12.01. Notices.* All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified mail, return receipt requested, postage prepaid, facsimile (confirmed by certified mail), electronic transmission (with confirmation of receipt of such transmission), or overnight courier, addressed as follows:

If to the Issuer:	Utah Charter School Finance Authority 350 North State Street, Suite 180 Salt Lake City, Utah 84114-2315 Attention: Chief Deputy State Treasurer Telephone: (801) 538-1472
If to the Borrower:	Promontory School of Expeditionary Learning 1051 W. 2700 S. Perry, Utah 84302 Attention: Director Telephone: (435) 919-1900
If to the Trustee:	U.S. Bank Trust Company, National Association 170 South Main Street, Suite 200 Salt Lake City, Utah 84101 Telephone: (801) 534-6083

A duplicate copy of each notice, certificate or other communication given hereunder by the Issuer or the Borrower shall also be given to the Trustee. The Issuer, the Borrower and the Trustee may, by notice hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

*Section 12.02. Binding Effect.* This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer and the Borrower, and their respective successors and assigns, subject, however, to the limitations contained in Sections 8.02, 9.01, 9.02 and 12.09 hereof.

*Section 12.03. Severability.* In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 12.04. Third Party Beneficiaries.* Each of the Issuer Indemnified Parties (other than the Issuer) and the Trustee Indemnified Parties and the Beneficial Owners are intended "Third Party Beneficiaries" of this Loan Agreement. Nothing in this Loan Agreement shall confer any right upon any person other than parties hereto, and those specifically designated as Third Party Beneficiaries of this Loan Agreement.

*Section 12.05. Amounts Remaining in Funds.* It is agreed by the parties hereto that any amounts remaining in the Funds upon termination of this Loan Agreement, provided the Bonds have been fully retired and all amounts due hereunder have been paid in full, shall belong to and be paid to the Borrower by the Trustee, as provided in the Indenture.

*Section 12.06. Execution in Counterparts.* This Loan Agreement 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 12.07. Governing Law.* This Loan Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations and laws applicable to the Issuer.

*Section 12.08. Filing.* The Borrower shall cause the security interests granted by the Deed of Trust to be recorded with the recorder of the county in which the Facilities are located. In addition, the Borrower shall cause the security interest in the Funds and trust accounts referred to in Section 5.02 hereof granted to the Issuer, the assignment of such security interest to the Trustee and the security interest in the Deed of Trust granted to the Trustee to be perfected by the filing of financing statements which shall fully comply with the Utah Uniform Commercial Code in the office of the Secretary of the State or the office of the recorder of the county in which the Facilities are located and in such other office as is at the time provided by law as the proper place for the filing thereof. The parties further agree that all necessary continuation statements shall be filed by the Borrower with the cooperation of the Trustee within the time prescribed by the Utah Uniform Commercial Code in order to continue such security interests.

*Section 12.09. Cancellation at Expiration of Term of Agreement.* Upon the termination of this Loan Agreement, and provided the Bonds have been fully retired and all amounts due hereunder have been paid in full, the Issuer shall deliver to the Borrower any documents and take or cause the Trustee to take such actions as may be necessary to evidence the termination of this Loan Agreement and the discharge of the Lien hereof.

*Section 12.10. No Pecuniary Liability.* No provision, covenant, or agreement contained in this Loan Agreement, or any obligations herein imposed upon the Issuer, or the breach thereof, shall constitute an indebtedness or liability of the Issuer within the meaning of any State constitutional provision or statutory limitation or shall constitute or give rise to a pecuniary liability of the Issuer or any member, officer or agent of the Issuer or a charge against the Issuer's general credit. In making the agreements, provisions and covenants set forth in this Loan Agreement, the Issuer has not obligated itself except with respect to the application of the revenues, as hereinabove provided.

*Section 12.11. No Personal Liability of Officials of the Borrower, Issuer or the Trustee.* None of the covenants, stipulations, promises, agreements and obligations of the Issuer or the Borrower contained herein shall be deemed to be covenants, stipulations, promises, agreements or obligations of any official, officer, agent or employee of the Issuer or the Borrower in his or her individual capacity, and no recourse shall be had for the payment of the principal of or premium, if any, or interest on the Bonds or for any claim based thereon or any claim hereunder against any

official, officer, agent or employee of the Issuer or the Borrower or any officer, agent, servant or employee of the Trustee or any natural person executing any Bond, including any officer or employee of the Trustee.

*Section 12.12. Special Limited Obligation of Issuer.* This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower and the Trustee for the benefit of the Owners of the Bonds, and their respective successors and assigns, subject to the limitation that any obligations of the Issuer created by or arising out of this Loan Agreement shall be special limited obligations of the Issuer, payable solely out of the revenues arising from the pledge and assignment of the Loan and the other funds held or set aside in trust under the Indenture and shall never constitute the debt or indebtedness of the Issuer, the State, or any political subdivision of the State within the meaning of any provision or limitation of the constitution or statutes of the State and shall not constitute nor (except for its fraud or intentional misrepresentation) give rise to a pecuniary liability of the Issuer, the State or any political subdivision of the State or a charge against the general credit or taxing powers, if any, of such entities.

Anything in this Loan Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer.

No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Loan Agreement, any other Issuer Documents, or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Facilities or the issuance and sale of the Bonds, against any Issuer Indemnified Parties, whether by virtue of any constitutional provision, statute, or rule of the law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any Issuer Indemnified Party, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into by the Issuer with the Borrower or the Trustee to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against each and every Issuer Indemnified Party is, by the execution of the Bonds, this Loan Agreement, and the other Issuer Documents, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Loan Agreement, and the other Issuer Documents, is expressly waived and released.

No agreements or provisions contained herein, nor any agreement, covenant, or undertaking by the Issuer in connection with the Facilities or the issuance, sale, and/or delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way, except as may be payable from the revenues pledged hereby for the payment of the Bonds and their application as provided in the Indenture. No failure of the Issuer to comply with any term, covenant, or agreement contained in the Bonds, this Loan Agreement, or the Indenture, or in any document executed by the Issuer in connection with the Facilities or the issuance and sale of the Bonds, shall subject the Issuer to

liability for any claim for damages, costs, or other financial or pecuniary charge, except to the extent that the same can be paid or recovered from the revenues pledged for the payment of the Bonds or other revenues derived under this Loan Agreement. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein; *provided* that no costs, expenses, or other monetary relief shall be recoverable from the Issuer, except as may be payable from the revenues pledged in the Indenture for the payment of the Bonds or other revenue derived under this Loan Agreement. No provision, covenant, or agreement contained herein, or any obligations imposed upon the Issuer, or the breach thereof, shall constitute an indebtedness of the Issuer within the meaning of any State constitutional or statutory limitation or shall constitute or give rise to a charge against its general credit. In making the agreements, provisions, and covenants set forth in this Loan Agreement, the Issuer has not obligated itself, except with respect to the application of the revenues pledged in the Indenture for the payment of the Bonds or other revenues derived under this Loan Agreement or the Indenture.

The Issuer shall have no liability or obligation with respect to the payment of the purchase price of the Bonds. None of the provisions of this Loan Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from the revenues pledged under the Indenture, or the Issuer shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or provided as arranged by the Trustee or the Borrower. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Loan Agreement, the Indenture, and in any and every Bond executed, authenticated, and delivered under the Indenture; *provided, however*, that (a) the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower or the Trustee, and (b) the Issuer shall have received the instrument to be executed.

*Section 12.13. No Warranty by Issuer.* THE BORROWER RECOGNIZES THAT, BECAUSE THE COMPONENTS OF THE FACILITIES HAVE BEEN AND ARE TO BE SELECTED BY IT, THE ISSUER HAS NOT MADE AN INSPECTION OF THE FACILITIES, IF AND WHEN ACQUIRED, OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE FACILITIES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE FACILITIES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A

PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

*Section 12.14. Prior Agreements Superseded.* This Loan Agreement, together with all agreements executed by the parties concurrently herewith or in conjunction with the initial issuance of a Series of Bonds, shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Issuer and the Borrower relating to such Series of Bonds, the lending of money and the Facilities.

*Section 12.15. Covenant by the Borrower with Respect to Statements, Representations and Warranties.* It is understood by the Borrower that all statements, representations and warranties made in this Loan Agreement shall be deemed to have been relied upon by the Issuer as an inducement to issue the Bonds, and that if any such statements, representations and warranties were false at the time they were made or, with respect to those representations and warranties which are to continue, are breached during the term hereof, such misrepresentation or breach shall constitute a breach of this Loan Agreement which may give rise to an event of default hereunder.

*Section 12.16. Provisions Relating to the Credit Enhancement Program.* The Bonds are issued pursuant to the Indenture under the Credit Enhancement Program. Notwithstanding any other provision of the Indenture or Loan Agreement to the contrary, so long as any Bonds remain outstanding under the Indenture and there has not been and is not continuing a Non-Appropriation, the provisions of Section 11.08 of the Indenture shall apply. The provisions of Section 11.08 of the Indenture are hereby incorporated by referenced in this Loan Agreement. The Borrower acknowledges such provisions and agrees to comply with each of the Borrower's obligations set forth therein.

*Section 12.17. Captions.* The captions and headings in this Loan Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Loan Agreement.

*Section 12.18. Provision of General Application.* Any consent or approval of the Issuer required pursuant to this Loan Agreement shall be in writing and shall not be unreasonably withheld. If such consent or approval is withheld, the Issuer shall state its reasons in writing.

*Section 12.19. Survival.* Notwithstanding the payment in full of the Bonds, the discharge of the Indenture, and the termination or expiration of the Promissory Notes and this Loan Agreement, all provisions in this Loan Agreement concerning (a) the tax-exempt status of the Tax-Exempt Bonds (including, but not limited to provisions concerning Rebate), (b) the interpretation of this Loan Agreement, (c) the governing law, (d) the forum for resolving disputes, (e) the Issuer's right to rely on facts or certificates, (f) the indemnity of the Issuer Indemnified Parties and the Trustee Indemnified Parties, and (g) the Issuer's and Trustee's lack of pecuniary liability shall survive and remain in full force and effect.

*Section 12.20. Notice of Change in Fact, Event of Default, Etc.* The Borrower will notify the Issuer and the Trustee promptly after the Borrower becomes aware of (i) any change in any material fact or circumstance represented or warranted by the Borrower in this Loan Agreement

or in connection with the issuance of a Series of Bonds which would make any such representation or warranty false when made, (ii) any Event of Default or event which, with notice or lapse of time or both, could become an Event of Default under this Loan Agreement or the Indenture or any Borrower Document, specifying in each case the nature thereof and what action the Borrower has taken, is taking, and/or proposes to take with respect thereto, (iii) any Internal Revenue Service audit of the Borrower or the Bonds, (iv) any material litigation affecting the Bonds, the Borrower or the Facilities, and (v) any default in indebtedness of the Borrower.

*Section 12.21. Amendments, Changes and Modifications.* Except as otherwise provided in this Loan Agreement or in the Indenture, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Issuer.

Any proposed amendment, modification or supplement of this Loan Agreement which provides for less restrictive covenants than required by the Issuer, but permitted by law, shall require the Issuer's consent, which may not be unreasonably withheld.

*Section 12.22. Payments Due on Holidays.* If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Loan Agreement, is not a Business Day such payments may be made or act performed or right exercised on the next succeeding Business Day unless otherwise provided herein, with the same force and effect as if done on the nominal date provided in this Loan Agreement.

*Section 12.23. Electronic Signatures.* Delivery of an executed counterpart of a signature page of this Loan Agreement by electronic means shall be effective as delivery of a manually executed counterpart of this Loan Agreement.

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

UTAH CHARTER SCHOOL FINANCE AUTHORITY,  
as Issuer

By \_\_\_\_\_  
Chair

PROMONTORY SCHOOL OF EXPEDITIONARY  
LEARNING,  
as Borrower

By \_\_\_\_\_  
Chair

TERMS ACKNOWLEDGED AND ACCEPTED:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Vice President

**EXHIBIT A**

**PROPERTY DESCRIPTION**

A PART OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 8 NORTH, RANGE 2 WEST, OF THE SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 2700 SOUTH STREET LOCATED SOUTH 89°56'30" WEST 3754.06 FEET ALONG THE NORTH LINE OF SAID SECTION AND SOUTH 00°00'00" WEST 1848.30 FEET AND NORTH 77°20'01" WEST 160.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION; RUNNING THENCE SOUTH 15°33'08" WEST 202.00 FEET; THENCE SOUTH 77°20'01" EAST 160.00 FEET; THENCE SOUTH 15°33'08" WEST 177.42 FEET TO AN EXISTING FENCE CORNER BEING GRANTOR'S SOUTHEAST PROPERTY CORNER; THENCE NORTH 85°40'42" WEST 1188.11 FEET TO THE EAST RIGHT-OF-WAY LINE OF 1200 WEST STREET; THENCE NORTH 14°01'01" EAST 306.27 FEET ALONG SAID EAST RIGHT-OF-WAY LINE; THENCE SOUTH 75°55'50" EAST 182.65 FEET; THENCE NORTH 14°01'01" EAST 249.72 FEET TO SAID SOUTH RIGHT-OF-WAY LINE; THENCE SOUTH 77°20'01" EAST 838.93 FEET ALONG SAID SOUTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

Tax ID: \_\_\_\_\_

**EXHIBIT B**

**FORM OF PROJECT FUND REQUISITION CERTIFICATE**

To: U.S. Bank Trust Company, National Association, as trustee (the "*Trustee*"), under the Indenture of Trust dated as of May 1, 2023 (the "*Indenture*"), between Utah Charter School Finance Authority and the Trustee, providing for the issuance of Bonds on behalf of Promontory School of Expeditionary Learning

REQUEST NO. \_\_\_\_\_

DATE: \_\_\_\_\_

The undersigned Authorized Borrower Representative hereby certifies and requests to the Trustee, as follows:

1. I have read the provisions of the Indenture relating hereto and have undertaken an examination and investigation of the facts and circumstances on which this written certificate and request is based in order to make the request and certification contained herein, and in my opinion, this certificate and request complies with the provisions of the Indenture.
2. In accordance with Section 3.04(c) of the Indenture, the undersigned hereby requests and authorizes a payment from the Project Fund relating to the Bonds to pay the amounts shown on the attached Payment Schedule to the Borrower, representing payments heretofore made or to be made by the Borrower to the persons listed thereon.
3. Each payment proposed to be made as set forth on the Payment Schedule has been incurred and is a proper charge against the Project Fund as a Cost of the Project with respect to the Bonds and/or the Project financed by the Bonds.
4. To the extent that the payment of any item set forth on the Payment Schedule is for other than work, materials, equipment or supplies in connection with this authorization and request, the undersigned certifies that each payment proposed to be made on the Payment Schedule is a proper charge against the Project Fund, is a reasonable amount, and has not been heretofore included in a prior certificate and request for payment or reimbursement from the Project Fund.
5. A copy of this certificate and request is being kept on file in the official records of the Borrower.
6. This certificate and request, including the Payment Schedule attached hereto, shall be conclusive evidence of the facts and statements set forth herein, and that there has not been filed with or served upon the Issuer or the Trustee notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to any of the persons named herein which has not been released or will

not be released simultaneously with the payment of such obligation, other than materialmen's or mechanics' liens accruing solely by operation of law.

Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Indenture.

DATED the day and year first above written.

PROMONTORY SCHOOL OF EXPEDITIONARY  
LEARNING

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

**SCHEDULE I**  
**PAYMENT SCHEDULE**

PAYEE	AMOUNT	PURPOSE
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**EXHIBIT C**  
**FORM OF PROMISSORY NOTE**

PROMONTORY SCHOOL OF EXPEDITIONARY  
LEARNING

\$ \_\_\_\_\_, 2023

By \_\_\_\_\_  
Chair

For value received, the undersigned, Promontory School of Expeditionary Learning (the "*Borrower*"), a Utah nonprofit corporation, hereby promises to pay to the order of Utah Charter School Finance Authority ("*Lender*") in its capacity as Issuer under the Indenture of Trust dated May 1, 2023, between U.S. Bank Trust Company, National Association, as trustee ("*Trustee*") and Lender, at Trustee's designated office in Salt Lake City, or at any other place designated at any time by the holder hereof, in lawful money of the United States of America and in immediately available funds, the principal sum of \$ \_\_\_\_\_, together with interest on the principal amount hereunder remaining unpaid from time to time, computed on the basis of a 360-day year consisting of twelve 30-day months, from the date hereof until this Note is fully paid, such principal amount above is payable in such amounts and at such times and at the rate or rates from time to time in effect under the Loan Agreement dated as of May 1, 2023 (the "*Loan Agreement*") by and between Lender and Borrower. The principal hereof and interest accruing thereon shall be due and payable as provided in the Loan Agreement. This Note may be prepaid only in accordance with the Loan Agreement.

This Note is issued pursuant, and is subject, to the Loan Agreement, which provides, among other things, for acceleration hereof.

This Note is secured, among other things, by the Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of May 1, 2023, and may now or hereafter be secured by one or more other security agreements, mortgages, deeds of trust, assignments or other instruments or agreements.

Borrower hereby agrees to pay all reasonable costs of collection, including attorneys' fees and legal expenses in the event this Note is not paid when due, whether or not legal proceedings are commenced.

Borrower agrees that the interest rate contracted for includes the interest rate set forth herein or in the Loan Agreement plus any other charges or fees set forth herein or therein and costs and expenses incident to this transaction paid by the Borrower to the extent the same are deemed interest under applicable law.

**ENDORSEMENT**

Pay to the order of U.S. Bank Trust Company, National Association, without recourse, as Trustee under the Indenture referred to in the within mentioned Note, as security for such Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

DATED: \_\_\_\_\_, 2023

UTAH CHARTER SCHOOL FINANCE AUTHORITY

By \_\_\_\_\_  
Chair

**EXHIBIT D**

**FORM OF REPAIR AND REPLACEMENT FUND REQUISITION**

U.S. Bank Trust Company, National Association

Re: \$ \_\_\_\_\_  
Utah Charter School Finance Authority  
Charter School Revenue Bonds  
(Promontory School of Expeditionary Learning),  
Series 2023[A]

The undersigned, an authorized representative of Promontory School of Expeditionary Learning hereby requests a disbursement of \$ \_\_\_\_\_ from the Repair and Replacement Fund established under the Indenture of Trust, dated as of May 1, 2023, between the Utah Charter School Finance Authority and U.S. Bank Trust Company, National Association with respect to the above-referenced bonds (the “*Indenture*”) for the following expenses: \_\_\_\_\_. Such expenses [are] [are not] for non-capital expenses. The undersigned acknowledges and agrees that subsequent to such disbursement, the Repair and Replacement Fund shall be replenished in accordance with the requirements of Section 3.07 of the Indenture.

Capitalized terms used but not defined herein have the meanings assigned to such terms in the Indenture.

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

PROMONTORY SCHOOL OF EXPEDITIONARY  
LEARNING

By \_\_\_\_\_  
Its \_\_\_\_\_



WHEN RECORDED, RETURN TO:

Eric T. Hunter  
Chapman and Cutler LLP  
215 South State Street, Suite 560  
Salt Lake City, Utah 84111

**DEED OF TRUST,  
ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FIXTURE FILING**

This Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the “*Deed of Trust*”) dated as of May 1, 2023, is made by and among PROMONTORY SCHOOL OF EXPEDITIONARY LEARNING, a Utah non-profit corporation (“*Trustor*”), in favor of U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as trustee (“*Trustee*”), for the benefit of UTAH CHARTER SCHOOL FINANCE AUTHORITY, with its office at 350 North State Street, Suite 180, Salt Lake City, Utah 84114-2315 (“*Beneficiary*”).

**RECITALS:**

A. Trustor is, or is about to become, the owner of fee simple title in and to certain real property located in Box Elder County, Utah, as more particularly described on *Exhibit A* attached to and incorporated by reference in this Deed of Trust (the “*Property*”).

B. The Beneficiary has authorized the issuance of, its \$\_\_\_\_\_ aggregate principal amount of Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023A (the “*Series 2023A Bonds*”) and \$\_\_\_\_\_ aggregate principal amount of Taxable Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023B (the “*Series 2023B Bonds*”) and, collectively with the Series 2023A Bonds, the “*Series 2023 Bonds*”), pursuant to an Indenture of Trust, dated as of May 1, 2023, between the Beneficiary and the Trustee, and has agreed to loan the proceeds of the Bonds to the Trustor (the “*Loan*”) pursuant to a Loan Agreement dated as of May 1, 2023 (the “*Loan Agreement*”), between the Beneficiary and the Trustor, the proceeds of which have been used or shall be used by Trustor to finance or refinance the Property and the improvements thereon.

C. Beneficiary has committed to extend the financing to Trustor, *provided* that Beneficiary obtains a first position deed of trust lien against the Property and the improvements thereon.

NOW, THEREFORE, upon the terms, covenants and conditions set forth in this Deed of Trust, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, TRUSTOR HEREBY CONVEYS AND WARRANTS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, and hereby grants to Beneficiary, as a secured party, a security interest in the following described real and personal property:

**GRANTING CLAUSE I**

**REAL PROPERTY**

All right, title, interest and estate of Trustor in and to the Property and Improvements (as such terms are defined in Article I of this Deed of Trust).

**GRANTING CLAUSE II**

**ASSIGNED CONTRACTS**

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to the following to the extent applicable to the Property or the Improvements:

- (1) All contracts and agreements relating to the planning, design, engineering, or architecture of the Improvements;
- (2) All drawings, models, plans, specifications, budgets, cost estimates, bid packages, bids, and other related documents relating to the development or installation of the Improvements;
- (3) All contracts and agreements relating to the installation, construction or demolition of any of the Improvements, including all retainages, payment and performance bonds, and performance escrows described in or required by any of the foregoing;
- (4) All contracts and agreements relating to the development of the Property or the Improvements, including all contracts with government authorities granting entitlements or development rights with respect to the Property, appraisals, soils reports, feasibility studies, environmental assessment reports, and engineering, mechanical and wetlands reports;
- (5) All contracts and agreements between Trustor and any utility company, water company or user association, or telecommunications company for the purpose of: (a) furnishing electricity, natural gas or oil, telephone, sewer, water, cable television, internet or other such services to the Property; (b) providing hook-ups, connections, lines or other necessary laterals or tie-ins to the Property and the Improvements installed or to be installed on the Property, including any “will serve” letters benefiting the Property; or (c) granting any such utility or other company access to the Improvements or to space in or on the Property or the Improvements to provide service to the Property;
- (6) All contracts and leases granted by Trustor, as lessor, to any individual or entity for the use of roof-top space or other areas on the Improvements or the Property for the placement of telecommunications equipment, antennae or transmission devices, or for the placement of billboards, signs or other advertising media;

(7) All contracts and agreements for marketing, leasing, advertising, use, or sale of the Improvements or any portion of the Improvements;

(8) All contracts and agreements relating to the management of the Property and the Improvements, or with any franchisor relating to the operation or use of the Improvements;

(9) All security deposits, connection fees, prepayments, reservation fees and other payments made by Trustor with respect to any of the foregoing; and

(10) All modifications, amendments, substitutions and replacements of any of the foregoing.

### **GRANTING CLAUSE III**

#### **AWARDS**

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Property or any portion of the Property or of any Improvements now or hereafter situate thereon or of any estate or easement in the Property (including any awards for change of grade of streets); and

(2) The proceeds of insurance paid on account of partial or total destruction of the Improvements now or hereafter located upon the Property or any portion thereof (regardless of whether or not Trustor is required to carry such insurance under this Deed of Trust or any other Loan Document).

### **GRANTING CLAUSE IV**

#### **CONSTRUCTION MATERIALS**

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all building materials, supplies and inventories acquired by Trustor with proceeds of the Loan (as defined in Article I of this Deed of Trust) and delivered to the Property for use in connection with or for incorporation into the Improvements on the Property.

### **GRANTING CLAUSE V**

#### **EQUIPMENT**

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All machinery, equipment, goods, supplies, appliances, floor coverings, furnishings, window coverings, security systems, communications systems and equipment, artwork, light fixtures, and other articles of tangible personal property of Trustor used or acquired for use on the Property;

(2) All attachments, accessories and accessions thereto and all substitutions and replacements thereof and all parts therefor.

### **GRANTING CLAUSE VI**

#### **FIXTURES AND INTERESTS**

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All buildings, improvements, renovations, works, structures, facilities and fixtures, including any future additions to, and improvements and betterments upon, and all renewals and replacements of, any of the foregoing and which are owned or acquired by Trustor and which are now or hereafter shall be constructed or affixed or constructively affixed to the Property, or to any portion of the Property; and

(2) All easements, licenses, streets, ways, alleys, roads, passages, rights-of-way, waters, watercourses, water rights, ditches and ditch rights (whether now owned or hereafter acquired by Trustor and whether arising by virtue of land ownership, contract or otherwise), of any kind and nature, relating to or in any way appurtenant or appertaining to the Property or any portion of the Property.

### **GRANTING CLAUSE VII**

#### **INTANGIBLES**

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All general intangibles of every nature and intellectual property owned by Trustor pertaining to the Property or the Improvements including, without limitation, any software, and any trade names, service names, trademarks, service marks, marketing materials, telephone numbers, domain names and any other names, numbers or materials used to identify, advertise or promote the Property or the Improvements; and

(2) All now existing or hereafter acquired chattel paper, accounts, deposit accounts, payment intangibles, letter of credit rights, supporting obligations, good will and other intangible personal property owned by Trustor and pertaining to the Property or the Improvements.

#### **GRANTING CLAUSE VIII**

##### **PERMITS AND LICENSES**

All right, title, interest and estate of Trustor, now existing or hereafter acquired, in and to all permits, franchises, privileges, grants, consents, licenses, authorizations and approvals heretofore or hereafter granted by the United States, by the State of Utah or by any departments or agencies thereof or any other governmental or public bodies, agencies or authorities (including, without limitation, Box Elder County, Utah) to or for the benefit of Trustor and utilized in connection with the development, installation or operation of the Improvements.

#### **GRANTING CLAUSE IX**

##### **RENTS, ISSUES, ETC.**

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all sales proceeds, rents, subrents, issues, royalties, income and profits of and from the Property or any portion of the Property.

#### **GRANTING CLAUSE X**

##### **TENEMENTS AND HEREDITAMENTS**

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all and singular the tenements, hereditaments, rights, privileges and appurtenances belonging, relating, or in any way appertaining to any of the Property, or any portion of the Property, or which shall hereafter in any way belong, relate or in any way appertain thereto (including, without limitation, any and all development rights, air rights or similar or comparable rights), and the reversion and reversions, remainder and remainders, and estates, rights, titles, interests, possessions, claims and demands of every nature whatsoever, at law or in equity, which Trustor may have or may hereafter acquire in and to the Property or any portion of the Property.

#### **GRANTING CLAUSE XI**

##### **PROCEEDS AND PRODUCTS**

All cash and noncash proceeds and all products of any of the foregoing, including, without limitation, insurance proceeds.

#### **ARTICLE I**

##### **DEFINITIONS**

Unless the context clearly indicates otherwise, certain terms used in this Deed of Trust shall have the meanings set forth below:

“*Event of Default*” means the occurrence and continuance of any one of the events listed in Section 11.1 of this Deed of Trust.

“*Hazardous Materials*” shall include, but shall not be limited to, substances defined as “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 5101 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*; Chapters 2, 3, 4, 5 and 6 of the Utah Environmental Quality Code, Title 19, Utah Code Annotated (1953), as the same may be amended from time to time; and in all rules adopted and regulations promulgated pursuant to any of the foregoing.

“*Impositions*” means all real property taxes and assessments, general and special, and all other taxes, assessments and other governmental, municipal or other charges or impositions of any kind or nature whatsoever (including, without limitation, charges and assessments on water or water stocks used on or with the Property and levies or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) which are assessed or imposed upon the Trust Estate, or become due and payable, and which create or may create a lien upon the Property or any portion of the Property, equipment or other facility used in the installation, renovation, operation or maintenance of the Trust Estate.

“*Improvements*” means the improvements installed or to be installed on the Property and owned by Trustor, including, but not limited to, appurtenant common areas and other related facilities and improvements.

“*Indenture*” is defined in the recitals hereto.

“*Loan*” is defined in the recitals hereto.

“*Loan Agreement*” is defined in the recitals hereto.

“*Loan Documents*” means the Loan Agreement, the Note, this Deed of Trust, all other deeds of trust and security agreements given by or for the benefit of Trustor to Beneficiary as security for the Note, and any and all other documents between Trustor and Beneficiary evidencing or securing the Loan, as the same may now be or may hereafter be amended or modified.

“*Note*” means, collectively, the Promissory Note, dated \_\_\_\_\_, 2023, in the aggregate principal amount of \$\_\_\_\_\_, executed by Trustor, as maker, in favor of Beneficiary, as payee, together with any and all amendments and modifications thereto.

“*Obligations*” means the obligations of Trustor described in Section 2.1 of this Deed of Trust, the payment and performance of which are secured by this Deed of Trust.

“*Permitted Encumbrances*” means those liens, encumbrances and matters affecting the Property as defined in the Loan Agreement and incorporated by reference in this Deed of Trust.

“*Personalty*” means all tangible and intangible personal property of Trustor listed in Granting Clauses II through XI of this Deed of Trust used in connection with the Property or incorporated into the Improvements.

“*Property*” means that certain real property situated in Box Elder County, Utah, described in Recital A above and referred to in Granting Clause I of this Deed of Trust, as more particularly described on *Exhibit A* attached to this Deed of Trust.

“*Trust Estate*” means all of the items, documents, interests and properties referred to in Granting Clauses I through XI of this Deed of Trust.

## ARTICLE II

### OBLIGATIONS SECURED

*Section 2.1. Obligations.* This Deed of Trust is given for the purpose of securing the following Obligations of Trustor:

(a) The payment and performance of each and every obligation of Trustor, evidenced by the Note, including, without limitation, the payment of principal of and interest on the Loan;

(b) The payment and performance of each and every agreement and obligation of Trustor under this Deed of Trust, and under any other instrument given to evidence or further secure the payment and performance of any obligation of Trustor under the Loan, the Loan Agreement and all of the other Loan Documents; and

(c) The payment of all sums expended and advanced by Trustee or Beneficiary pursuant to the terms of this Deed of Trust, together with interest thereon as provided in the Loan Agreement.

*Section 2.2. Extensions and Renewals.* Any extensions of, renewals of, modifications of, or additional advances of the Loan, or any of the Obligations evidenced by the Note, regardless of the extent or subject matter of any such extension, renewal, modification or additional advance, shall be secured by this Deed of Trust.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES

*Section 3.1. Property.* Trustor represents and warrants to Beneficiary as follows:

(a) Except for the Permitted Encumbrances, Trustor is, or simultaneously with the execution of this Deed of Trust shall become, the owner of fee simple title in and to the Property;

(b) Trustor possesses all requisite power and authority to execute and deliver this Deed of Trust;

(c) Except for the Permitted Encumbrances, Trustor shall defend title to the Property against all claims and demands whatsoever;

(d) The Property is free and clear of and from any and all liens, claims, encumbrances, restrictions, encroachments and interests whatsoever, in favor of any third party, other than the Permitted Encumbrances;

(e) The lien created by this Deed of Trust upon the Property is a valid and subsisting first position lien against the Trust Estate, subject only to the Permitted Encumbrances;

(f) Any and all obligations incurred by Trustor in connection with the acquisition of all or any portion of the Property are current and without default on the part of Trustor; and

(g) To the best of Trustor's actual knowledge: (1) the Trust Estate is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Trust Estate, including, without limitation, soil and ground water conditions; (2) there are no Hazardous Materials constructed, deposited, stored, disposed, placed or located in, on or under the Trust Estate; and (3) Trustor has not received notice from any federal, state or local agency or department regarding the noncompliance by Trustor of the Trust Estate with respect to any federal, state or local law, ordinance or regulation governing the use, handling, storage, generation, transportation or disposal of Hazardous Materials or the mere presence of Hazardous Materials on the Property.

*Section 3.2. Personalty.* Trustor represents and warrants to Beneficiary as follows:

(a) Trustor is the owner, or upon acquisition thereof, will be the owner of all Personalty used by Trustor in connection with or incorporated into the Improvements on the Property;

(b) The Personalty is, or upon acquisition of title thereto by Trustor will be, free and clear of all liens, claims, encumbrances, restrictions, charges and security interests in favor of any third party other than the Permitted Encumbrances;

(c) Trustor will not create, permit or suffer to exist, any lien, claim, encumbrance, restriction, charge or security interest in or to the Personalty without the prior written consent of Beneficiary; and

(d) Trustor shall defend the Personalty and take such other action as is necessary to remove any lien, claim, encumbrance, restriction, charge or security interest in or to the Personalty superior to the security interest in Beneficiary created hereunder, except the Permitted Encumbrances.

#### ARTICLE IV

##### MAINTENANCE OF TRUST ESTATE

Trustor shall: (a) maintain the Trust Estate at all times in good condition and repair; (b) not commit any waste of the Trust Estate, or, except with the prior written permission of Beneficiary, remove, damage, demolish or structurally alter any of the Improvements now on the Property, or to be installed or constructed on the Property hereafter; (c) complete promptly and in good and workmanlike manner the Improvements, or any other improvements on the Property, which may for any reason be installed or constructed; (d) restore promptly and in good and workmanlike manner any of the Improvements, or any portion of the Property, which may for any reason be damaged or destroyed; (e) comply at all times with all laws, ordinances, regulations, covenants and restrictions in any manner affecting the Trust Estate; (f) not commit or knowingly permit any act upon the Trust Estate in violation of law; and (g) do all acts which by reason of the character or use of the Trust Estate may be reasonably necessary to maintain and care for the same, the specific enumeration herein not excluding the general.

#### ARTICLE V

##### INSURANCE

*Section 5.1. Insurance.* Trustor or Trustor's general contractor, as applicable, shall secure and at all times maintain and promptly pay when due all premiums for insurance as required by the Loan Agreement and such other insurance and in such amounts as may from time to time reasonably be required by Beneficiary against the same or other hazards.

*Section 5.2. Policies and Premiums.* All policies of insurance shall meet the requirements of Section 7.1 of the Loan Agreement. In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by Section 5.1, Beneficiary may, but without any obligation to do so, procure such insurance for such risks covering Beneficiary's interest, and Trustor shall pay all premiums thereon promptly upon demand by Beneficiary. If Trustor fails to pay any premium after demand by Beneficiary, Beneficiary, at

Beneficiary's option, may advance any sums necessary to maintain and to keep in force such insurance. Any sums so advanced, together with interest thereon at the default rate as provided for in the Loan Agreement, shall be secured by this Deed of Trust.

*Section 5.3. Occurrence and Notice of Casualty.* In the event of loss or damage to the Trust Estate, or any portion of the Trust Estate, Trustor shall immediately give notice thereof to Beneficiary. Beneficiary may, but without any obligation to do so, make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary, unless otherwise provided in the Loan Agreement. The insurance proceeds or any part thereof shall be deemed part of the security for the Obligations and shall be applied, per the terms of the Loan Agreement, to restore or repair the portion of the Trust Estate damaged, *provided* that any excess insurance proceeds not so applied may be applied by Beneficiary, at Beneficiary's option, to reduce the indebtedness secured by this Deed of Trust (whether or not then due and payable). Except to the extent that insurance proceeds are received by Beneficiary and applied to the indebtedness secured by this Deed of Trust, nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Trust Estate as provided in Article IV of this Deed of Trust or restoring all damage or destruction to the Trust Estate, regardless of whether there are insurance proceeds available or whether any such proceeds are sufficient in amount. The application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

*Section 5.4. Disposition of Policies on Foreclosure.* In the event Beneficiary exercises the power of sale provisions of this Deed of Trust or takes any other transfer of title or assignment of the Trust Estate in extinguishment in whole or in part of the Obligations, all right, title and interest of Trustor in and to the policies of insurance required by Section 5.1 shall inure to the benefit of and pass to the successor in interest of Trustor or the purchaser or grantee of the Trust Estate.

#### ARTICLE VI

##### INDEMNIFICATION AND OFFSET

*Section 6.1. Indemnification by Trustor.* Trustor hereby indemnifies and holds Beneficiary harmless in accordance with the following:

(a) If Beneficiary is made a party defendant to any litigation (except litigation wherein Trustor asserts a claim against Beneficiary and prevails) concerning this Deed of Trust or the Trust Estate or any part of the Trust Estate or interest therein, or the occupancy thereof by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless from any and all liability by reason of such litigation, including reasonable attorney fees and costs incurred by Beneficiary in any such litigation, whether or not the litigation is prosecuted to judgment. If, following the occurrence and continuance of an Event of Default, Beneficiary commences an action against Trustor to enforce any of the material terms, covenants or conditions of this Deed of Trust or because of the breach by Trustor of any of the material terms, covenants or conditions, or for the recovery of any sum secured

hereby, Trustor shall pay the reasonable attorney fees and costs actually incurred by Beneficiary in such action. The right to such attorney fees and costs shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any material term, covenant or condition of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect Beneficiary's rights hereunder and in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorney fees and costs in an amount equal to the amount of such fees and costs actually incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of such breach.

(b) If Beneficiary is held liable or could be held liable for, or is subject to any losses, damages, costs, charges or expenses, directly or indirectly on account of any claims for work, labor or materials furnished in connection with or arising from the installation, repair or reconstruction of any of the Improvements, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability or expense arising therefrom including reasonable attorney fees and costs.

(c) Trustor, to the full extent permitted by law, shall indemnify, defend and hold harmless Beneficiary, Beneficiary's directors, officers, employees, agents, participants, successors and assigns from and against any and all loss, cost, expense or liability incurred in connection with any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Materials located under or upon or migrating into, under, from or through the Property, which Beneficiary may incur due to the making of the Loan, the exercise of any of Beneficiary's rights under this Deed of Trust or under any other document evidencing or securing the Loan, or otherwise. The foregoing indemnity shall apply: (1) whether or not the release of the Hazardous Materials was caused by Trustor, a tenant or subtenant of Trustor, or a prior owner or tenant of the Property; and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Materials or the mere presence of Hazardous Materials on the Property. The obligations of Trustor under this Section 6.1(c) shall survive the foreclosure of this Deed of Trust, a conveyance in lieu of foreclosure, the repayment of the Loan proceeds and the discharge and release of the lien and encumbrance of this Deed of Trust.

*Section 6.2. Off-Set.* All sums payable by Trustor under this Deed of Trust shall (unless otherwise specifically provided in this Deed of Trust) be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of the Trust Estate or any part thereof; (b) any restriction or prevention of or interference with any use of the Trust Estate or any part thereof; (c) any title defect or encumbrance or any eviction from the Trust Estate or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or

by any court, in any such proceeding; (e) any claim which Trustor has or might have against Beneficiary; (f) any default or failure on the part of Beneficiary to perform or comply with any of the terms, covenants or conditions of this Deed of Trust or of any other agreement with Trustor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

## ARTICLE VII

### IMPOSITIONS

*Section 7.1. Payment of Impositions.* Subject to Section 7.3 of this Deed of Trust, Trustor shall pay, prior to delinquency, all Impositions. However, if, by law, any Imposition is payable, or may at the election of the taxpayer be paid in installments, Trustor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

*Section 7.2. Evidence of Payment.* Trustor shall, upon request by Beneficiary, furnish to Beneficiary, within 30 days after the date upon which such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payments thereof.

*Section 7.3. Right to Contest.* Subject to the terms of the Loan Agreement, Trustor shall have the right, before any date set for forfeiture, whether at tax sale, foreclosure on a tax lien or otherwise, to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such contest shall not be deemed or construed in any way as relieving, modifying or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in Section 7.1, unless Trustor has given prior written notice to Beneficiary of Trustor's intent so to contest or object to an Imposition, and unless, at Beneficiary's option: (a) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Trust Estate, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (b) Trustor shall furnish good and sufficient undertaking and sureties as may be required or permitted by law to accomplish a stay of such proceedings.

*Section 7.4. Tax on Deed of Trust.* If at any time after the date hereof there shall be assessed or imposed: (a) a tax or assessment on the Trust Estate in lieu of or in addition to the Impositions payable by Trustor; or (b) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Obligations or upon payments on the Note (whether principal or interest); then all such taxes, assessments and fees shall be deemed to be included within the term "Impositions" as defined in Article I of this Deed of Trust, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. Trustor shall have no obligation to pay any franchise, income, excess profits or similar tax levied on Beneficiary or on the Obligations secured hereby.

## ARTICLE VIII

### ADDITIONAL COVENANTS

*Section 8.1. Payment of Utilities.* Trustor shall pay when due all utility charges relating to the Trust Estate which may become a lien or charge against the Trust Estate or any portion thereof, for gas, electricity, water or sewer services furnished to the Trust Estate and all assessments or charges of a similar nature, whether public or private, affecting the Trust Estate or any portion thereof, whether or not such assessments or charges are liens thereon.

*Section 8.2. Defense of Title.* Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the Trust Estate, or the rights or powers of Beneficiary or Trustee. Should Beneficiary elect in good faith to appear in or defend any such action or proceeding, Trustor shall pay all costs and expenses, including costs of evidence of title and reasonable attorney fees and costs, incurred by Beneficiary or Trustee.

*Section 8.3. Performance in Trustor's Stead.* Should Trustor fail to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee, but without any obligation to do so, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Beneficiary or Trustee being authorized to enter upon the Trust Estate for such purposes); (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either Beneficiary or Trustee appears to be superior to the lien of this Deed of Trust; and (d) in exercising any such powers, incur any liability, expend such reasonable amounts as Beneficiary may deem necessary therefor, including cost of evidence of title, employment of attorneys, and payment of reasonable attorney fees and costs. All such amounts expended by either or both Trustee or Beneficiary shall, at the election of Beneficiary, be added to the principal indebtedness secured by this Deed of Trust and shall accrue interest in accordance with the terms of the Note.

*Section 8.4. Repayment of Advances.* Trustor shall immediately repay to Beneficiary all sums, other than Loan proceeds, with interest thereon as provided in the Note, which at any time may be paid or advanced by Beneficiary for the payment of insurance premiums, taxes, assessments, other governmental, municipal, or other charges or Impositions, title searches, title reports or abstracts, and any other advances made by Beneficiary which are reasonably necessary to maintain this Deed of Trust as a valid and subsisting lien upon the Trust Estate, to preserve and protect Beneficiary's interest in this Deed of Trust, or to preserve, repair or maintain the Trust Estate. All such advances shall be wholly optional on the part of Beneficiary, and Trustor's obligation to repay the same, with interest, to Beneficiary shall be secured by the lien of this Deed of Trust.

*Section 8.5. No Removal of Fixtures.* Trustor shall not, during the existence of this Deed of Trust and without the prior written consent of Beneficiary, remove from the Property any of the

Improvements or any of the Personalty, except in the ordinary course of Trustor's business and except to the extent replaced by items of comparable quality and value.

*Section 8.6. Further Assurance.* Trustor shall execute, if necessary, and deliver to Beneficiary such further instruments, including, without limitation, Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or as may reasonably be required by Beneficiary to carry out more effectively the purposes of this Deed of Trust and to subject to the lien and encumbrance created or intended to be created hereby any property, rights or interests covered or intended to be covered by this Deed of Trust. Trustor hereby authorizes (to the extent such authorization is valid under applicable law) Beneficiary to file, without Trustor's signature, such Uniform Commercial Code Financing Statements and Continuation Statements as Beneficiary may deem necessary in order to perfect or continue the perfection of the security interests created by this Deed of Trust.

*Section 8.7. No Further Encumbrances.* Except for the Permitted Encumbrances and the lien and encumbrance of this Deed of Trust, Trustor shall not create, permit or suffer to exist, and, at Trustor's expense, will defend the Trust Estate and take such other action as is necessary to remove any lien, claim, charge, security interest or encumbrance in or to the Trust Estate, or any portion of the Trust Estate.

*Section 8.8. No Conveyance of Property.* Trustor shall not sell, convey or alienate the Property or any portion thereof, or any interest therein to any person or entity, without the prior written consent of Beneficiary. In the event Trustor shall sell, convey or alienate all or any portion of the Property, or any interest therein, in violation of the foregoing, or be divested of title to the Property in any manner, whether voluntarily or involuntarily, then the entire principal indebtedness of the Loan, as evidenced by the Note and the other Loan Documents, and all other Obligations secured by this Deed of Trust, irrespective of the maturity date expressed therein, at the option of Beneficiary, and without prior demand or notice, shall become immediately due and payable.

*Section 8.9. Application of Payments.* If at any time during the term of this Deed of Trust Beneficiary receives or obtains a payment, installment or sum which is less than the entire amount then due under the Note secured by this Deed of Trust and any of the other Loan Documents, then Beneficiary shall, notwithstanding any instructions which may be given by Trustor, have the right to apply such payment, installment or sum, or any part thereof, to such of the items or Obligations then due from Trustor or to Beneficiary as Beneficiary, in Beneficiary's sole discretion, may determine.

*Section 8.10. Hazardous Materials.* Trustor shall comply with all applicable federal, state and local laws, regulations, rules and ordinances governing the handling, storage, generation, transportation and disposal of Hazardous Materials as the same affect or may affect the operation of Trustor's present business on or with respect to the Trust Estate. In addition, Trustor shall not without the prior written consent of Beneficiary undertake any new business venture or operation on or affecting the Trust Estate which now requires or may hereafter require compliance with any federal, state or local law, regulation, rule or ordinance governing Hazardous Materials. If requested by Beneficiary from time to time during the continuance of this Deed of Trust, Trustor shall submit to Beneficiary a report, in form satisfactory to Beneficiary, certifying that the Trust

Estate is not being used in any regulated activities directly or indirectly involving the use, handling, storage, generation, transportation and disposal of Hazardous Materials. Beneficiary reserves the right, in Beneficiary's sole and absolute discretion, to retain, at Trustor's expense, an independent professional consultant to review any report prepared by Trustor and to conduct its own investigation of the Trust Estate. Trustor hereby grants to Beneficiary, its agents, employees, consultants and contractors, the right to enter upon the Trust Estate and to perform such tests as are reasonably necessary to conduct such a review or investigation.

*Section 8.11. Fixture Filing.* This Deed of Trust shall be effective as a fixture filing from the date of recordation hereof in accordance with Section 9a-502 of the Utah enactment of the Uniform Commercial Code. In connection therewith, the addresses of Trustor, as debtor ("Debtor"), and of Beneficiary, as secured party ("Secured Party"), are set forth below. The following address of Beneficiary, as the Secured Party, is also the address from which information concerning the security interest may be obtained by any interested party:

- (a) Name and address of Debtor:

Promontory School of Expeditionary Learning  
1051 W. 2700 S.  
Perry, Utah 84302  
Attention: Director

- (b) Name and address of Secured Party:

Utah Charter School Finance Authority  
350 North State Street, Suite 180  
PO Box 142315  
Salt Lake City, Utah 84114-2315  
Attention: Chief Deputy State Treasurer

- (c) Description of the types (or items) of property covered by this Fixture Filing: See pages 1 through 5 above.

- (d) Description of real estate subject to this Fixture Filing, to which the collateral is attached or upon which it is located: See *Exhibit A* hereto.

Some of the above-described collateral is or is to become fixtures upon the above-described real estate, and this Fixture Filing is to be filed for record in the public real estate records. This Deed of Trust secures an obligation secured by real property and any fixtures thereon and shall be governed by the provisions of Section 9a-502 of the Utah enactment of the Uniform Commercial Code.

## ARTICLE IX

### CONDEMNATION AWARDS

Trustor shall promptly give notice to Beneficiary of any condemnation proceeding or any taking for public improvements. If the Trust Estate or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding, any condemnation award shall be used as set forth in Section 7.01 of the Loan Agreement.

## ARTICLE X

### ASSIGNMENT OF RENTS AND LEASES

*Section 10.1. Assignment.* As additional security for the Obligations secured by this Deed of Trust, Trustor hereby assigns, sells, transfers and conveys to Beneficiary during the continuance of this Deed of Trust, all contracts, leases, subleases and agreements relating to the sale, lease, sublease or use of any portion of the Trust Estate or the Property, together with all sales proceeds, rents, subrents, issues, royalties, income and profits of and from the Trust Estate. Until the occurrence of an Event of Default, Trustor may collect and use all such sales proceeds, rents, subrents, issues, royalties, income and profits, as they become due and payable, and may retain, use and enjoy the Trust Estate. Upon the occurrence and continuance of an Event of Default hereunder, Trustor's right to collect and use any of such proceeds shall cease, and Beneficiary shall have the right, with or without taking possession of the Trust Estate, and either in person, by agent or through a court appointed receiver (Trustor hereby consents to the appointment of Beneficiary or Beneficiary's designee as such receiver), to sue for or otherwise collect all such sales proceeds, rents, subrents, issues, royalties, income and profits, including those past due and unpaid. Any sums so collected, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorney fees, shall be applied toward the payment of the Obligations. Such right of collection and use of such proceeds by Beneficiary shall obtain both before and after the exercise of the power of sale provisions of this Deed of Trust, the foreclosure of this Deed of Trust and throughout any period of redemption. The rights granted under this Section 10.1 shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Trust Estate is in danger of being lost, removed or materially injured, or whether the Trust Estate or any other security is adequate to discharge the Obligations secured by this Deed of Trust. Beneficiary's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power and authority of Beneficiary thereafter to collect the same. Nothing contained herein, nor Beneficiary's exercise of Beneficiary's right to collect such proceeds, shall be, or be construed to be, and affirmation by Beneficiary of any contractual interest, tenancy, lease, sublease, option or other interest in the Trust Estate, or an assumption of liability under, or a subordination of the lien or charge of this Deed of Trust to any contractual interest, tenancy, lease, sublease, option or other interest in the Trust Estate. All purchasers, tenants, lessees, sublessees and other persons who have any obligation to make any payment to Trustor in connection with the Trust Estate or any portion thereof are hereby authorized and directed to pay the rents, subrents, issues, royalties, income, profits and other payments payable by them with respect to the Trust Estate, or any portion thereof, directly to Beneficiary on the demand of



Beneficiary. Beneficiary's receipt of such sales proceeds, rents, subrents, issues, royalties, income and profits shall be a good and sufficient discharge of the obligation of the purchaser, tenant, lessee, sublessee or other person concerned to make the payment connected with the amount so received by Beneficiary.

*Section 10.2. No Waiver of Rights by Collection of Proceeds.* The entering upon and taking possession of the Trust Estate or any portion of the Trust Estate or the collection of sale proceeds, rents, subrents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Trust Estate, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of, any scheduled installments provided for in any of the Obligations secured by this Deed of Trust.

*Section 10.3. Indemnification.* Trustor shall indemnify and hold Beneficiary harmless from and against all claims, demands, judgments, liabilities, actions, costs and fees (including reasonable attorney fees and costs) arising from or related to receipt by Beneficiary of the sale proceeds, rents, subrents, issues, royalties, income and profits from the Trust Estate or any portion of the Trust Estate, except negligent or willful acts of Beneficiary.

## ARTICLE XI

### EVENTS OF DEFAULT AND REMEDIES

*Section 11.1. Events of Default.* The occurrence and continuance of any one of the following shall constitute an Event of Default under this Deed of Trust:

- (a) Failure by Trustor to observe and perform any term, covenant or condition to be observed or performed by Trustor contained in this Deed of Trust, the Loan Agreement, the Note or any of the other Loan Documents.
- (b) Any representation or warranty of Trustor contained in this Deed of Trust, the Loan Agreement, the Note or any of the other Loan Documents was untrue when made.
- (c) A default by Trustor under the terms of any other promissory note, deed of trust, security agreement, undertaking or arrangement between Trustor and Beneficiary now in existence or hereafter arising.

*Section 11.2. Notice.* Unless otherwise expressly provided by the terms of this Deed of Trust or the other Loan Documents, if an Event of Default shall occur, Beneficiary shall give written notice of such occurrence to Trustor as provided in the Loan Agreement.

*Section 11.3. Division of Trust Estate.* Upon the occurrence and continuance of an Event of Default and if there are Hazardous Materials then present on the Property, Beneficiary, at Beneficiary's election and without any obligation to do so, may divide the Trust Estate into any number of parcels to facilitate the sale of the Trust Estate at a foreclosure sale. In connection

therewith, Beneficiary may: (a) enter upon the Trust Estate and conduct or cause to be conducted inspections and surveys of the Trust Estate; (b) divide the Trust Estate in such manner as to segregate any Hazardous Materials into one or more distinct parcels; and (c) elect to sell at foreclosure sale only those portions of the Trust Estate that are not contaminated by or do not contain Hazardous Materials. Trustor hereby consents to such division and sale of the Trust Estate.

*Section 11.4. Acceleration; Notice.* Upon the occurrence and continuance of an Event of Default, Beneficiary shall have the option, in addition to any other remedy Beneficiary may have under the Note, to declare by notice to Trustor all sums secured by this Deed of Trust immediately due and payable and elect to have the Trust Estate sold in the manner provided herein. In the event Beneficiary elects to sell the Trust Estate, Beneficiary shall execute or cause Trustee to execute a written notice of default and election to cause the Trust Estate to be sold to satisfy the Obligations. Such notice shall be filed for record in Box Elder County, Utah.

*Section 11.5. Exercise of Power of Sale.* After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, except as provided by law, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to any statutory right of Trustor to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed. In every such case, notice or postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale or as otherwise provided by law. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. The recitals in the Trustee's Deed of any matters or facts relating to the exercise of the power of sale and the sale of the Trust Estate shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of: (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees and attorney fees and costs; (b) all sums expended or advanced by Beneficiary in conjunction with any provisions of this Deed of Trust, not then repaid, with accrued interest thereon from the date of expenditure, at the default rate of interest provided in the Loan Agreement; (c) all sums then secured by this Deed of Trust, including interest and principal on the Note; and (d) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the Clerk of the District Court of Box Elder County, Utah.

*Section 11.6. Possession.* Upon the occurrence of an Event of Default, Beneficiary may enter upon and take possession of the Property, with or without legal action, lease the Property, collect therefrom all rentals and, after deducting all costs of collection and administrative expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as Beneficiary may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Obligations. Beneficiary is

given full authority to do any act Trustor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Deed of Trust and without applying for a receiver of such rents. In addition to the foregoing, upon the occurrence of an Event of Default, Trustor shall pay monthly in advance to Beneficiary or to any receiver appointed to collect said rents the fair and reasonable rental value for Trustor's use and occupation of the Property, and upon default in any such payment Trustor shall vacate and surrender the possession of the Property to Beneficiary or to such receiver. If Trustor does not vacate and surrender the Property, then Trustor may be evicted by summary proceedings.

*Section 11.7. UCC Remedies.* Beneficiary, with regard to the security interest in all Personalty granted to Beneficiary under the Granting Clauses of this Deed of Trust, shall have the right to exercise, from time to time, any and all rights and remedies available to Beneficiary, as a secured party under the Utah enactment of the Uniform Commercial Code, and any and all rights and remedies available to Beneficiary under any other applicable law. Beneficiary shall also have the right to dispose of the Personalty in connection with a foreclosure sale of the Property, whether the foreclosure sale is conducted by the Trustee in connection with the exercise of the private power of sale, or by a sheriff in connection with a judicial foreclosure of this Deed of Trust. Upon written demand from Beneficiary, Trustor shall, at Trustor's expense, assemble the Personalty and make the Personalty available to Beneficiary at the Property.

*Section 11.8. Foreclosure as a Mortgage.* If an Event of Default occurs and continues hereunder, Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorney fees and costs, in such amounts as shall be fixed by the court.

*Section 11.9. Receiver.* If an Event of Default occurs and continues, Beneficiary, as a matter of right and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right upon notice to Trustor to apply to any court having jurisdiction over the subject matter to appoint a receiver or receivers of the Trust Estate. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and may exercise all such powers until completion of the sale of the Trust Estate or the foreclosure proceeding, unless the receivership is sooner terminated.

*Section 11.10. No Remedy Exclusive.* No remedy conferred upon or reserved to Beneficiary under this Deed of Trust shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Deed of Trust, the Loan Agreement, the Note or the other Loan Documents, or now or hereafter existing at law or in equity or by statute. No delay or failure to exercise any right or power accruing upon 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.

*Section 11.11. Cross Default.* The occurrence and continuance of an Event of Default under this Deed of Trust, the Note, the Loan Agreement, any other Loan Document, or any other

agreement or arrangement between Trustor and Beneficiary now existing or entered into hereafter, shall constitute a default under all such documents, including, without limitation, this Deed of Trust, the Note, the Loan Agreement, the other Loan Documents, as well as any other such agreement or arrangement.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

*Section 12.1. Notices.* Except as otherwise provided in this Deed of Trust or in any other Loan Document, whenever Beneficiary or Trustor desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust or any other Loan Document, each such notice shall be in writing and shall be effective only if the notice is delivered by personal service, by nationally recognized overnight courier, by facsimile, or by mail, postage prepaid, addressed as follows:

If to Trustor, to:

Promontory School of Expeditionary Learning  
1051 W. 2700 S.  
Perry, Utah 84302  
Attention: Director  
Telephone: (435) 919-1900

If to Beneficiary:

Utah Charter School Finance Authority  
350 North State Street, Suite 180  
PO Box 142315  
Salt Lake City, Utah 84114-2315  
Attention: Chief Deputy State Treasurer  
Telephone: (801) 538-1472

If to the Trustee:

U.S. Bank Trust Company, National Association  
170 South Main Street, Suite 200  
Salt Lake City, Utah 84101  
Telephone: (801) 534-6083

Any notice delivered personally or by courier shall be deemed to have been given when delivered. Any notice sent by facsimile shall be presumed to have been received on the date transmitted as evidenced by a confirmation of transmission. Any notice sent by mail shall be presumed to have been received five (5) business days after deposit in the United States mail, with postage prepaid and properly addressed. Any party may change its address by giving notice to the other party of its new address in the manner provided above.

*Section 12.2. Severability.* If any provision of this Deed of Trust shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions contained in this Deed of Trust or render the same invalid, inoperative or unenforceable to any extent whatsoever.

*Section 12.3. Amendments, Changes and Modifications.* This Deed of Trust may not be amended, changed, modified, altered or terminated without the prior written consent of both Beneficiary and Trustor.

*Section 12.4. Governing Law.* This Deed of Trust shall be governed exclusively by and construed in accordance with the applicable laws of the State of Utah, without giving effect to principles of conflicts of laws.

*Section 12.5. Interpretation.* Whenever the context shall require, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The article and section headings contained in this Deed of Trust are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

*Section 12.6. Binding Effect.* This Deed of Trust shall be binding upon and shall inure to the benefit of, the respective successors and assigns of Beneficiary and Trustor.

*Section 12.7. Waivers.* Beneficiary's failure at any time or times hereafter to require strict performance by Trustor of any of the undertakings, agreements or covenants contained in this Deed of Trust shall not waive, affect or diminish any right of Beneficiary hereunder to demand strict compliance and performance therewith. Any waiver by Beneficiary of any Event of Default under this Deed of Trust shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements or covenants of Trustor under this Deed of Trust shall be deemed to have been waived by Beneficiary, unless such waiver is evidenced by an instrument in writing signed by an officer of Beneficiary and directed to Trustor specifying such waiver.

*Section 12.8. Access.* Beneficiary, or Beneficiary's authorized agents and representatives, is hereby authorized and shall have the right, at all reasonable times during the existence of this Deed of Trust and without prior written notice to Trustor, to enter upon the Trust Estate or any portion of the Trust Estate for the purpose of inspecting the Trust Estate or for the purpose of performing any of the acts that Beneficiary is authorized under this Deed of Trust to perform.

*Section 12.9. Successor Trustee.* Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which the Trust Estate or some part thereof is situated a substitution of trustee. From the time the substitution is filed of record, the new Trustee shall succeed to all the powers, duties, authority and title of the Trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

*Section 12.10. Acceptance of Trust.* Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary, or Trustee shall be party, unless brought by Trustee.

*Section 12.11. Request for Notice of Default.* Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth in Section 12.1 of this Deed of Trust.

Section 12.12. Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts taken together shall constitute only one instrument.

DATED effective as of the date first above written.

TRUSTOR:

PROMONTORY SCHOOL OF EXPEDITIONARY  
LEARNING

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

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF WASHINGTON )

This instrument was acknowledged before me on this \_\_\_\_ day of June, 2023, by \_\_\_\_\_, who is Chair of the Board of Trustees of Promontory School of Expeditionary Learning, a Utah non-profit corporation.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at \_\_\_\_\_ County, Utah

My Commission Expires: \_\_\_\_\_

[SEAL]

EXHIBIT A

PROPERTY DESCRIPTION

A PART OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 8 NORTH, RANGE 2 WEST, OF THE SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF 2700 SOUTH STREET LOCATED SOUTH 89°56'30" WEST 3754.06 FEET ALONG THE NORTH LINE OF SAID SECTION AND SOUTH 00°00'00" WEST 1848.30 FEET AND NORTH 77°20'01" WEST 160.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION; RUNNING THENCE SOUTH 15°33'08" WEST 202.00 FEET; THENCE SOUTH 77°20'01" EAST 160.00 FEET; THENCE SOUTH 15°33'08" WEST 177.42 FEET TO AN EXISTING FENCE CORNER BEING GRANTOR'S SOUTHEAST PROPERTY CORNER; THENCE NORTH 85°40'42" WEST 1188.11 FEET TO THE EAST RIGHT-OF-WAY LINE OF 1200 WEST STREET; THENCE NORTH 14°01'01" EAST 306.27 FEET ALONG SAID EAST RIGHT-OF-WAY LINE; THENCE SOUTH 75°55'50" EAST 182.65 FEET; THENCE NORTH 14°01'01" EAST 249.72 FEET TO SAID SOUTH RIGHT-OF-WAY LINE; THENCE SOUTH 77°20'01" EAST 838.93 FEET ALONG SAID SOUTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

Tax ID: \_\_\_\_\_

## APPENDIX E

### FORM OF OPINION OF BOND COUNSEL

[LETTERHEAD OF CHAPMAN AND CUTLER LLP]

[TO BE DATED THE CLOSING DATE]

Re: Utah Charter School Finance Authority  
\$ \_\_\_\_\_  
Charter School Revenue Bonds  
(Promontory School of Expeditionary Learning),  
Series 2023A  
  
\$ \_\_\_\_\_  
Taxable Charter School Revenue Bonds  
(Promontory School of Expeditionary Learning),  
Series 2023B

The Utah Charter School Finance Authority (the “*Issuer*”) has on this date issued its Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023A (the “*Series 2023A Bonds*”) and Taxable Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023B (the “*Series 2023B Bonds*”) and, collectively with the Series 2023A Bonds, the “*Series 2023 Bonds*”). The Series 2023 Bonds are issued under and pursuant to (i) the Charter School Financing Act, Title 53G, Chapter 5, Part 6, Utah Code Annotated 1953, as amended, and the Utah Industrial Facilities and Development Act, Title 11, Chapter 17, Utah Code Annotated 1953, as amended (collectively, the “*Act*”), and (ii) an Indenture of Trust dated as of May 1, 2023 (the “*Indenture*”), between the Issuer and U.S. Bank Trust Company, National Association, as trustee (the “*Trustee*”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

The Series 2023 Bonds are being issued for the purpose of loaning the proceeds thereof to Promontory School of Expeditionary Learning (the “*Borrower*”) pursuant to a Loan Agreement dated as of May 1, 2023 (the “*Loan Agreement*”), between the Issuer and the Borrower, for the purpose of (i) refunding certain outstanding obligations of the Borrower (the “*Refunded Obligations*”), which financed the costs of acquiring the Borrower’s charter school facilities (the “*Existing Facilities*”), (ii) financing the acquisition and construction of improvements to the Existing Facilities (the “*2023 Project*”), (iii) funding a debt service reserve, and (iv) paying costs of issuance of the Series 2023 Bonds.

The Issuer and the Borrower have entered into the Loan Agreement providing for, among other things, the application of the proceeds of the Series 2023 Bonds for the purposes set forth above and for loan payments by the Borrower in such amounts and at such times as are required to pay the principal of and interest on the Series 2023 Bonds when due. Pursuant to the Indenture,

the Issuer has assigned to the Trustee its right, title and interest in and under the Loan Agreement, with certain exceptions as provided in the Indenture.

The Series 2023 Bonds are special obligations of the Issuer, payable solely from the Pledged Revenues and moneys, securities and funds pledged under the Indenture for the payment of the principal of and interest on the Series 2023 Bonds. Reference is made to the Indenture and the Loan Agreement for a description of the covenants and undertakings of the Issuer and the Borrower in connection with the Series 2023 Bonds and the pledge and assignment to the Trustee of the Pledged Revenues and moneys, securities and funds held or set aside under the Indenture for the payment of the principal of and interest on the Series 2023 Bonds.

In connection with the issuance of the Series 2023 Bonds, we have examined: (i) the Act and such other provisions of law as we deem relevant; (ii) certified copies of the proceedings of record of the Issuer preliminary to and in connection with the issuance of the Series 2023 Bonds; (iii) executed counterparts of the Indenture and the Loan Agreement; (iv) the form of the Series 2023 Bonds set forth in the Indenture; and (v) such other materials, showings and documents as we deem necessary for the purpose of this opinion. Based upon the foregoing, we are of the opinion that:

1. The Issuer is a body politic and corporate of the State of Utah with the power to enter into and perform its obligations under the Indenture and the Loan Agreement and to issue the Series 2023 Bonds.

2. The Indenture and the Loan Agreement have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding obligations of the Issuer.

3. The Indenture creates a valid pledge which it purports to create of the Trust Estate, subject to the provisions of the Indenture permitting the application of the Pledged Revenues and other amounts held or set aside thereunder as the Trust Estate for the purposes and on the terms and conditions set forth in the Indenture.

4. The Series 2023 Bonds are the legal, valid and binding special obligations of the Issuer, enforceable in accordance with their terms and the terms of the Indenture, and are secured under the Indenture by the Trust Estate in accordance with the terms of the Indenture. The Series 2023 Bonds are payable solely from the Pledged Revenues and other amounts pledged therefor as part of the Trust Estate under the Indenture and do not constitute a general obligation debt or liability of the Issuer or of the State of Utah or any political subdivision thereof.

5. Subject to compliance by the Issuer and the Borrower with certain covenants, under present law, interest on the Series 2023A Bonds is excludable from gross income of the owners thereof for federal income tax purposes and is not included as an item of tax preference in computing the alternative minimum tax for individuals under the Internal Revenue Code of 1986, as amended. For tax years beginning after December 31, 2022, interest on the Series 2023A Bonds may affect the corporate alternative minimum

tax for certain corporations. Failure to comply with certain of such Issuer and Borrower covenants could cause the interest on the Series 2023A Bonds to be includible in gross income for federal income tax purposes retroactively to the date of issuance of the Series 2023A Bonds. Ownership of the Series 2023A Bonds may result in other federal tax consequences to certain taxpayers, and we express no opinion regarding any such collateral consequences arising with respect to the Series 2023A Bonds. In rendering our opinion on tax exemption, we have relied on the opinion of Farnsworth Johnson PLLC, counsel to the Charter School, that the Charter School is a 501(c)(3) organization and with respect to certain other matters.

6. Interest on the Series 2023B Bonds is includible in gross income of the owners thereof for federal income tax purposes.

7. Under the existing laws of the State of Utah, as presently enacted and construed, interest on the Series 2023 Bonds is exempt from taxes imposed by the Utah Individual Income Tax. No opinion is expressed with respect to any other taxes imposed by the State of Utah or any political subdivision thereof. Ownership of the Series 2023 Bonds may result in other state and local tax consequences to certain taxpayers, and we express no opinion regarding any such collateral consequences arising with respect to the Series 2023 Bonds.

We express no opinion herein as to the accuracy, adequacy or completeness of the Official Statement relating to the Series 2023 Bonds or any other information furnished to any person in connection with any offer or sale of the Series 2023 Bonds.

In rendering this opinion, we have relied upon certifications of the Issuer and the Borrower with respect to certain material facts within the Issuer's and the Borrower's knowledge. Our opinion represents our legal judgment based upon our review of the law and the facts that we deem relevant to render such opinion, and is not a guarantee of a result. This opinion is given as of the date hereof and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Respectfully submitted,

ETHunter

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## APPENDIX F

### PROPOSED FORM OF CONTINUING DISCLOSURE UNDERTAKING

FOR THE PURPOSE OF PROVIDING  
CONTINUING DISCLOSURE INFORMATION  
UNDER SECTION (b)(5) OF RULE 15c2-12

[TO BE DATED CLOSING DATE]

This Continuing Disclosure Undertaking (the “*Agreement*”) is entered into by and between Promontory School of Expeditionary Learning (the “*Borrower*”) and U.S. Bank Trust Company, National Association (the “*Dissemination Agent*”), in connection with the issuance by the Utah Charter School Finance Authority (the “*Issuer*”) of its \$\_\_\_\_\_ aggregate principal amount of Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023A (the “*Series 2023A Bonds*”) and \$\_\_\_\_\_ aggregate principal amount of Taxable Charter School Revenue Bonds (Promontory School of Expeditionary Learning), Series 2023B (the “*Series 2023B Bonds*”) and, collectively with the Series 2023A Bonds, the “*Bonds*”). The Bonds are being issued pursuant to an Indenture of Trust, dated as of May 1, 2023 (the “*Indenture*”), between U.S. Bank Trust Company, National Association, as trustee (the “*Trustee*”), and the Issuer, and the proceeds of the Bonds are being loaned to the Borrower pursuant to a Loan Agreement, dated as of May 1, 2023 between the Issuer and the Borrower (the “*Loan Agreement*”).

In consideration of the issuance of the Bonds by the Issuer and the purchase of such Bonds by the beneficial owners thereof, the Borrower covenants and agrees as follows:

1. PURPOSE OF THIS AGREEMENT. This Agreement is executed and delivered by the Borrower as of the date set forth below, for the benefit of the beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with the requirements of the Rule (as defined below). The Borrower represents that it will be the only obligated person with respect to the Bonds at the time the Bonds are delivered to the Participating Underwriter and that no other person is expected to become so committed at any time after issuance of the Bonds.

2. DEFINITIONS. The terms set forth below shall have the following meanings in this Agreement, unless the context clearly otherwise requires.

“*Annual Financial Information*” means the financial information and operating data described in *Exhibit I*.

“*Annual Financial Information Disclosure*” means the dissemination of disclosure concerning Annual Financial Information and the dissemination of the Audited Financial Statements as set forth in Section 4.

“*Audited Financial Statements*” means the audited financial statements of the Borrower prepared pursuant to the standards and as described in *Exhibit I*.

*“Commission”* means the Securities and Exchange Commission.

*“Dissemination Agent”* means any agent designated as such in writing by the Borrower and which has filed with the Borrower a written acceptance of such designation, and such agent’s successors and assigns. The initial Dissemination Agent shall be U.S. Bank Trust Company, National Association.

*“EMMA”* means the MSRB through its Electronic Municipal Market Access system for municipal securities disclosure or through any other electronic format or system prescribed by the MSRB for purposes of the Rule.

*“Exchange Act”* means the Securities Exchange Act of 1934, as amended.

*“Financial Obligation”* means (a) a debt obligation, (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (c) a guarantee of (a) or (b) in this definition; *provided however*, the term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

*“MSRB”* means the Municipal Securities Rulemaking Board.

*“Participating Underwriter”* means Robert W. Baird & Co. Incorporated, as the underwriter in the primary offering of the Bonds.

*“Reportable Event”* means the occurrence of any of the Events with respect to the Bonds set forth in *Exhibit II*.

*“Reportable Events Disclosure”* means dissemination of a notice of a Reportable Event as set forth in Section 5.

*“Rule”* means Rule 15c2-12 adopted by the Commission under the Exchange Act, as the same may be amended from time to time.

*“State”* means the State of Utah.

*“Undertaking”* means the obligations of the Borrower pursuant to Sections 4 and 5.

3. CUSIP NUMBER/FINAL OFFICIAL STATEMENT. The CUSIP Numbers of the Bonds are as follows:

**Series 2023A**

DATE DUE (OCTOBER 15)	AMOUNT MATURING	CUSIP NUMBER
	\$	

**Series 2023B**

DATE DUE (OCTOBER 15)	AMOUNT MATURING	CUSIP NUMBER

The Final Official Statement relating to the Bonds is dated \_\_\_\_\_, 2023 (the “*Final Official Statement*”). The Borrower will include the CUSIP Number in all disclosure described in Sections 4 and 5 of this Agreement.

4. ANNUAL FINANCIAL INFORMATION DISCLOSURE. Subject to Section 8 of this Agreement, the Borrower hereby covenants that it will disseminate, or cause the Dissemination Agent to disseminate, its Annual Financial Information and its Audited Financial Statements (in the form and by the dates set forth in *Exhibit I*) to EMMA in such manner and format and accompanied by identifying information as is prescribed by the MSRB or the Commission at the time of delivery of such information and by such time so that such entities receive the information by the dates specified. MSRB Rule G-32 requires all EMMA filings to be in word-searchable PDF format. This requirement extends to all documents to be filed with EMMA, including financial statements and other externally prepared reports. Not later than five (5) business days prior to the date specified for providing the Annual Financial Information and Audited Financial Statements to EMMA, the Borrower shall provide the Annual Financial Information and Audited Financial Statements to the Dissemination Agent. If by such date, the Dissemination Agent has not received a copy of the Annual Financial Information and Audited Financial Statements, the Dissemination

Agent shall contact the Borrower to determine if the Borrower is or expects to be in compliance with the first sentence of this Section.

If any part of the Annual Financial Information can no longer be generated because the operations to which it is related have been materially changed or discontinued, the Borrower will disseminate a statement to such effect as part of its Annual Financial Information for the year in which such event first occurs.

If any amendment or waiver is made to this Agreement, the Annual Financial Information for the year in which such amendment or waiver is made (or in any notice or supplement provided to EMMA) shall contain a narrative description of the reasons for such amendment or waiver and its impact on the type of information being provided. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, notice of such change shall be given in the same manner as for a Reportable Event under Section 5.

5. REPORTABLE EVENTS DISCLOSURE. Subject to Section 8 of this Agreement, the Borrower hereby covenants that it will disseminate in a timely manner (not in excess of ten business days after the occurrence of the Reportable Event) Reportable Events Disclosure to EMMA in such manner and format and accompanied by identifying information as is prescribed by the MSRB or the Commission at the time of delivery of such information. MSRB Rule G-32 requires all EMMA filings to be in word-searchable PDF format. This requirement extends to all documents to be filed with EMMA, including financial statements and other externally prepared reports.

6. CONSEQUENCES OF FAILURE OF THE BORROWER TO PROVIDE INFORMATION. If the Borrower does not provide to the Dissemination Agent a copy of the Annual Financial Information or Audited Financial Statements by the applicable dates required in Section 4 above, the Dissemination Agent in a timely manner shall send a notice to the Borrower. If the Borrower files any report directly with EMMA, the Borrower shall promptly provide the Dissemination Agent with a confirmation or documentation reasonably required by the Dissemination Agent confirming that the filing of such report was made in a timely manner on or before the date required herein (or if not as of such date, specifying the date of filing) and that such filing contained the information required by this Agreement. If the Borrower does not promptly provide such confirmation to the Dissemination Agent that the filing of such report was made in a timely manner on or before the date required therein, the Dissemination Agent shall, in a timely manner, transmit a notice of failure to file to EMMA in electronic format accompanied by identifying information as prescribed by the MSRB.

In the event of a failure of the Borrower to comply with any provision of this Agreement, the beneficial owner of any Bond may seek mandamus or specific performance by court order, to cause the Borrower to comply with its obligations under this Agreement. A default under this Agreement shall not be deemed a default or an Event of Default under the Indenture or the Loan Agreement, and the sole remedy under this Agreement in the event of any failure of the Borrower to comply with this Agreement shall be an action to compel performance.

7. AMENDMENTS; WAIVER. Notwithstanding any other provision of this Agreement, the Borrower by resolution authorizing such amendment or waiver, may amend this Agreement, and any provision of this Agreement may be waived, if:

(a) (i) The amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, including without limitation, pursuant to a “no-action” letter issued by the Commission, a change in law, or a change in the identity, nature, or status of the Borrower, or type of business conducted; or

(ii) This Agreement, as amended, or the provision, as waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(b) The amendment or waiver does not materially impair the interests of the beneficial owners of the Bonds, as determined either by parties unaffiliated with the Borrower (such as the Trustee), or by approving vote of Bondholders pursuant to the terms of the Indenture at the time of the amendment or waiver.

In the event that the Commission or the MSRB or other regulatory authority shall approve or require Annual Financial Information Disclosure or Reportable Events Disclosure to be made to a central post office, governmental agency or similar entity other than EMMA or in lieu of EMMA, the Borrower shall, if required, make such dissemination to such central post office, governmental agency or similar entity without the necessity of amending this Agreement.

8. TERMINATION OF UNDERTAKING. The Undertaking of the Borrower shall be terminated hereunder if the Borrower shall no longer have any legal liability for any obligation on or relating to repayment of the Bonds under the Indenture and the Loan Agreement. The Borrower shall give notice to EMMA in a timely manner if this Section is applicable.

9. DISSEMINATION AGENT. The Borrower may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent shall be U.S. Bank Trust Company, National Association, and U.S. Bank Trust Company, National Association hereby accepts the duties and obligations of Dissemination Agent as provided herein.

10. ADDITIONAL INFORMATION. Nothing in this Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Financial Information Disclosure or notice of occurrence of a Reportable Event, in addition to that which is required by this Agreement. If the Borrower chooses to include any information from any document or notice of occurrence of a Reportable Event in addition to that which is specifically required by this Agreement, the Borrower shall have no obligation under this Agreement to update such information or include it in any future disclosure or notice of occurrence

of a Reportable Event. If the Borrower is changed, the Borrower shall disseminate such information to EMMA.

11. BENEFICIARIES. This Agreement has been executed in order to assist the Participating Underwriter in complying with the Rule; however, this Agreement shall inure solely to the benefit of the Borrower, the Dissemination Agent, if any, and the beneficial owners of the Bonds, and shall create no rights in any other person or entity.

12. RECORDKEEPING. The Borrower shall maintain records of all Annual Financial Information Disclosure and Reportable Events Disclosure, including the content of such disclosure, the names of the entities with whom such disclosure was filed and the date of filing such disclosure.

13. ASSIGNMENT. The Borrower shall not transfer its obligations under the Loan Agreement unless the transferee agrees to assume all obligations of the Borrower under this Agreement or to execute an Undertaking under the Rule.

14. GOVERNING LAW. This Agreement shall be governed by the laws of the State.

PROMONTORY SCHOOL OF EXPEDITIONARY  
LEARNING

By \_\_\_\_\_  
Chair

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as initial Dissemination Agent

By \_\_\_\_\_  
Vice President

## EXHIBIT I

### ANNUAL FINANCIAL INFORMATION AND TIMING AND AUDITED FINANCIAL STATEMENTS

“*Annual Financial Information*” means the following financial information and operating data:

- (a) Annual financial statements of the Borrower, including an auditor’s certification of compliance with the debt coverage requirements and days-cash-on-hand requirements under the Loan Agreement (and showing the debt coverage ratio and days cash-on-hand);
- (b) An update for the applicable fiscal year of the tables contained under the caption, “ENROLLMENT AND WAIT LIST–Admissions and Wait List,” in APPENDIX B of the Final Official Statement;
- (c) An update for the applicable fiscal year of the tables contained under the caption, “ENROLLMENT AND WAIT LIST–Enrollment,” in APPENDIX B of the Final Official Statement;
- (d) An update for the applicable fiscal year of the table contained under the caption, “ENROLLMENT AND WAIT LIST–Retention Rate,” in APPENDIX B of the Final Official Statement;
- (e) An update for the applicable fiscal year of the tables contained under the caption, “Academic Achievement Indicators” in Appendix B of the Final Official Statement;
- (f) Annual budget of the Borrower, within 30 days of its adoption;
- (g) Unaudited quarterly financial statements of the Borrower, within 60 days of the end of each calendar quarter, which will include a comparison of such calendar quarter to the budget of the Borrower;
- (h) Any information provided to any rating agency then rating the Borrower’s Bonds as part of such rating agency’s ongoing surveillance; and
- (i) Notice at least 30 days prior to an annual conference call to be scheduled by the Borrower in November or December of each year, with registered owners, beneficial owners, and potential purchasers of the Bonds, regarding the Borrower’s performance for the prior year ended June 30, to address, at a minimum: enrollment data and trends; budget overview; discussion of fiscal year-end financial statements and the final audit thereof; academic performance; financial performance; other material factors or events which reflect the school’s performance outlook. All or a portion of the Annual Financial Information and the Audited Financial Statements may be included by reference to other documents which have been submitted to the MSRB or filed with the Commission. The Borrower shall clearly identify each such item of information included by reference.



Annual Financial Information will be provided to the MSRB within 180 days after the last day of the Borrower's fiscal year (except for items (e) and (f) above, which shall be due by the dates set forth above). Audited Financial Statements should be filed at the same time as the Annual Financial Information. If Audited Financial Statements are not available when the Annual Financial Information is filed, unaudited financial statements shall be included, and Audited Financial Statements will then be provided to the MSRB within 10 Business Days after availability to the Borrower.

Audited Financial Statements will be prepared in accordance with generally accepted accounting principles in the United States as in effect from time to time.

If any change is made to the Annual Financial Information as permitted by this Agreement, including for this purpose a change made to the fiscal year-end of the Obligated Person, the Borrower will disseminate a notice to the MSRB of such change.

## EXHIBIT II

### EVENTS WITH RESPECT TO THE BONDS FOR WHICH REPORTABLE EVENTS DISCLOSURE IS REQUIRED

1. Principal and interest payment delinquencies
2. Non-payment related defaults, if material
3. Unscheduled draws on debt service reserves reflecting financial difficulties
4. Unscheduled draws on credit enhancements reflecting financial difficulties
5. Substitution of credit or liquidity providers, or their failure to perform
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security
7. Modifications to the rights of security holders, if material
8. Bond calls, if material, and tender offers
9. Defeasances
10. Release, substitution or sale of property securing repayment of the securities, if material
11. Rating changes
12. Bankruptcy, insolvency, receivership or similar event of the Borrower\*
13. The consummation of a merger, consolidation or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material
15. Incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

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\* This event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower.



