

CAPISTRANO UNIFIED SCHOOL DISTRICT SCHOOL FACILITIES CORPORATION  
MEETING OF THE BOARD OF DIRECTORS  
33122 Valle Road  
San Juan Capistrano, CA 92675

OCTOBER 24, 2012

REVISED  
10-23-12

Immediately Following the Regular Meeting of the  
Capistrano Unified School District Board of Trustees

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF THE AGENDA – ROLL CALL

- A. ~~Adoption of Corporation Resolution No. 2012-01, Resolution of the Board of Directors of the Capistrano Unified School District School Facilities Corporation Holding an Annual Meeting, Electing Officers of the Corporation and Approving Amendment of Corporate Bylaws:~~ DISCUSSION/  
ACTION  
Page 1  
EXHIBIT  
The Capistrano Unified School District School Facilities Corporation (Corporation) was incorporated to assist the Capistrano Unified School District (District) in financing and refinancing public schools and school facilities by, among other things, participating with the District in the execution and delivery of certificates of participation. *deleted on 10/23/12*

~~By adopting Corporation Resolution No. 2012-01, the Board of Directors of the Corporation consents to hold its annual meeting and appoint Joseph Farley as President of the Corporation, Julie Hatchel as Secretary of the Corporation, and Clark Hampton as Chief Financial Officer of the Corporation.~~

~~By adopting Corporation Resolution No. 2012-01, the Board of Directors revises its bylaws to specify that the person holding the position of Superintendent of the District shall hold the position of President of the Corporation, the person holding the position of Chief Business Officer of the District shall hold the position of Chief Financial Officer of the Corporation and the person holding the position of Assistant Superintendent, Education Services of the District shall hold the position of Secretary of the Corporation, unless otherwise specified by the Corporation's Board of Directors.~~

~~Recommendation: Adoption of Resolution No. 2012-01, Resolution of the Board of Directors of the CUSD Facilities Corporation holding an annual meeting; electing officers of the Corporation; and Approving Amendment of Corporate Bylaws~~

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_

ROLL CALL:

Trustee Addonizio \_\_\_\_\_ Trustee Bryson \_\_\_\_\_

Trustee Alpay \_\_\_\_\_ Trustee Hatton \_\_\_\_\_

Trustee Brick \_\_\_\_\_ Trustee Palazzo \_\_\_\_\_

\_\_\_\_\_ Trustee Pritchard \_\_\_\_\_

**B. Adoption of Corporation Resolution No. 2012-02, Resolution of the Board of Directors of the Capistrano Unified School District School Facilities Corporation Authorizing Delivery and Sale of 2012 Certificates of Participation in the Maximum Principal Amount of \$23,000,000 and Approving Related Documents and Actions:**

DISCUSSION/  
ACTION  
Page 15  
EXHIBIT

The District, with the cooperation of the Corporation previously executed and delivered the Capistrano Unified School District Unified School District Certificates of Participation Series 2002 (Education and Support Facilities) in the par amount of \$31,950,000 (2002 Certificates), of which \$23,000,000 remain outstanding at this time.

Staff recommends refinancing of the currently outstanding 2002 Certificates through the execution and delivery of refunding Certificates of Participation to be designated as the "Capistrano Unified School District Unified School District 2012 Refunding Certificates of Participation" (2012 Refunding Certificates).

The leased premises for the 2012 Refunding Certificates will be the real property constituting the Las Flores School facility and site, located at 25862 Antonio Parkway, Rancho Santa Margarita, California and the Capistrano Valley High School facility and site, located at 26301 Via Escolar, Mission Viejo, California (which currently secures the lease payments for the 2002 Certificates).

In addition to authorizing the issuance of the Bonds, the Board of Directors would, by the adoption of Resolution No. 2012-02, be taking the following additional actions:

- \* Approve the various agreements and documents under which the 2012 Refunding Certificates will be executed and delivered and the 2002 Certificates will be prepaid and defeased (i.e. be fully refinanced) according to their final terms.
- \* Approve, under the terms of the Assignment Agreement that the Trustee (U.S. Bank, N.A.) will be assigned all of the duties and responsibilities of the Corporation under the agreements and documents when the 2012 Refunding Certificates are delivered.

Recommendation: Adoption of Resolution No. 2012-02, Resolution of the Board of Directors of the CUSD Facilities Corporation Authorizing Delivery and Sale of 2012 Refunding Certificates of Participation in the maximum principal amount of \$23,000,000 and Approving Related Documents and Actions.

Motion by _____	Seconded by _____
ROLL CALL:	
Trustee Addonizio _____	Trustee Bryson _____
Trustee Alpay _____	Trustee Hatton _____
Trustee Brick _____	Trustee Palazzo _____
	Trustee Pritchard _____

**OTHER MATTERS**

**ADJOURNMENT**

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_



CAPISTRANO UNIFIED SCHOOL DISTRICT  
San Juan Capistrano, California

**RESOLUTION NO. 2012-01**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT SCHOOL FACILITIES CORPORATION HOLDING ANNUAL MEETING; ELECTING OFFICERS OF THE CORPORATION; AND APPROVING AMENDMENT OF CORPORATE BYLAWS**

*WHEREAS*, the Bylaws of the Capistrano Unified School District School Facilities Corporation (“Corporation”) provide that the officers of the Corporation shall be chosen by the Board at the Annual Meeting of the Board of Directors (Board); and

*WHEREAS*, pursuant to §3.06 of the Bylaws of the Corporation (Bylaws), the Board now desires to hold its 2012 Annual Meeting and designate officers for the year; and

*WHEREAS*, the Board has determined that it is desirable to make amendments to the existing Bylaws to clarify who the officers of the Corporation shall be on an ongoing basis; and

*WHEREAS*, Article VII of the Bylaws provides that any of the Bylaws may be amended by the vote of a majority of a quorum of the Board at a meeting of the Board and with the consent of the Board of Trustees.

*BE IT RESOLVED* by the Board of Directors of the Corporation as follows:

Section 1.     Confirmation of Recitals. The Board finds that all of the recitals are true and correct.

Section 2.     Consent to Annual Meeting. The members of the Board hereby consent to holding the 2012 Annual Meeting of the Board on October 24, 2012. All actions taken on behalf of the Corporation since its last meeting are hereby ratified.

Section 3.     Designation of Officers. The following shall be the designation of officers, such officers to serve until a quorum of the Board determines to alter the officer designation or until their respective successors are properly designated, elected and qualified, or until the death, resignation or removal of such officer:

<u>Office</u>	<u>Individual</u>
President:	Joseph M. Farley, Ed.D
Secretary:	Julie Hatchel, Ed.D
Chief Financial Officer:	Clark Hampton

Section 4. Amendment of Bylaws. The Board approves the amendment of the Bylaws in the form presented to the Board in conjunction herewith, and as attached hereto to reflect that the President of the Corporation shall be the Superintendent of the Capistrano Unified School District (District), the Chief Financial Officer of the Corporation shall be the Chief Business Officer of the District, and the Secretary of the Corporation shall be the Assistant Superintendent, Education Services of the District.

Section 5. Secretary Actions. The Secretary of the Corporation is hereby authorized and directed to take actions necessary to ensure that copies of the Bylaws, as amended, are kept at its principal office.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of the Capistrano Unified School District School Facilities Corporation on the 24<sup>th</sup> day of October 2012, by the following called vote:

---

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

---

Secretary  
Capistrano Unified School District School  
Facilities Corporation

SECRETARY'S CERTIFICATION

STATE OF CALIFORNIA            )  
  )  
COUNTY OF ORANGE            )

The undersigned Secretary of the Capistrano Unified School District School Facilities Corporation certifies that the foregoing resolution was adopted by the Board of Directors of the Capistrano Unified School District School Facilities Corporation at its meeting held on the 24<sup>th</sup> day of October, 2012.

\_\_\_\_\_  
Julie Hatchel, Ed.D  
Secretary



BYLAWS  
OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT  
SCHOOL FACILITIES CORPORATION

ARTICLE I. OFFICES

Section 1.01. Principal Office. The principal office of this corporation for its transaction of business is located in the City of San Juan Capistrano, County of Orange, State of California.

Section 1.02. Change of Address. The Board of Directors of this corporation (the “Board”) is hereby granted full power and authority to change the principal office of the corporation from one location to another in the County of Orange, California. Any such change shall be noted by the secretary in these Bylaws, but shall not be considered an amendment of these Bylaws.

ARTICLE II. NO MEMBERS

Section 2.01. No Members. Pursuant to section 5310 of the Corporations Code, the bylaws of a nonprofit corporation may provide that the corporation shall have no members. This corporation shall have no members.

ARTICLE III. DIRECTORS

Section 3.01. Powers. Subject to the limitations of the Articles of Incorporation and these Bylaws, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. All actions taken by the Board or by a committee created by the Board shall be at a meeting duly called and shall be reported in the duly executed minutes of the corporation or of such committee for such meeting and transmitted to the Board of Trustees of the Capistrano Unified School District (the “Board of Trustees”). The Board may delegate the management of the activities of the corporation to any person or persons, a management company or committees, however composed, provided that any such delegation other than to a committee of the Board or to the staff of the Board of Trustees must be approved by the Board of Trustees, and provided, moreover, that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Bylaws and in the State of California Nonprofit Public Benefit Corporation Law (the “Law”):



(a) To select and remove all of the other officers, agents and employees of the corporation, prescribe powers and duties for them as may not be inconsistent with law, the Articles of incorporation or these Bylaws, fix their compensation, if any, and require from them security for faithful service;

(b) To conduct, manage and control the affairs and activities of the corporation and to make such rules and regulations therefor as are consistent with law, the Articles of Incorporation or these Bylaws, as they may deem best;

(c) To adopt, make and use a corporate seal and to alter the form of such seal from to time as they may deem best;

(d) Subject to the approval of the Board of Trustees, to borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor; and

(e) Subject to the approval of the Board of Trustees, to acquire real or personal property of any nature and to lease the same to the District and to assign its interest in any such lease to any person including a trustee for the benefit of the owners of certificates of participation. All acquisitions of real or personal property and any construction undertaken shall be done in accordance with the laws and regulations applicable to the District for procurement or construction.

Section 3.02. Number. The authorized number of directors shall be not less than one and not more than fifteen; provided, however, that the number of directors shall at all times be equal to the number of permanent members of the Board of Trustees or its successor, which is currently seven (7). The number of directors may be changed by an amendment of these Bylaws.

Section 3.03. Term of Office. The term of office of each director shall be co-extensive with his or her term as a member of the Board of Trustees.

Section 3.04. Resignation and Removal. Subject to the provisions of Section 5226 of the Law, any director who may resign at any time as a permanent member of the Board of Trustees shall be automatically deemed to have resigned from the Board of Directors of the corporation. Such resignation shall take effect at the time the resignation takes effect for purposes of the Board of Trustees and the acceptance of such resignation shall not be necessary to make it effective for purposes of the corporation. Any director shall be removed from the Board of Directors of the corporation if such director, in his or her capacity as a permanent member of the Board of Trustees, is removed from the Board of Trustees, and shall be automatically replaced as a director of the corporation by the person elected to the Board of Trustees to replace the permanent member so removed.

The Board of Trustees or the Board, with the approval of the Board of Trustees, may declare vacant the office of a director who has been declared of unsound mind by a final order of a court, or convicted of a felony, or who has been found by a final order or judgment of any court to have breached any duty arising under Chapter 2, Article 3 of the Law.

No reduction of the authorized number of directors shall have the effect of removing any

director prior to the expiration of the director's term of office.

Section 3.05. Designation of Directors and Filling of Vacancies. The incorporator of the corporation shall elect the existing permanent members of the Board of Trustees to serve as the Board of Directors of the corporation so long as each such director remains a permanent member of the Board of Trustees.

If the office of any director becomes vacant due to a vacancy on the Board of Trustees, the person elected or appointed to the Board of Trustees to fill such vacancy in the Board of Trustees shall automatically fill the vacancy in the Board of Directors of the corporation. A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation or removal of any member sitting on the Board of Trustees, or if the authorized number of members of the Board of Trustees shall be increased.

Section 3.06. Organizational Meeting. The Board shall hold at least one regular meeting annually (the "Organizational Meeting") for the purpose of the organization of the corporation, election of officers and the transaction of other business. Notice of each Organizational Meeting shall be given in accordance with the notice requirements for special meetings set forth in Section 3.08 hereof.

Section 3.07. Other Regular Meetings. Other regular meetings of the Board shall be held without call or notice on such dates and at such times and places as the Board shall fix by resolution.

Section 3.08. Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the president or any vice president or the secretary or any two directors. Any person calling such meeting shall cause such notice of the meeting to be given pursuant to the requirements set forth below.

Special meetings of the Board shall be held on three (3) days' notice by first-class mail, postage prepaid, or on forty-eight (48) hours' notice delivered personally or by telephone or telegraph. Except as provided in the next sentence, under no circumstance may the Articles of Incorporation or these Bylaws dispense with the notice of a special meeting. Notice of the special meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of such notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 3.09. Ralph M. Brown Act. All meetings of the Board and any committee thereof shall be called, noticed (except where these Bylaws impose a greater period of notice), held and conducted in accordance with the provisions of the Ralph M. Brown Act, as amended (commencing with Section 54950 of the Government Code of the State of California).

Section 3.10. Place of Meeting. Regular and special meetings of the Board shall be held in any place within or without the State of California which has been designated from time to time by resolution of the Board. In the absence of such designation, regular and special meetings shall be held at the principal office of the corporation. The designation of a place of meeting outside the

District must be approved in advance by the Board of Trustees.

Section 3.11. Quorum. A majority of the authorized number of directors shall constitute a quorum of the Board for the transaction of business. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act or decision of the Board, unless a greater number be required by law or by the Articles of Incorporation, except as provided in the next sentence. Any meeting at which a quorum was initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting, or such greater number as required by law, the Articles of Incorporation or these Bylaws.

Section 3.12. Adjournment. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent directors if the time and place is fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to any other time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the meeting was held within twenty-four (24) hours after the time of adjournment.

Section 3.13. Rights of Inspection. Every director and every member of the Board of Trustees shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation.

Section 3.14. Committees. The Board of Directors may create one or more committees, each consisting of two or more directors, and delegate to such committees any of the authority of the Board of Directors, except with respect to the following:

- (a) The filing of vacancies on the Board or on any committee;
- (b) The determination of the amount of any reimbursement of the directors for serving on the Board or on any committee;
- (c) The amendment or repeal of these Bylaws or the adoption of new bylaws;
- (d) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- (e) The appointment of other committees of the Board or the members thereof;
- (f) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected; and
- (g) The approval of any self-dealing transaction except as provided in

paragraph (3) of subdivision (d) of Section 5233 of the Law.

Any such committee must be created, and the members thereof appointed, by resolution adopted by a majority of the authorized number of directors then in office, provided that a quorum is present. Any such committee may be designated by such name as the Board shall specify. The Board may appoint one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted.

The regular and special meetings and other actions of any such committee shall be governed by the provisions of this Article III applicable to meetings and actions of the Board minutes in written form shall be kept of each meeting of each committee.

Section 3.15. Compensation and Reimbursement. The directors and members of committees shall receive no compensation for their services as directors and as members of committees. The directors and members of committees may receive reimbursement for expenses, if any, incurred in the performance of their duties as directors or as members of committees, in accordance with procedures established by the Board and ratified by the Board of Trustees.

#### ARTICLE IV. OFFICERS

Section 4.01. Officers. The officers of the corporation, who shall be directors of the corporation, shall be a president, a secretary and a chief financial officer. The corporation may also have, at the discretion of the Board, one or more vice presidents, one or more assistant secretaries, one or more assistant chief financial officers, and such other officers as may be elected or appointed in accordance with the provisions of Section 4.03 of this Article IV. Any number of offices may be held by the same person except as provided in the Articles of Incorporation or in these Bylaws and except that the offices of president and secretary or president and chief financial officer may not be combined.

Section 4.02. Election. The officers of the corporation, except such officers as may be elected or appointed in accordance with the provisions of Section 4.03 or Section 4.05 of this Article IV, shall be chosen annually by, and shall serve at the pleasure of, the Board, and shall hold their respective offices until their resignation, removal, or other disqualification from service, or until their respective successor shall be elected. Unless otherwise appointed by the Board, the president of the corporation shall be the Superintendent of the District, the chief financial officer of the corporation shall be the Chief Business Officer of the District and the secretary of the corporation shall be the Assistant Superintendent, Education Services of the District.

Section 4.03. Subordinate Officers. The Board may elect, and may empower the president to appoint, such other officers, who need not be directors of the corporation, as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 4.04. Term, Removal and Resignation. Subject to the provisions of this Section,

the term of office of each officer shall be co-extensive with his or her employment term with the District in the position identified in Section 4.02 above.

Any officer may be removed, either with or without cause, by the Board at any time or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board. Any such removal shall be without prejudice to the rights, if any, of the officer under any contract of employment of the officer.

Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. Any such resignation shall take effect upon the date of the receipt by the corporation of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 4.06. President. The president is the general manager and chief executive officer of the corporation and has, subject to the control of the Board, general supervision, direction and control of the business and officers of the corporation. The president shall preside at all meetings of the Board. The president has the general powers and duties of management usually vested in the office of president and general manager of a corporation and such other powers and duties as may be prescribed by the Board.

Section 4.07. Vice Presidents. In the absence or disability of the president, the vice presidents, if any be appointed, in order of their rank as fixed by the Board or, if not ranked, the vice president designated by the Board, shall perform all the duties of the president and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board.

Section 4.08. Secretary. The secretary shall keep or cause to be kept, at the principal office or such other place as the Board may order, a book of minutes of all meetings of the Board and its committees, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Board and committee meetings, and the proceedings thereof. The secretary shall keep, or cause to be kept, at the corporation's principal office in the State of California the original or a copy of the corporation's Articles of Incorporation and Bylaws, as amended to date.

The secretary shall give, or cause to be given, notice of all meetings of the Board and any committees thereof required by these Bylaws or by law to be given, shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board.

Section 4.09. Chief Financial Officer. The chief financial officer is the treasurer of the corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct

accounts of the properties and business transactions of the corporation. The corporation's accounting books and financial statements shall at all times be open to inspection by any director or by any member of the Board of Trustees.

The chief financial officer shall deposit or cause to be deposited all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be allowed by law and designated by the Board. The chief financial officer shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the president and the directors, whenever they request it, an account of all transactions as chief financial officer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board.

## ARTICLE V. OTHER PROVISIONS

Section 5.01. Endorsement of Documents; Contracts. Subject to the provisions of applicable law, any note, mortgage, evidence of indebtedness, contract, conveyance or other instrument in writing and any assignment or endorsement thereof executed or entered into between the corporation and any other person, when signed by the president or any vice president, and the secretary, any assistant secretary, the chief financial officer or any assistant chief financial officer of the corporation, shall be valid and binding on the corporation in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same. Any such instruments may be signed by any other person or persons and in such manner as from time to time shall be determined by the Board, and, unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

Section 5.02. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the Law shall govern the construction of these Bylaws.

## ARTICLE VI. NOTICE

Section 6.01. Notice of Meetings. Notice of all meetings of the Board and any committees thereof, shall be given to the Board of Trustees in writing in the same manner as notices are given to the directors of the corporation. Notices shall be directed to the Board of Trustees of the Capistrano Unified School District, 32972 Calle Perfecto, San Juan Capistrano, California 92675. Failure to give such notice shall not in any way invalidate any action taken by the Board at any such meeting.

Section 6.02. Participation of the District Board. Members of the Board of Trustees or their designees shall have the right to attend meetings of the Board, and committees thereof and to make recommendations thereto.

## ARTICLE VII. AMENDMENTS

Except as otherwise provided by the Articles of Incorporation and these Bylaws, new articles of incorporation and/or bylaws may be adopted or the Articles of Incorporation and/or

these Bylaws may be amended or repealed by the vote of a majority of a quorum of the Board at a meeting of the Board duly called for the purpose in accordance with the Articles of Incorporation and these Bylaws; provided, however, that the Articles of Incorporation and these Bylaws shall not be amended or repealed without the consent of the Board of Trustees.

ARTICLE VIII. CORPORATE RECORDS,  
FISCAL YEAR AND SEAL

Section 8.01. Keeping Records. The corporation shall keep adequate and correct records and minutes of the proceedings of the Board and committees of the Board. The minutes shall be kept in written form.

Section 8.02. Annual Report. The annual report referred to in Section 6321 of the Nonprofit Corporation Law of the State of California is expressly dispensed with.

Section 8.03. Fiscal Year. The fiscal year of the corporation shall begin July 1 and end June 30 of each year, except the first fiscal year shall run from the date of incorporation to June 30, 1998.

Section 8.04. Dissolution. In the event of dissolution of the corporation in any manner and for any cause, after the payment or adequate provision for the payment of all of its debts and liabilities, all of the remaining funds, assets and properties of the corporation shall be paid or distributed to the Capistrano Unified School District.

Section 8.05. Corporate Seal. The Board shall adopt a corporate seal which shall set forth the name of the corporation. The secretary of the corporation shall have the custody of the seal and affix it in all appropriate cases to all corporate documents. Failure to affix the seal shall not, however, affect the validity of any instrument.

## CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of The Capistrano Unified School District School Facilities Corporation, a California nonprofit public benefit corporation; that these Bylaws, consisting of nine pages, are the Bylaws of this Corporation as adopted by the Board of Directors on October 24, 2012; and that these Bylaws have not been amended or modified since that date.

IN WITNESS WHEREOF, I, Julie Hatchel, have hereunder subscribed my name this 24<sup>th</sup> day of October 2012, at San Juan Capistrano, California.

---

Julie Hatchel, Ed.D  
Secretary







CAPISTRANO UNIFIED SCHOOL DISTRICT  
San Juan Capistrano, California

**RESOLUTION NO. 2012-02**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE CAPISTRANO  
UNIFIED SCHOOL DISTRICT SCHOOL FACILITIES CORPORATION  
AUTHORIZING DELIVERY AND SALE OF 2012 REFUNDING  
CERTIFICATES OF PARTICIPATION IN THE MAXIMUM  
PRINCIPAL AMOUNT OF \$23,000,000 AND APPROVING RELATED  
DOCUMENTS AND ACTIONS**

*WHEREAS*, the Capistrano Unified School District School Facilities Corporation (the Corporation) has been formed for the purpose of providing financial assistance to the Capistrano Unified School District (the District), and to that end the Corporation has previously entered into a Lease Agreement dated as of April 1, 2002 (the 2002 Lease Agreement), with the District under which the Corporation has leased the real property constituting the Las Flores School facility and site, located at 25862 Antonio Parkway, Rancho Santa Margarita, California and the Capistrano Valley High School facility and site, located at 26301 Via Escolar, Mission Viejo, California (collectively, the Property) to the District in consideration of the payment of semiannual lease payments by the District; and

*WHEREAS*, the lease payments under the 2002 Lease Agreement are evidenced by Certificates of Participation, Series 2002 (Education and Support Facilities) executed and delivered in the aggregate principal amount of \$31,950,000 (the 2002 Certificates), the proceeds of which were applied to finance the construction of school facilities of the District; and

*WHEREAS*, the lease payments under the 2002 Lease Agreement are payable from any source of legally available funds of the District; and

*WHEREAS*, in order to take advantage of favorable interest rates prevailing in the municipal bond market, the District wishes at this time to refinance its obligations with respect to the 2002 Certificates, and the District further wishes to raise proceeds to finance additional projects; and

*WHEREAS*, funds to refinance the 2002 Certificates will be provided from the proceeds of 2012 Certificates of Participation to be issued in the maximum principal amount of \$23,000,000 (the 2012 Refunding Certificates); and

*WHEREAS*, the Board of Directors wishes at this time to authorize and approve all proceedings for the refinancing of the District's obligations with respect to the 2002 Certificates and the financing of additional projects, the delivery and sale of the 2012 Refunding Certificates for that purpose and all related documents and actions, in furtherance of the purposes for which the Corporation has been formed;

EXHIBIT B

*IT IS HEREBY RESOLVED* by the Board of Directors of the Capistrano Unified School District School Facilities Corporation as follows:

Section 1. Approval of Refinancing and Financing Plan and Related Documents. The Board of Directors approves the refinancing and financing plan outlined above. To that end, the Board of Directors approves each of the following financing documents in substantially the respective forms on file with the Secretary, together with any changes therein or additions thereto deemed advisable by the Executive Director or the Secretary, whose execution thereof shall be conclusive evidence of such approval:

- (a) First Amended and Restated Site Lease between the District as lessor and the Corporation as lessee, under which the District continues to lease the Property or other appropriate property to the Corporation.
- (b) First Amended and Restated Lease Agreement between the Corporation as lessor and the District as lessee, under which the Corporation continues to lease the Property or other appropriate property back to the District, and the District agrees to pay semiannual lease payments from legally available funds as required to implement the financing plan.
- (c) Trust Agreement among the District, the Corporation and U.S. Bank National Association, or another appropriate institution designated by the Superintendent as trustee (the Trustee), under which the Trustee agrees to execute and deliver the 2012 Refunding Certificates, and which specifies the detailed terms and provisions relating to the 2012 Refunding Certificates.
- (d) Purchase Contract among the District, the Corporation and a purchaser (the "Purchaser"), under which the District agrees to sell the 2012 Refunding Certificates to the Purchaser.
- (e) Assignment Agreement between the Corporation and the Trustee.

The Executive Director and the Secretary are each individually authorized and directed for and in the name and on behalf of the Corporation to execute, and the Secretary is hereby authorized and directed to attest and affix the seal of the Corporation to, the final form of each of the foregoing documents. The schedule of lease payments attached to the First Amended and Restated Lease Agreement shall correspond to the payments of principal and interest represented by the 2012 Refunding Certificates, to be determined upon the sale thereof as set forth in Section 2.

Section 2. Sale of 2012 Refunding Certificates. The Board of Directors approves the sale of the 2012 Refunding Certificates to the Purchaser in accordance with the Purchase Contract which is approved under Section 1.

Section 3. Official Actions. The Executive Director, the Secretary and all other officers of the Corporation are each authorized and directed in the name and on behalf of the Corporation to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved pursuant to this Resolution. Whenever in this resolution any officer of the Corporation is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 4. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of the Capistrano Unified School District School Facilities Corporation on the 24<sup>th</sup> day of October 2012, by the following called vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

---

Lynn Hatton  
Clerk



TO BE RECORDED AND WHEN RECORDED  
RETURN TO:  
Samuel R. Santana  
301 E. Ocean Blvd., Suite 1750  
Long Beach, CA 90807

---

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

### **FIRST AMENDED AND RESTATED SITE LEASE**

This FIRST AMENDED AND RESTATED SITE LEASE (this "Site Lease"), dated as of November 1, 2012, is between the CAPISTRANO UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the Constitution and laws of the State of California, as lessor (the "District"), and the CAPISTRANO UNIFIED SCHOOL DISTRICT SCHOOL FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation").

#### *BACKGROUND:*

1. The District has previously leased certain real property to the Corporation consisting generally of the land and improvements constituting the Las Flores School facility and site, located at 25862 Antonio Parkway, Rancho Santa Margarita, California and the Capistrano Valley High School facility and site, located at 26301 Via Escolar, Mission Viejo, California (collectively, the "2002 Leased Property"), under a site lease dated as of April 1, 2002, which was recorded in the Orange County Recorder's Office on April 16, 2002, as Document Number 2002-0318979 (the "2002 Site Lease"), and the Corporation concurrently leased the Leased Property back to the District under a Lease Agreement dated as of April 1, 2002, which was recorded in the Orange County Recorder's Office on April 16, 2002, as Document Number 2002-0318980 (the "2002 Lease Agreement").

2. The District's lease payment obligations under the 2002 Lease Agreement are evidenced by 2002 Certificates of Participation executed and delivered in the aggregate principal amount of \$31,950,000 (the "2002 Certificates") under a Trust Agreement dated as of April 1, 2002, among the District, the Corporation and U.S. Bank National Association, as trustee.

3. The District's lease payment obligations under the 2002 Lease Agreement are payable from any source of legally available funds of the District.

4. The District has determined that it is in the best interests of the District at this time to refinance its obligations under the 2002 Lease Agreement which are represented by the 2002 Certificates, by exercising its right to prepay its lease payment obligations under

Site Lease - Capistrano 2012  
Refunding COPs - Oct 3  
2012.DOC

FIRST AMENDED AND  
RESTATED SITE LEASE

the 2002 Lease Agreement and thereby pay and prepay the 2002 Certificates in full on December 1, 2012.

5. In order to raise funds required for the foregoing purposes, the Corporation and the District have agreed to enter into this Site Lease as provided herein and to enter into the First Amended and Restated Lease Agreement dated as of November 1, 2012 (the "Lease"), which is evidenced by a Memorandum of Lease Agreement dated as of November 1, 2012, and recorded concurrently herewith, and the Corporation has assigned certain of its rights under the Lease to U.S. Bank National Association, as trustee (the "Trustee") under an Assignment Agreement dated as of November 1, 2012, and recorded concurrently herewith.

6. In consideration of such assignment the Trustee has agreed to enter into a Trust Agreement dated as of November 1, 2012, under which the Trustee agrees to execute and deliver \$23,000,000 aggregate principal amount of 2012 Refunding Certificates of Participation, each evidencing a direct, undivided fractional interest in the lease payments to be paid by the District under the Lease, the proceeds of which will be used to pay and prepay the District's lease payment obligations under the 2002 Lease Agreement and thereby pay and prepay all of the outstanding 2002 Certificates on December 1, 2012.

7. The payment of principal and interest represented by the Certificates will be insured by a policy of municipal bond insurance issued by [\_\_\_\_\_] ("Certificate Insurer").

#### AGREEMENT:

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

SECTION 1. *Lease of Leased Property.* The District does hereby lease the real property constituting the Las Flores School facility and site, located at 25862 Antonio Parkway, Rancho Santa Margarita, California and the Capistrano Valley High School facility and site, located at 26301 Via Escolar, Mission Viejo, California, which real property is more particularly described in Appendix A attached hereto and by this reference incorporated herein (the "Leased Property") to the Corporation, upon the terms and conditions set forth in this Site Lease, without interruption by virtue of the amendment and restatement of the 2002 Site Lease hereby.

SECTION 2. *Term; Possession.* The term of this Site Lease commences, and the Corporation becomes entitled to possession of the Leased Property, as of the Closing Date. This Site Lease ends, and the right of the Corporation hereunder to possession of the Leased Property thereupon ceases, on the date on which all of the outstanding Certificates are paid in full, or provision has made for such payment in accordance with the Trust Agreement, and the Trust Agreement has been discharged under and in accordance with Section 13.01 thereof, but under any circumstances not later than December 1, 2042.

SECTION 3. *Purpose of this Site Lease.* The purpose for which the District and the Corporation agree to enter into this Site Lease is to facilitate the refinancing of the District's lease payment obligations under the 2002 Lease Agreement and thereby refunding the outstanding 2002 Certificates. No further consideration is due and payable under this Site



Lease in consideration of the creation of the leasehold estate in the Leased Property hereunder.

SECTION 4. *Assignments and Subleases.* Unless the District is in default under the Lease, the Corporation may not assign its rights under this Site Lease or sublet all or any portion of the Leased Property, without the prior written consent of the District.

SECTION 5. *Right of Entry.* The District reserves the right for any of its duly authorized representatives to enter upon the Leased Property, or any portion thereof, at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

SECTION 6. *Termination.* The Corporation agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property in the same good order and condition as the Leased Property was in at the time of commencement of the term hereof, reasonable wear and tear excepted, and agrees that all buildings, improvements and structures then existing upon the Leased Property shall remain thereon and title thereto shall vest thereupon in the District for no additional consideration.

SECTION 7. *Default.* If the Corporation defaults in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Corporation, with the prior written consent of Insurer the District may, and at the written direction of Insurer the District shall, exercise any and all remedies granted by law. No merger of this Site Lease and of the Lease may occur as a result of the exercise of any such remedies. So long as the Lease remains in effect, the Lease Payments payable by the District under the Lease shall continue to be paid to the Trustee.

SECTION 8. *Quiet Enjoyment.* The Corporation at all times during the term of this Site Lease will peaceably and quietly have, hold and enjoy all of the Leased Property, subject to the provisions of the Lease and subject only to Permitted Encumbrances.

SECTION 9. *Amendment.* The Corporation and the District may at any time amend or modify any of the provisions of this Site Lease, but only: (a) with the prior written consents of the Certificate Insurer and the Owners of a majority in aggregate principal amount of the Outstanding Certificates; or (b) with the prior written consent of the Certificate Insurer but without the consent of the Trustee or any of the Certificate Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the District or the Corporation contained in this Site Lease, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the District or the Corporation,
- (ii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, for the purpose of conforming to the original intention of the District and the Corporation,
- (iii) to amend any provision thereof relating to the Tax Code, but only if and to the extent such amendment will not adversely affect the exclusion

from gross income of interest represented by any of the Certificates under the Tax Code, in the opinion of Bond Counsel,

- (iv) to amend the description of any component of the Leased Property to reflect accurately the property originally intended to be included therein, or to effectuate any substitution of property or any release of property as permitted by the Lease,
- (v) in any other respect whatsoever as the Corporation and the District deem necessary or desirable, provided that, in the opinion of Special Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Certificates.

The District must obtain and cause to be filed with the Trustee an opinion of Special Counsel with respect to any amendment or modification hereof, stating that all conditions precedent to such amendment as set forth in this Section 9 have been satisfied. Promptly following the effective date of any amendment or modification under this Section, the District must mail written notice thereof to each rating agency which then maintains a rating on the Certificates.

SECTION 10. *Waiver of Personal Liability.* All liabilities under this Site Lease on the part of the Corporation are solely corporate liabilities of the Corporation as a public body, corporate and politic, and the District releases each and every member and officer of the Corporation from personal or individual liability under this Site Lease. No member or officer of the Corporation or its governing board may be individually or personally liable under this Site Lease for anything done or omitted to be done by the Corporation hereunder.

SECTION 11. *Taxes.* The District shall pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon.

SECTION 12. *Eminent Domain.* If all or any part of the Leased Property, or any improvements thereon, are taken by eminent domain proceedings, the interest of the Corporation will be recognized and is hereby determined to be the aggregate amount of the then unpaid principal components of the Lease Payments; and the balance of the award, if any, shall be paid to the District. The District waives any and all rights that it has or may hereafter have to acquire the interest of the Corporation in and to the Leased Property through the eminent domain powers of the District.

SECTION 13. *Partial Invalidity.* If any one or more of the terms, provisions, covenants or conditions of this Site Lease are to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease will be affected thereby, and each provision of this Site Lease will be valid and enforceable to the fullest extent permitted by law.

SECTION 14. *Notices.* Any notice, request, complaint, demand or other communication under this Site Lease may be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy, telex or other form of telecommunication, at its number set forth below. Notice is effective either (a) upon transmission by telecopy, telex or other form of telecommunication, (b) 48 hours after

deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The District, the Corporation, the Trustee and Insurer may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the District:* Capistrano Unified School District  
33122 Valle Road  
San Juan Capistrano, CA 92675  
Attention: Superintendent  
Fax: (949) 493-8729

*If to the Corporation:* Capistrano Unified School District School  
Facilities Corporation  
33122 Valle Road  
San Juan Capistrano, CA 92675  
Attention: Executive Director  
Fax: (949) 234-9200

*If to the Trustee:* U.S. Bank National Association

*If to Insurer:*

SECTION 15. *Governing Law.* This Site Lease is governed by the Constitution and laws of the State of California.

SECTION 16. *Third Party Beneficiaries.* The Trustee and Insurer are each hereby made a third party beneficiary under this Site Lease with all rights of a third party beneficiary.

SECTION 17. *Binding Effect.* This Site Lease inures to the benefit of and is binding upon the Corporation, the District and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 18. *Section Headings.* All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

SECTION 19. *Execution in Counterparts.* This Site Lease may be executed in any number of counterparts, each of which will be deemed to be an original but all together constitute but one and the same lease. It is also agreed that separate counterparts of this Site Lease may be separately executed by the Corporation and the District, all with the same force and effect as though the same counterpart had been executed by both the Corporation and the District.

SECTION 20. *Amendments.* This Site Lease may not be amended without the prior written consent of Insurer.

SECTION 21. *Defined Terms.* All capitalized terms used herein and not otherwise defined have the respective meanings given those terms in the Trust Agreement.

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

**CAPISTRANO UNIFIED SCHOOL DISTRICT,**  
*as Lessor*

By \_\_\_\_\_  
Dr. Joseph M. Farley, Superintendent

Attest:

\_\_\_\_\_  
Lynn Hatton, Clerk of the Board

**CAPISTRANO UNIFIED SCHOOL DISTRICT  
SCHOOL FACILITIES CORPORATION,** *as  
Lessee*

By \_\_\_\_\_  
Dr. Joseph M. Farley, Executive Director

Attest:

\_\_\_\_\_  
Julie Hatchel, Secretary

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_        ) ss

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

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

Notary Public Seal

STATE OF CALIFORNIA            )  
  )  ss  
COUNTY OF \_\_\_\_\_        )

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

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

Notary Public Seal

**APPENDIX A**

**DESCRIPTION OF THE LEASED PROPERTY**

The real property constituting the Leased Property consists of that certain land located in the County of Orange, State of California, more particularly described as follows, together with all buildings, facilities and other improvements located on such land as of the Closing Date.

[INSERT LEGAL DESCRIPTIONS]

End of Legal Description





---

---

**FIRST AMENDED AND RESTATED LEASE AGREEMENT**

**Dated as of November 1, 2012**

**by and between the**

**CAPISTRANO UNIFIED SCHOOL DISTRICT**

**and**

**CAPISTRANO UNIFIED SCHOOL DISTRICT SCHOOL FACILITIES CORPORATION**

---

---

**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE I</b>	
<b>DEFINITIONS; RULES OF INTERPRETATION</b>	
Section 1.1. <i>Definitions</i> .....	1
Section 1.2. <i>Interpretation</i> .....	3
<b>ARTICLE II:</b>	
<b>COVENANTS, REPRESENTATIONS AND WARRANTIES:</b>	
Section 2.1. <i>Covenants, Representations and Warranties of the District</i> .....	3
Section 2.2. <i>Covenants, Representations and Warranties of the Corporation</i> .....	4
<b>ARTICLE III:</b>	
<b>DEPOSIT OF FUNDS; LEASE OF LEASED PROPERTY; LEASE PAYMENTS</b>	
Section 3.1. <i>Deposit of Moneys</i> .....	5
Section 3.2. <i>Lease of Leased Property by District to Corporation</i> .....	5
Section 3.3. <i>Sublease of Leased Property by Corporation Back to District</i> .....	5
Section 3.4. <i>Term</i> .....	5
Section 3.5. <i>Lease Payments</i> .....	5
Section 3.6. <i>Quiet Enjoyment</i> .....	6
Section 3.7. <i>Title</i> .....	6
<b>ARTICLE IV:</b>	
<b>MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS</b>	
Section 4.1. <i>Maintenance, Utilities, Taxes and Assessments</i> .....	9
Section 4.2. <i>Modification of Leased Property</i> .....	9
Section 4.3. <i>Public Liability and Property Damage Insurance</i> .....	9
Section 4.4. <i>Casualty Insurance</i> .....	10
Section 4.5. <i>Worker's Compensation Insurance</i> .....	10
Section 4.6. <i>Rental Interruption Insurance</i> .....	10
Section 4.7. <i>Insurance Net Proceeds; Form of Policies</i> .....	11
Section 4.8. <i>Installation of District's Personal Property</i> .....	11
Section 4.9. <i>Liens</i> .....	11
Section 4.10. <i>Advances</i> .....	11
<b>ARTICLE V:</b>	
<b>DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS</b>	
Section 5.1. <i>Application of Net Proceeds</i> .....	12
Section 5.2. <i>Termination or Abatement Due to Eminent Domain</i> .....	12
Section 5.3. <i>Abatement Due to Damage or Destruction</i> .....	12
<b>ARTICLE VI:</b>	
<b>OTHER COVENANTS OF THE DISTRICT:</b>	
Section 6.1. <i>Disclaimer of Warranties</i> .....	13
Section 6.2. <i>Access to the Leased Property</i> .....	13
Section 6.3. <i>Release and Indemnification Covenants</i> .....	13
Section 6.4. <i>Assignment by the Corporation</i> .....	14
Section 6.5. <i>Assignment and Subleasing by the District</i> .....	14
Section 6.6. <i>Amendment of Lease</i> .....	14
Section 6.7. <i>Tax Covenants</i> .....	15
<b>ARTICLE VII:</b>	
<b>EVENTS OF DEFAULT AND REMEDIES:</b>	
Section 7.1. <i>Events of Default Defined</i> .....	15
Section 7.2. <i>Remedies on Default</i> .....	16
Section 7.3. <i>No Remedy Exclusive</i> .....	17
Section 7.4. <i>Agreement to Pay Attorneys' Fees and Expenses</i> .....	17

Section 7.5. *No Additional Waiver Implied by One Waiver* .....17  
 Section 7.6. *Assignee to Exercise Rights*.....18

ARTICLE VIII:

PREPAYMENT OF LEASE PAYMENTS:

Section 8.1. *Security Deposit* .....18  
 Section 8.2. *Optional Prepayment* .....18  
 Section 8.3. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent  
 Domain*.....18

ARTICLE IX  
 MISCELLANEOUS

Section 9.1. *Notices* .....19  
 Section 9.2. *Binding Effect* .....19  
 Section 9.3. *Severability* .....19  
 Section 9.4. *Net-net-net Lease* .....19  
 Section 9.5. *Further Assurances and Corrective Instruments* .....19  
 Section 9.6. *Execution in Counterparts*.....20  
 Section 9.7. *Applicable Law* .....20  
 Section 9.8. *Captions*.....20

This FIRST AMENDED AND RESTATED LEASE AGREEMENT (this "Lease"), dated as of November 1, 2012, is by and between CAPISTRANO UNIFIED SCHOOL DISTRICT SCHOOL FACILITIES CORPORATION, a corporation duly organized and existing under the laws of the State of California, as lessor (together with its successors and assigns, the "Corporation"), and the CAPISTRANO UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the laws of the State of California (the "District");

**WITNESSETH:**

**WHEREAS**, the Capistrano Unified School District (the "District") financed the construction of school facilities from a portion of the proceeds of Certificates of Participation, dated April 16, 2002, and issued in the original aggregate principal amount of \$31,950,000 (the "2002 Certificates"), which was secured by lease payments (the "2002 Lease Payments") to be made by the District pursuant to a Lease Agreement dated April 1, 2002, and recorded in Orange County on April 16, 2002, as Instrument No. 2002-0318980 (the "2002 Lease") by and between the District and Capistrano Unified School District School Facilities Corporation (the "Corporation"); and

**WHEREAS**, in order to take advantage of favorable interest rates and realize interest rate savings to the District, the District has determined at this time to prepay its obligations under the 2002 Lease and thereby provide for the prepayment and defeasance of the portion of the 2002 Certificates representing interests in 2002 Lease Payments; and

**WHEREAS**, the Corporation has assigned its interests in the 2002 Lease to the 2002 Trustee, such that the 2002 Trustee can assist the District in the prepayment and defeasance of the 2002 Certificates; and

**WHEREAS**, to that end, the District and the Corporation have determined to enter into this Lease, all for the purpose of refinancing the District's 2002 Certificates, as herein described;

**NOW, THEREFORE**, for and in consideration of the promises and the material covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

**ARTICLE I**

**Definitions; Rules of Interpretation**

Section 1.1. *Definitions.* All terms defined in this Section 1.1 shall for all purposes of this Lease have the meanings herein specified.

"Certificate Insurer" means [ \_\_\_\_\_ ] Insurance Corporation.

"Closing Date" means the date of execution and delivery of this Lease by the parties hereto, being November 20, 2012.

"Corporation" means Capistrano Unified School District School Facilities Corporation, a corporation duly organized and existing under the laws of the State of California.

"District" means the Capistrano Unified School District, a school district duly organized and existing under the Constitution and the Laws of the State of California.

"Event of Default" means any of the events of default as defined in Section 7.1

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

"Fiscal Year" means each twelve-month period during the Term of this Lease commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the District as its fiscal year period.

"Lease Payment" means all payments required to be paid by the District on any date pursuant to Section 3.5, including any prepayment thereof pursuant to Section 5.2 or 5.3.

"Lease Payment Date" means , with respect to any Interest Payment Date, the 15<sup>th</sup> Calendar Day of the month immediately preceding such Interest Payment Date, commencing June 1, 2013, and continuing to and including the date on which the Lease Payments have been paid in full.

"Leased Property" mean the real property described more fully in Appendix A hereto plus all improvements located thereon, or any real property and improvements substituted thereto pursuant to Section 3.8 of this Agreement.

"Net Proceeds" means any insurance proceeds or condemnation awards paid with respect to the Leased Property remaining after payment therefrom of all expenses incurred in the collection thereof.

"2002 Certificates" means the Certificates of Participation dated as of April 16, 2002 and issued in the original principal amount not to exceed \$31,950,000 under the 2002 Trust Agreement.

"2002 Lease" means that certain Lease Agreement dated as of April 1, 2002, by and between Capistrano Unified School District School Facilities Corporation and the District.

"2002 Trust Agreement" means that certain Trust Agreement dated as of April 1, 2002, by and among First Trust National Association, as original trustee, the Capistrano Unified School District, and Corporation.

"2002 Trustee" means U.S. Bank National Association, trustee for the 2002 Certificates.

"Rental Period" means the twelve-month period commencing on December 2 in each year during the Term of this Lease and extending to and including the succeeding December 1, except that the first Rental Period shall commence on the Closing Date and extend to and include December 1, 2012.

"Special Counsel" means Dannis Woliver Kelley, or any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code.

"Tax Code" means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

"Term of this Lease" or "Term" means the time during which this Lease is in effect, as provided in Section 3.4.

Section 1.2. *Interpretation.*

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

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

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

## ARTICLE II

### COVENANTS, REPRESENTATIONS AND WARRANTIES

Section 2.1. *Covenants, Representations and Warranties of the District.* The District makes the following covenants, representations and warranties to the Corporation as of the date of the execution and delivery of this Lease:

(a) Due Organization and Existence. The District is a school district duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under the laws of the State of California to enter into this Lease and to carry out and consummate all transactions contemplated hereby, and by proper action the District has duly authorized the execution and delivery of this Lease.

(b) Due Execution. The representatives of the District executing this Lease have been fully authorized to execute the same pursuant to a resolution duly adopted by the governing body of the District.

(c) Valid, Binding and Enforceable Obligations. This Lease has been duly authorized, executed and delivered by the District and constitutes the legal, valid and binding agreement of the District enforceable against the District in accordance with their respective terms.

(d) No Conflicts. The execution and delivery of this Lease, the consummation of the transactions herein contemplated and the fulfillment of

or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the District is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease or the financial condition, assets, properties or operations of the District.

(e) Essentiality. The Leased Property is essential to the governmental functions of the District.

Section 2.2. *Covenants, Representations and Warranties of the Corporation*. The Corporation makes the following covenants, representations and warranties as the basis for its undertakings herein contained:

(a) Due Organization and Existence. The Corporation is a corporation duly organized and validly existing under the laws of the State of California, has full legal right, power and authority to enter into this Lease and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the Corporation has duly authorized the execution and delivery of this Lease.

(b) Due Execution. The representatives of the Corporation executing this Lease are fully authorized to execute the same pursuant to official action taken by the governing body of the Corporation.

(c) Valid, Binding and Enforceable Obligations. This Lease has been duly authorized, executed and delivered by the Corporation and constitutes the legal, valid and binding agreement of the Corporation, enforceable against the Corporation in accordance with its terms.

(d) No Conflicts. The execution and delivery of this Lease, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Corporation is a party or by which the Leased Property is otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon the Leased Property, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease or the financial condition, assets, properties or operations of the Corporation.

### ARTICLE III

#### DEPOSIT OF FUNDS; LEASE OF LEASED PROPERTY; LEASE PAYMENTS

Section 3.1. *Deposit of Moneys.* Pursuant to the Assignment of Lease, the proceeds therefrom in the amount of \$\_\_\_\_\_ shall be applied on the Closing Date as follows: (a) the amount of \$\_\_\_\_\_ shall be deposited with the Trustee for deposit in the escrow established for the District, to be applied, together with other funds on deposit with the 2002 Trustee, to the prepayment in full of the 2002 Lease Payments and the prepayment in full of the 2002 Certificates, (b) \$\_\_\_\_\_ shall be deposited with the Trustee into the Reserve Fund, and (c) \$\_\_\_\_\_ shall be retained by the Trustee and deemed expended on the Closing Date for the purpose of paying costs of the transaction.

The foregoing amounts deposited with the 2002 Trustee shall be applied, together with other amounts on deposit in funds maintained for the District in connection with the 2002 Certificates for the purpose of paying in full all of the District's lease payment obligations under the 2002 Lease Agreement and thereby prepaying the District's portion of the 2002 Certificates. On the Closing Date, the District's obligations under the 2002 Lease Agreement shall be prepaid and discharged in full, in accordance with the provisions of the 2002 Lease Agreement.

Section 3.2. *Lease of Leased Property by District to Corporation.* The District hereby covenants that it has fee title to the Leased Property. For and in consideration of the deposits to be made pursuant to Section 3.1 hereof on the Closing Date by the Corporation to and on behalf of the District as rental, the District hereby leases the Leased Property to the Corporation for a term which is coterminous with the Term of this Lease, provided that the Corporation shall use the Leased Property as so leased solely for the purpose of subleasing the Leased Property back to the District pursuant to the provisions of this Lease; and provided further, that upon the occurrence of an Event of Default, the Corporation or any successor or assignee of the Corporation may use the Leased Property in its discretion in order to exercise fully the remedies provided in this Lease. No merger shall be effected by the District's lease of the Leased Property to the Corporation, and the Corporation's sublease of the Leased Property back to the District.

Section 3.3. *Lease of Leased Property by Corporation Back to District.* The Corporation hereby subleases the Leased Property to the District, and the District hereby subleases the Leased Property from the Corporation. The Leased Property shall be subleased to the District pursuant to this Lease upon the terms and provisions hereof.

Section 3.4. *Term.* The Term of this Lease shall commence on the Closing Date and shall end on the date on which all of the Lease Payments have been paid in full. The provisions of this Section 3.4 are subject to the provisions of Section 5.2 relating to the taking in eminent domain of the Leased Property or any portion thereof.

Section 3.5. *Lease Payments.*

(a) Obligation to Pay. Subject to the provisions of Sections 5.2 and 5.3 and the provisions of Article VIII, the District agrees to pay to the Corporation, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Exhibit B attached hereto and by this reference incorporated herein, to be due and payable in immediately available funds on 15 days prior to each of the respective Lease Payment Dates specified in Exhibit B. The Lease Payments payable in any



Rental Period with respect to the Leased Property shall be for the use of the Leased Property during such Rental Period. Monies on deposit in the Lease Payment Fund are credited against Lease Payments due.

(b) Effect of Prepayment. In the event that the District prepays all Lease Payments in full pursuant to Sections 8.2 or 8.3, the District's obligations under this Section shall thereupon cease and terminate. In the event that the District prepays the Lease Payments in part but not in whole pursuant to Section 8.3, the principal components of the remaining Lease Payments shall be reduced on a pro rata basis; and the interest component of each remaining Lease Payment shall be reduced on a pro rata basis.

(c) Fair Rental Value. The Lease Payments coming due and payable during each Rental Period shall constitute the total rental for the Leased Property for such Rental Period, and shall be paid by the District in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making such determination, consideration has been given to the estimated fair market value of the Leased Property, the costs of financing the deposit required for the purposes set forth in Section 3.1, other obligations of the District and the Corporation under this Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the District and the general public.

(d) Source of Payments; Budget and Appropriation. The Lease Payments shall be payable from any source of available funds of the District, subject to the provisions of Sections 5.2, 5.3 and 8.1. The District covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the District herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the District.

(e) Assignment. The District understands and agrees that all Lease Payments have been assigned by the Corporation to the Trustee, and the District hereby assents to such assignment. The Corporation hereby directs the District, and the District hereby agrees, to pay to the Trustee all payments payable by the District pursuant to this Section 3.5 and all amounts payable by the District pursuant to Article VIII.

Section 3.6. *Quiet Enjoyment.* Throughout the Term of this Lease, the Corporation shall provide the District with quiet use and enjoyment of the Leased Property and the District shall peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Lease. The Corporation will, at the request of the District and at the District's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent the Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation shall have the right to inspect the Leased Property as provided in Section 6.2.

Section 3.7. *Title.* At all times during the Term of this Lease, the District shall hold title to the Leased Property, including all additions which comprise fixtures, repairs,

replacements or modifications thereto, subject to the assignment to the Trustee, and subject to the provisions of Section 6.2.

Upon the termination of this Lease (other than pursuant to Section 7.2(b) hereof), all right, title and interest of the Corporation in and to the Leased Property shall be transferred to and vested in the District. Upon the payment in full of all Lease Payments allocable to the Leased Property, or upon the deposit by the District of security for such Lease Payments as provided in Section 8.1, all right, title and interest of the Corporation in and to the Leased Property shall be transferred to and vested in the District. The Corporation agrees to take any and all steps and execute and record any and all documents reasonably required by the District to consummate any such transfer of title.

Section 3.8. *Substitution of Leased Property.* The District shall have, upon the prior written consent of the Certificate Insurer, and is hereby granted, the option at any time and from time to time during the Term of this Lease, to substitute other land, facilities, improvements or other property ("Substitute Leased Property") for the Leased Property or any portion thereof ("Former Leased Property"), provided that the District shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such substitution:

(a) The District shall take all actions and shall execute all documents required to subject such Substitute Leased Property to the terms and provisions of this Lease, including the filing with the Corporation and the Trustee an amended Exhibit "A", which adds thereto a description of such Substitute Leased Property and deletes therefrom the description of such Former Leased Property;

(b) The District shall deliver to the Corporation and the Trustee evidence that the value of the Substitute Leased Property following such substitution is equal to or greater than the outstanding principal amount of the Certificates and shall confirm in writing to the Trustee that the indemnification provided pursuant to the Trust Agreement applies with respect to the Substitute Leased Property;

(c) The District shall certify in writing to the Corporation and the Trustee that such Substitute Leased Property serves the public purposes of the District and constitutes property which the District is permitted to lease under the laws of the State of California;

(d) The District shall certify in writing to the Corporation and the Trustee that the estimated useful life of such Substitute Leased Property at least extends to the date on which the final Lease Payment becomes due and payable hereunder;

(e) The District shall obtain a policy of title insurance meeting the requirements of this Lease with respect to such Substitute Leased Property;

(f) The District shall certify in writing to the Corporation and the Trustee that the Substitute Leased Property shall not cause the District to violate any of its covenants, representations and warranties made herein or in the Trust Agreement; and

From and after the date on which all of the foregoing conditions precedent to such substitution are satisfied, the Term of this Lease shall cease with respect to the Former Leased Property and shall be continued with respect to the Substitute Leased Property, and all references herein to the Former Leased Property shall apply with full force and effect to the Substitute Leased Property. The District shall not be entitled to any reduction,

diminution, extension or other modification of the Lease Payments whatsoever as a result of such substitution.

Section 3.9 *Additional Rental Payments*. In addition to the Lease Payments, the District shall pay when due all costs and expenses incurred by the Corporation to comply with the provisions of the Lease and the Trust Agreement, including without limitation all costs of issuance (to the extent not paid from amounts on deposit in the Cost of Issuance Fund), annual compensation due to the Trustee, all of its reasonable costs payable as a result of the performance of and compliance with its duties under the Trust Agreement and all other amounts due to the Trustee pursuant to the Trust Agreement, and all costs and expenses of attorneys, auditors, engineers and accounts. Such costs and expenses shall be payable as additional amounts of rental hereunder in consideration of the right of the District to the use and occupancy of the Leased Property.

Section 3.10. *Release of Property*

The District may release any portion of the Leased Property (the "Released Property") from the Lease and the First Amended and Restated Site Lease (the "Site Lease") provided that the District has satisfied all of the requirements contained in the Lease, including the following:

- (a) [INSERT BOND INSURER] has given its prior written consent to such release.
- (b) No event of default has occurred and is continuing under the Lease.
- (c) The District has certified in writing to the Corporation and the Trustee that the fair market value of the property, which remains subject to the Lease and the Site Lease following such removal is at least equal to the aggregate original principal amount of the Certificates, and the fair rental value of the property which remains subject to the Lease and the Site Lease following such removal is at least equal to the Lease Payments thereafter coming due and payable thereunder.
- (d) The District has mailed written notice of such removal to each rating agency which then maintains a rating on the Certificates.
- (e) District delivers an opinion of counsel stating that the release of property will not affect the tax-exempt status of the Certificates.

Upon the satisfaction of all such conditions precedent, the Term of the Lease will thereupon end as to the Released Property. The District is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release

## **ARTICLE IV**

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

Section 4.1. *Maintenance, Utilities, Taxes and Assessments.* Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property shall be the responsibility of the District, and the District shall pay for or otherwise arrange for the payment of all utility services supplied to the Leased Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the District or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Corporation agrees to provide only the Leased Property, as hereinbefore more specifically set forth. The District waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this Lease.

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

The District may, at the District's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the District that, in its reasonable opinion, by nonpayment of any such items the interest of the Corporation in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the District shall promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation.

Section 4.2. *Modification of Leased Property.* The District shall, at its own expense, have the right to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property shall not comprise part of the Leased Property and shall not become subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto pursuant to this Section, shall be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

Section 4.3. *Public Liability and Property Damage Insurance.* The District shall maintain or cause to be maintained throughout the Term of this Lease a standard comprehensive general insurance policy or policies in protection of the Corporation, the District, and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss

or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as the District shall deem adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and may be maintained in whole or in part in the form of the participation by the District in a joint powers authority or other program providing pooled insurance. The proceeds of such liability insurance shall be applied by the District toward extinguishment or satisfaction of the liability with respect to which paid.

Section 4.4. *Casualty Insurance.* The District shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, casualty insurance against loss or damage to any part of the Leased Property covering such hazards as are customarily covered with respect to works and property of like character, in an amount at least equal to the replacement value of the Leased Property or the principal amount of outstanding Lease Payments relating to the Leased Property, whichever is greater. Such insurance shall be subject to a deductible not to exceed \$50,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and may be maintained in whole or in part in the form of the participation by the District in a joint powers authority or other program providing pooled insurance. The Net Proceeds of such insurance shall be applied as provided in Section 5.1.

Section 4.5. *Worker's Compensation Insurance.* If required by applicable California law, the District shall carry worker's compensation insurance covering all employees on, in, near or about the Leased Property and, upon request, shall furnish to the Corporation certificates evidencing such coverage throughout the Term of this Lease.

Section 4.6. *Rental Interruption Insurance.* The District shall procure and maintain, or cause to be procured and maintained, throughout the term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Leased Property and the improvements situated thereon as a result of any of the hazards covered in the insurance required by Section 4.4, in an amount at least equal to the maximum Lease Payments coming due and payable during any future twenty-four (24) month period. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the District, and may be maintained in whole or in part in the form of the participation by the District in a joint powers authority or other program providing pooled insurance. The Net Proceeds of such insurance, if any, shall be applied by the District towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

Section 4.7. *Recordation Hereof; Title Insurance.* On or before the Closing Date, the District shall, at its expense (a) cause the Site Lease, this Lease or a memorandum thereof in form and substance approved by Special Counsel, and the Assignment Agreement to be recorded in the office of the Orange County Recorder with respect to the Leased Property; and (b) obtain a CLTA policy of title insurance insuring the District's leasehold estate hereunder in the Lease Property, subject only to Permitted Encumbrances, in an amount at least equal to the aggregate principal amount of the Certificates. A copy of such policy shall be delivered to the Certificate Insurer. All Net Proceeds received under any such title insurance policy shall be deposited with the Trustee in the Lease Payment Fund and shall be credited towards the prepayment of the remaining Lease Payments pursuant to Section 8.3.

Section 4.8. *Insurance Net Proceeds; Form of Policies.* All insurance policies (or riders) required by this Article IV shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State of California, and either be rated 'A' or better by A.M. Best Co., or be rated in the highest two rating categories by S&P and Moodys without gradation. All policies shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least thirty (30) days before the cancellation or revision becomes effective. Each insurance policy or rider required by this Article IV shall name the District, the Trustee and the Corporation as insured parties and the Trustee as loss payee and shall include a lender's loss payable endorsement for the benefit of the Trustee. Prior to the Closing Date, the District shall deposit with the Trustee policies (and riders and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the District shall furnish to the Trustee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article IV unless such insurance is no longer obtainable, in which event the District shall notify the Trustee of such fact. Copies of all insurance policies shall be delivered annually to the Certificate Insurer.

Section 4.9. *Installation of District's Personal Property.* The District may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Property. All such items shall remain the sole property of the District, in which the Corporation shall have no interest, and may be modified or removed by the District at any time, provided that the District shall repair and restore any and all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent the District from purchasing or leasing items to be installed pursuant to this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Leased Property.

Section 4.10. *Liens.* The District shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than as herein contemplated and except for such encumbrances as the District shall certify in writing to the Corporation do not materially and adversely affect the leasehold estate in the Leased Property hereunder and for which the Trustee approves in writing, which approval shall not be unreasonably withheld. Except as expressly provided in this Article IV, the District shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The District shall reimburse the Corporation for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. In no event shall the Leased Property be pledged to a future debt issuance of any kind without the consent of the Certificate Insurer.

Section 4.11. *Advances.* If the District shall fail to perform any of its obligations under this Article IV, the Corporation may take such action as may be necessary to cure such failure, including the advancement of money, and the District shall be obligated to repay all such advances as additional rental hereunder, with interest at the rate then payable with respect to the Certificates.

## ARTICLE V

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

Section 5.1. *Application of Net Proceeds.* The Net Proceeds of any insurance award resulting from any damage to or destruction of the Leased Property by fire or other casualty, and the Net Proceeds of any taking of the Leased Property or any portion thereof in eminent domain proceedings, shall be paid to the Corporation to be applied as hereinafter set forth in this Section 5.1.

In the event that the Leased Property becomes destroyed or damaged beyond repair at any time during the Term of this Lease, or in the event the Leased Property or any portion thereof is taken in eminent domain proceedings at any time during the Term of this Lease, the District shall as soon as practicable after such event, with the prior written consent of the Corporation, apply the Net Proceeds resulting therefrom either to: (a) repair the Leased Property to full use; (b) replace the Leased Property, at the District's sole cost and expense, with property of equal or greater value to the Leased Property immediately prior to the time of the such destruction or damage, such replacement Leased Property to be subject to the Corporation's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement; or (c) prepay the Lease Payments in accordance with Section 8.3. The District shall notify the Corporation of which course of action it desires to take within thirty (30) days after the occurrence of such destruction or damage. The Corporation may (but is not required to) in its own name or in the District's name execute and deliver proofs of claim, receive all such moneys, endorse checks and other instruments representing payment of such moneys, and adjust, litigate, compromise or release any claim against the issuer of any such policy, and the District hereby grants to the Corporation a power of attorney coupled with an interest to accomplish all or any of the foregoing. The Net Proceeds of all insurance payable with respect to the Leased Property shall be available to the District and shall be used to discharge the District's obligations under this Section.

Section 5.2. *Termination or Abatement Due to Eminent Domain.* If the Leased Property shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease shall cease with respect thereto as of the day possession shall be so taken. If less than all of the Leased Property shall be taken permanently, or if the Leased Property shall be taken temporarily, under the power of eminent domain, (a) this Lease shall continue in full force and effect with respect thereto and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (b) there shall be a partial abatement of Lease Payments allocated thereto, in an amount to be determined by the District with the prior written consent of the Corporation, such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

Section 5.3. *Abatement Due to Damage or Destruction.* The amount of Lease Payments shall be abated during any period in which by reason of damage or destruction (other than by eminent domain which is hereinbefore provided for) there is substantial interference with the use and occupancy by the District of the Leased Property or any portion thereof. The amount of such abatement shall be determined by the District, with the prior written consent of the Corporation, such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portions of the Leased

Property not damaged or destroyed. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease shall continue in full force and effect and the District waives any right to terminate this Lease by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 5.3 to the extent that the proceeds of hazard insurance or rental interruption insurance are available to pay Lease Payments which would otherwise be abated under this Section 5.3, it being hereby declared that such proceeds and amounts constitute a special fund for the payment of the Lease Payments.

## ARTICLE VI

### OTHER COVENANTS OF THE DISTRICT

Section 6.1. *Disclaimer of Warranties.* THE CORPORATION MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE DISTRICT OF THE LEASED PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. THE DISTRICT ACKNOWLEDGES THAT THE CORPORATION IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE DISTRICT LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE DISTRICT. In no event shall the Corporation be liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease for the existence, furnishing, functioning or District's use of the Leased Property.

Section 6.2. *Access to the Leased Property.* The District agrees that the Corporation, and the Corporation's successors or assigns, shall have the right at all reasonable times to enter upon and to examine and inspect the Leased Property or any part thereof. The District further agrees that the Corporation, and the Corporation's successors or assigns shall have such rights of access to the Leased Property or any component thereof as may be reasonably necessary to cause the proper maintenance of the Leased Property in the event of failure by the District to perform its obligations hereunder; *provided, however*, that neither the Corporation nor any of its assigns shall have any obligation to cause such proper maintenance.

Section 6.3. *Release and Indemnification Covenants.* The District shall and hereby agrees to indemnify and save the Corporation and its officers, agents, successors and assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the District, (b) any breach or default on the part of the District in the performance of any of its obligations under this Lease, (c) any negligence or willful misconduct of the District or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property, (d) any intentional misconduct or negligence of any sublessee of the District with respect to the Leased Property, (e) the acquisition, construction, improvement and equipping of the Leased Property, or (f) the clean-up of any hazardous materials or toxic wastes from the Leased Property, or the authorization of payment of the costs thereof. No indemnification is made under this Section or elsewhere in this Lease for willful misconduct or negligence under this Lease by the Corporation, or its officers, agents, employees, successors or assigns. The



indemnification provided by the District under this Section shall survive the termination of this Lease.

Section 6.4. *Assignment by the Corporation.* The Corporation's rights under this Lease, including the right to receive and enforce payment of the Lease Payments to be made by the District hereunder, have been assigned to the Trustee. The District hereby consents to such assignment and agrees that the Trustee shall not be liable for any of the covenants, agreements or obligations of the Corporation under this Lease except for those obligations specifically set forth in the Assignment of Lease. Whenever in this Lease any reference is made to the Corporation and such reference concerns rights which the Corporation has assigned to the Trustee, such reference shall be deemed to refer to the Trustee.

The Corporation or the Trustee shall have the right to make additional assignments of its interests herein, but no such assignment shall be effective as against the District unless and until the Corporation or the Trustee shall have filed with the District written notice thereof. The District shall pay all Lease Payments hereunder pursuant to the written direction of the Corporation or the assignee named in the most recent assignment or notice of assignment filed with the District. During the Term of this Lease, the District shall keep a complete and accurate record of all such notices of assignment.

Section 6.5. *Assignment and Subleasing by the District.* This Lease may not be assigned by the District. The District may sublease the Leased Property, or any portion thereof, subject to all of the following conditions:

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

(b) The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Corporation a true and complete copy of such sublease.

(c) No such sublease by the District shall cause the Leased Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State of California.

(d) The District shall furnish the Corporation with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State of California.

Section 6.6. *Amendment of Lease.* This Lease may be amended by the District and the Corporation, but only with the prior written consent of the Corporation and the Certificate Insurer (which consent shall not be unreasonably withheld). Prior to the effective date of any such amendment, and as a condition precedent to the effectiveness thereof, the District at its expense shall obtain an opinion of Bond Counsel stating that such amendment will not adversely affect the exclusion from gross income of the interest component of the Lease Payments.

Section 6.7. *Tax Covenants.*

(a) Generally. The District shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest components of the Lease Payments to become includable in gross income for federal income tax purposes.

(b) Private Activity Bond Limitation. The District shall assure that the proceeds of the Lease Payments are not so used as to cause the District's obligations hereunder to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The District shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Lease Payments to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The District shall not take, or permit or suffer to be taken, any action with respect to the proceeds of the Lease Payments which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Lease Payments to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(e) Arbitrage Rebate. The District shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Lease Payments.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.1. *Events of Default Defined.* Any one or more of the following events shall constitute an Event of Default hereunder:

(a) Failure by the District to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.

(b) Failure by the District to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Corporation; *provided, however,* if in the reasonable opinion of the District the failure stated in the notice can be corrected, but not within such thirty (30) day period, the Corporation shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within such thirty (30) day period and diligently pursued until the default is corrected.

(c) The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or

attachment, or adjudication of the District as a bankrupt, or assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

Section 7.2. *Remedies on Default.* Whenever any Event of Default shall have happened and be continuing, it shall be lawful for the Corporation, only with the consent of the Certificate Insurer, to exercise any and all remedies available pursuant to law or granted pursuant to this Lease; *provided, however,* that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the District is expressly made a condition and upon the breach thereof the Corporation may exercise any and all rights granted hereunder; *provided,* that no termination of this Lease shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Corporation shall have and is granted each and every one of the following remedies.

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

The District hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the District to enter upon and re-lease the Leased Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Leased Property, to place such property in storage or other suitable place in the County of Orange for the account of and at the expense of the District, and the District hereby exempts and agrees to save harmless the Corporation from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained.

The District agrees that the terms of this Lease constitute full and sufficient notice of the right of the Corporation to re-lease the Leased Property in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the Corporation in effecting such re-leasing shall constitute a surrender or termination of this Lease irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the District the right to terminate this Lease shall vest in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The District agrees to surrender and quit possession of the Leased Property upon demand of the

Corporation for the purpose of enabling the Leased Property to be re-let under this paragraph, and the District further waives the right to any rental obtained by the Corporation in excess of the Lease Payments and hereby conveys and releases such excess to the Corporation as compensation to the Corporation for its services in re-leasing the Leased Property.

(b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Corporation at its option may terminate this Lease and re-lease all or any portion of the Leased Property. In the event of the termination of this Lease by the Corporation at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Leased Property by the Corporation in any manner whatsoever or the re-leasing of the Leased Property), the District nevertheless agrees to pay to the Corporation all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Corporation from such re-leasing shall be applied by the Corporation to Lease Payments due under this Lease.

Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Corporation shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the District shall be or become effective by operation of law, or otherwise, unless and until the Corporation shall have given written notice to the District of the election on the part of the Corporation to terminate this Lease. The District covenants and agrees that no surrender of the Leased Property, or of the remainder of the Term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

(c) Proceedings at Law or In Equity. If an Event of Default occurs and continues hereunder, the Corporation may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

Section 7.3. *No Remedy Exclusive*. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article VII it shall not be necessary to give any notice, other than such notice as may be required in this Article VII or by law.

Section 7.4. *Agreement to Pay Attorneys' Fees and Expenses*. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys (including in-house legal counsel) or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party.

Section 7.5. *No Additional Waiver Implied by One Waiver*. In the event any agreement contained in this Lease should be breached by either party and thereafter

waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.6. *Trustee to Exercise Rights.* Such rights and remedies as are given to the Corporation under this Article VII have been assigned by the Corporation to the Trustee, to which assignment the District hereby consents. Such rights and remedies shall be exercised solely by the Trustee.

## ARTICLE VIII

### PREPAYMENT OF LEASE PAYMENTS

Section 8.1. *Security Deposit.* Notwithstanding any other provision of this Lease, the District may on any date secure the payment of the Lease Payments in whole by depositing with a fiduciary, in trust, an amount of cash which is either (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit B, or (b) invested in whole in non-callable Federal Securities in such amount as will, in the opinion of an independent certified public accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay such Lease Payments when due pursuant to Section 3.5(a) or when due on any optional prepayment date pursuant to Section 8.2, as the District shall instruct at the time of said deposit. In the event of a security deposit pursuant to this Section with respect to all unpaid Lease Payments, (a) the Term of this Lease shall continue, (b) all obligations of the District under this Lease, and all security provided by this Lease for said obligations, shall thereupon cease and terminate, excepting only the obligation of the District to make, or cause to be made all of the Lease Payments from such security deposit, and (c) pursuant to Section 3.7, title to the Leased Property shall vest in the District on the date of said deposit automatically and without further action by the District or the Corporation. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

Section 8.2. *Optional Prepayment.* The Certificates maturing on or before December 1, 20\_\_ are not subject to prepayment prior to their maturity dates. The Certificates maturing on December 1, 20\_\_ are subject to prepayment prior to their respective state maturity dates, at the option of the District, from any source of available funds, in whole or in part, on any date on or after December 1, 20\_\_, at a prepayment price equal to the principal amount to be prepaid, plus accrued interest to the date fixed for prepayment, without premium.

The District shall give the Corporation and its assigns notice of its intention to exercise its option not less than sixty (60) days in advance of the date of exercise.

Section 8.3. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.* The District shall be obligated to prepay the unpaid principal components of the Lease Payments in whole on any date or in part, on any Lease Payment Date, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Leased Property to be used for such purpose pursuant to Section 5.1. The District and the Corporation hereby agree that such proceeds, to the extent remaining after payment of any delinquent Lease Payments, shall be credited towards the District's obligations under this Section 8.3.

**ARTICLE IX**

**MISCELLANEOUS**

Section 9.1. *Notices.* Any notice, request, complaint, demand or other communication under this Lease shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Corporation, the District and the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the District: Capistrano Unified School District  
33122 Valle Road  
San Juan Capistrano, CA 92675  
Attention: Superintendent  
Fax: (949) 234-9200

If to the Corporation: Capistrano Unified School District School Facilities Corporation  
33122 Valle Road  
San Juan Capistrano, CA 92675  
Attention: Executive Director  
Fax: (949) 234-9200

If to the Trustee: \_\_\_\_\_  
\_\_\_\_\_, CA 90\_\_\_\_  
Attention: \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_-\_\_\_\_

Section 9.2. *Binding Effect.* This Lease shall inure to the benefit of and shall be binding upon the Corporation, the District and their respective successors and assigns.

Section 9.3. *Severability.* In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.4. *Net-net-net Lease.* This Lease shall be deemed and construed to be a "net-net-net lease" and the District hereby agrees that the Lease Payments shall be an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

Section 9.5. *Further Assurances and Corrective Instruments.* The Corporation and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

Section 9.6. *Execution in Counterparts.* This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.7. *Applicable Law.* This Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 9.8. *Captions.* The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease.

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

**CAPISTRANO UNIFIED SCHOOL DISTRICT  
SCHOOL FACILITIES CORPORATION**

By \_\_\_\_\_  
Dr. Joseph M. Farley, Executive Director

Attest:

\_\_\_\_\_  
Julie Hatchel, Secretary

**CAPISTRANO UNIFIED SCHOOL DISTRICT**

By \_\_\_\_\_  
Dr. Joseph M. Farley, Superintendent

Attest:

\_\_\_\_\_  
Lynn Hatton, Clerk of the Board



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE LEASED PROPERTY**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA,  
COUNTY OF ORANGE, AND IS DESCRIBED AS FOLLOWS:

[INSERT LEGAL DESCRIPTION]

End of Legal Description

**EXHIBIT B**

**SCHEDULE OF LEASE PAYMENTS**

<u>Lease Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Lease Payment</u>
-------------------------------	--------------------------------	-------------------------------	------------------------------------

---

---

TRUST AGREEMENT

Dated as of November 1, 2012

among

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

CAPISTRANO UNIFIED SCHOOL DISTRICT FACILITIES CORPORATION

and the

CAPISTRANO UNIFIED SCHOOL DISTRICT

Relating to

\$23,000,000

2012 Refunding Certificates of Participation

---

---

TABLE OF CONTENTS

ARTICLE I  
DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions* ..... 2  
SECTION 1.02. *Authorization*..... 2  
SECTION 1.03. *Interpretation* ..... 2

ARTICLE II  
THE CERTIFICATES OF PARTICIPATION

SECTION 2.01. *Authorization*..... 3  
SECTION 2.02. *Date* ..... 3  
SECTION 2.03. *Terms of Certificates*..... 3  
SECTION 2.04. *Fully Registered Form; Interest*..... 3  
SECTION 2.05. *Book Entry System* ..... 4  
SECTION 2.06. *Form and Execution of Certificates*..... 5  
SECTION 2.07. *Transfer and Exchange*..... 5  
SECTION 2.08. *Certificates Mutilated, Lost, Destroyed or Stolen* ..... 6  
SECTION 2.09. *Payment*..... 6  
SECTION 2.10. *Execution of Documents and Proof of Ownership* ..... 7  
SECTION 2.11. *Registration Books*..... 7

ARTICLE III  
PREPAYMENT OF CERTIFICATES

SECTION 3.01. *Prepayment* ..... 8  
SECTION 3.02. *Selection of Certificates for Prepayment*..... 9  
SECTION 3.03. *Notice of Prepayment*..... 9  
SECTION 3.04. *Partial Prepayment of Certificates*..... 10  
SECTION 3.05. *Effect of Notice of Prepayment* ..... 10  
SECTION 3.06. *Purchase of Certificates*..... 10  
SECTION 3.07. *Payments under the Insurance Policy*..... 10

ARTICLE IV:  
DISPOSITION OF PROCEEDS OF SALE

SECTION 4.01. *Application of Proceeds*..... 12  
SECTION 4.02. *Reserve Fund* ..... 12  
SECTION 4.03. *Establishment and Application of Costs of Issuance Fund*..... 15

ARTICLE V:  
LEASE PAYMENTS; LEASE PAYMENT FUND

SECTION 5.01. *Assignment of Rights in Lease*..... 16  
SECTION 5.02. *Establishment of Lease Payment Fund* ..... 16  
SECTION 5.03. *Deposits* ..... 16  
SECTION 5.04. *Application of Moneys* ..... 16  
SECTION 5.05. *Surplus* ..... 16

ARTICLE VI:  
INSURANCE AND CONDEMNATION FUND:

SECTION 6.01. *Establishment of Insurance and Condemnation Fund; Application of Net Proceeds of Insurance Award*..... 17  
SECTION 6.02. *Deposit and Application of Net Proceeds of Eminent Domain Award*..... 17

ARTICLE VII:  
MONEYS IN FUNDS; INVESTMENTS

SECTION 7.01. *Held in Trust*..... 19  
SECTION 7.02. *Investments Authorized* ..... 19  
SECTION 7.03. *Accounting*..... 19  
SECTION 7.04. *Allocation of Earnings* ..... 19  
SECTION 7.05. *Valuation and Disposition of Investments*..... 20

ARTICLE VIII:  
THE TRUSTEE:

SECTION 8.01. Appointment of Trustee.....	21
SECTION 8.02. Acceptance of Trusts.....	21
SECTION 8.03. Fees, Charges and Expenses of Trustee.....	24
SECTION 8.04. Notice to [INSURER] and Certificate Owners of Default.....	24
SECTION 8.05. Removal of Trustee.....	25
SECTION 8.06. Resignation by Trustee.....	25
SECTION 8.07. Appointment of Successor Trustee.....	25
SECTION 8.08. Merger or Consolidation.....	25
SECTION 8.09. Concerning any Successor Trustee.....	26
SECTION 8.10. Non-Liability of Trustee.....	26
SECTION 8.11. Actions Through Agents.....	26
SECTION 8.12. Nature of Trust Engagement.....	26
SECTION 8.13. [INSURER]'s Exercise of Rights Relating to the Trustee.....	27

ARTICLE IX:  
MODIFICATION OR AMENDMENT:

SECTION 9.01. Amendments Permitted.....	27
SECTION 9.02. Procedure for Amendment with Written Consent of Certificate Owners.....	28
SECTION 9.03. Effect of Supplemental Agreement.....	28
SECTION 9.04. Endorsement or Replacement of Certificates Delivered After Amendments.....	29
SECTION 9.05. Amendatory Endorsement of Certificates.....	29
SECTION 9.06. Opinion of Counsel.....	29
SECTION 9.07. Notice to Rating Agencies.....	29

ARTICLE X:  
OTHER COVENANTS:

SECTION 10.01. Compliance With and Enforcement of Lease.....	29
SECTION 10.02. Observance of Laws and Regulations.....	30
SECTION 10.03. Prosecution and Defense of Suits.....	30
SECTION 10.04. Recordation and Filing.....	30
SECTION 10.05. Tax Covenants.....	30
SECTION 10.06. Continuing Disclosure.....	31
SECTION 10.07. Rights Under Certificate Insurance Policy.....	31
SECTION 10.08. Further Assurances.....	32

ARTICLE XI:  
LIMITATION OF LIABILITY:

SECTION 11.01. Limited Liability of District.....	33
SECTION 11.02. No Liability of the Corporation for Trustee Performance.....	33
SECTION 11.03. Indemnification of Trustee.....	33
SECTION 11.04. Opinion of Counsel.....	34
SECTION 11.05. Limitation of Rights to Parties and Certificate Owners.....	34

ARTICLE XII:  
EVENTS OF DEFAULT AND REMEDIES:

SECTION 12.01. Assignment of Rights.....	34
SECTION 12.02. Events of Default Defined.....	34
SECTION 12.03. Remedies.....	35
SECTION 12.04. Application of Funds.....	35
SECTION 12.05. Institution of Legal Proceedings.....	35
SECTION 12.06. Non-waiver.....	36
SECTION 12.07. Remedies Not Exclusive.....	36
SECTION 12.08. Power of Trustee to Control Proceedings.....	36
SECTION 12.09. Limitation on Certificate Owners' Right to Sue.....	36

<i>SECTION 12.10. Possession of Certificates by Trustee Not Required</i> .....	37
<i>SECTION 12.11. Rights of [INSURER]</i> .....	37
<i>SECTION 12.12. Subrogation.</i> .....	37

ARTICLE XIII:

DISCHARGE; ADMINISTRATIVE PROVISIONS

<i>SECTION 13.01. Discharge Hereof</i> .....	37
<i>SECTION 13.02. Records</i> .....	38
<i>SECTION 13.03. Notices</i> .....	38
<i>SECTION 13.04. Disqualified Certificates</i> .....	39
<i>SECTION 13.05. Payment of Certificates After Discharge of Trust Agreement</i> .....	39
<i>SECTION 13.06. Governing Law</i> .....	40
<i>SECTION 13.07. Binding Effect; Successors</i> .....	40
<i>SECTION 13.08. Corporation and District Representatives</i> .....	40
<i>SECTION 13.09. Third-Party Beneficiary</i> .....	40
<i>SECTION 13.10. Execution in Counterparts</i> .....	40
<i>SECTION 13.11. Delivery of Canceled Certificates</i> .....	40
<i>SECTION 13.12. Headings</i> .....	40
<i>SECTION 13.13. Waiver of Notice</i> .....	40
<i>SECTION 13.14. Separability of Invalid Provisions</i> .....	40

APPENDIX A DEFINED TERMS

APPENDIX B FORM OF CERTIFICATE OF PARTICIPATION

## **TRUST AGREEMENT**

This TRUST AGREEMENT (this "Trust Agreement"), dated as of November 1, 2012, is among U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee"), the CAPISTRANO UNIFIED SCHOOL DISTRICT FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), and the CAPISTRANO UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the Constitution and laws of the State of California (the "District").

### *B A C K G R O U N D :*

1. The District has previously leased certain real property to the Corporation consisting generally of the land and improvements constituting the Las Flores School facility and site, located at 25862 Antonio Parkway, Rancho Santa Margarita, California and the Capistrano Valley High School facility and site, located at 26301 Via Escolar, Mission Viejo, California (collectively, the "Property"), under a Site Lease Agreement dated as of April 1, 2002 (the "2002 Site Lease"), and the Corporation concurrently leased such real property back to the District under a Lease Agreement dated as of April 1, 2002 (the "2002 Lease Agreement").

2. The District's lease payment obligations under the 2002 Lease Agreement are evidenced by 2002 Certificates of Participation executed and delivered in the aggregate principal amount of \$31,950,000 (the "2002 Certificates") under a Trust Agreement dated as of April 1, 2002, among the District, the Corporation and U.S. Bank National Association, as trustee.

3. The District's lease payment obligations under the 2002 Lease Agreement are payable from any source of legally available funds of the District.

4. The District has determined that it is in the best interests of the District at this time to refinance its obligations under the 2002 Lease Agreement which are represented by the 2002 Certificates, by exercising its right to prepay its lease payment obligations under the 2002 Lease Agreement and thereby pay and prepay the 2002 Certificates in full on December 1, 2012.

5. In order to raise funds required for the foregoing purposes, the Corporation and the District have agreed to enter into a First Amended and Restated Site Lease dated as of November 1, 2012 (the "Site Lease"), and to enter into a First Amended and Restated Lease Agreement dated as of November 1, 2012 (the "Lease"), and the Corporation has assigned certain of its rights under the Lease to the Trustee under an Assignment Agreement dated as of November 1, 2012.

6. In consideration of such assignment the Trustee has agreed to enter into this Trust Agreement under which the Trustee agrees to execute and deliver \$23,000,000 aggregate principal amount of 2012 Refunding Certificates of Participation, each evidencing a direct, undivided fractional interest in the lease payments to be paid by the District under the Lease, the proceeds of which will be used to pay and prepay the District's lease payment obligations under the 2002 Lease Agreement and thereby pay and prepay all of the outstanding 2002 Certificates on December 1, 2012.

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

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

**ARTICLE I**

**DEFINITIONS; RULES OF CONSTRUCTION**

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Trust Agreement have the respective meanings specified in Appendix A when used in this Trust Agreement.

SECTION 1.02. *Authorization.* Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Trust Agreement, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

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

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

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



## ARTICLE II

### THE CERTIFICATES OF PARTICIPATION

SECTION 2.01. *Authorization.* The Trustee is hereby authorized and directed upon written request from the Corporation to register, execute and deliver to the Original Purchaser, Certificates in the aggregate principal amount of \$23,000,000. The Certificates evidence direct, undivided fractional ownership interests of the Owners thereof in the Lease Payments.

SECTION 2.02. *Date.* Each Certificate shall be dated as of the date of its execution and interest represented thereby shall be payable from the Interest Payment Date next preceding the date of execution thereof, unless:

- (a) it is executed following a Record Date and on or before the next succeeding Interest Payment Date, in which event interest represented thereby will be payable from such Interest Payment Date,
- (b) unless it is executed on or before the first Record Date, in which event interest represented thereby will be payable from the Closing Date, or
- (c) if, as of the date of any Certificate, interest represented by such Certificate is in default, in which event interest represented thereby will be payable from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to such Certificate.

SECTION 2.03. *Terms of Certificates.* Principal represented by the Certificates is payable on December 1 in each of the respective years and in the respective amounts, and interest represented thereby is computed at the respective rates, as follows:

<u>Maturity Date</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Maturity Date</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
---	-----------------------------------	--------------------------------	---	-----------------------------------	--------------------------------

SECTION 2.04. *Fully Registered Form; Interest.* The Certificates will be delivered in the form of fully registered Certificates without coupons in the authorized denominations of \$5,000 or any integral multiple thereof, except that no Certificate shall represent principal payable in more than one year. The Trustee shall assign the Certificates such alphabetical and numerical designation as the Trustee deems appropriate.

Interest represented by the Certificates is payable on each Interest Payment Date to and including the date of maturity or prepayment, whichever is earlier, as provided in Section 2.09. Said interest represents the portion of Lease Payments designated as interest and coming due on each of the respective Interest Payment Dates. The share of the portion of Lease Payments designated as interest with respect to any Certificate will be computed

by multiplying the portion of Lease Payments designated as principal represented by such Certificate by the rate of interest represented by such Certificate (on the basis of a 360-day year consisting of twelve 30-day months).

SECTION 2.05. *Book Entry System.*

(a) Original Delivery. The Certificates will be initially delivered in the form of a separate single fully registered Certificate (which may be typewritten) for each maturity of the Certificates. Upon initial delivery, the ownership of each such Certificate will be registered on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Certificates will be registered in the name of the Nominee on the Registration Books.

With respect to Certificates the ownership of which is registered in the name of the Nominee, the District and the Trustee have no responsibility or obligation to any Depository System Participant or to any person on behalf of which the District holds an interest in the Certificates. Without limiting the generality of the immediately preceding sentence, the District and the Trustee have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any Depository System Participant or any other person, other than a Certificate Owner as shown in the Registration Books, of any notice with respect to the Certificates, including any notice of prepayment, (iii) the selection by the Depository of the beneficial interests in the Certificates to be prepaid if the District elects to prepay the Certificates in part, (iv) the payment to any Depository System Participant or any other person, other than a Certificate Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest represented by the Certificates or (v) any consent given or other action taken by the Depository as Owner of the Certificates. The District and the Trustee may treat and consider the person in whose name each Certificate is registered as the absolute owner of such Certificate for the purpose of payment of principal, premium, if any, and interest represented by such Certificate, for the purpose of giving notices of prepayment and other matters with respect to such Certificate, for the purpose of registering transfers of ownership of such Certificate, and for all other purposes whatsoever. The Trustee shall pay the principal, interest and premium, if any, represented by the Certificates only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments are valid and effective to fully satisfy and discharge all obligations with respect to payment of principal, interest and premium, if any, represented by the Certificates to the extent of the sum or sums so paid. No person other than a Certificate Owner may receive a Certificate evidencing the obligation of the District to make payments of principal, interest and premium, if any, under this Trust Agreement. Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the District shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Certificates for the Depository's book-entry system, the District shall execute and deliver to such Depository a letter representing such matters as are necessary to so qualify the Certificates. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the District or the Trustee any obligation whatsoever with respect to persons having interests in the Certificates other than the Certificate Owners. Upon the written acceptance by the Trustee, the Trustee shall agree to take all action reasonably necessary for all representations of the District in such letter with respect to the

Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the District may take any other actions, not inconsistent with this Trust Agreement, to qualify the Certificates for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Certificates, or (ii) the District determines to terminate the Depository as such, then the District shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the District and the Trustee in the execution and delivery of replacement Certificates by providing the Trustee with a list showing the interests of the Depository System Participants in the Certificates, and by surrendering the Certificates, registered in the name of the Nominee, to the Trustee on or before the date such replacement Certificates are to be executed and delivered. The Depository, by accepting delivery of the Certificates, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the District fails to identify another Securities Depository to replace the Depository, then the Certificates shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Certificates shall designate, in accordance with the provisions hereof.

If the District determines that it is in the best interests of the beneficial owners of the Certificates that they be able to obtain certificated Certificates, the District may notify the Depository System Participants of the availability of such certificated Certificates through the Depository. In such event, the Trustee will execute, transfer and exchange Certificates as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the District shall cooperate with the Depository in taking appropriate action (i) to make available one or more separate certificates evidencing the Certificates to any Depository System Participant having Certificates credited to its account with the Depository, or (ii) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Certificates, all at the District's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Trust Agreement to the contrary, so long as any Certificate is registered in the name of the Nominee, all payments with respect to principal, interest and premium, if any, represented by such Certificate and all notices with respect to such Certificate shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.06. *Form and Execution of Certificates*. The Certificates shall be substantially in the form set forth in Appendix B attached hereto and by this reference incorporated herein. The Trustee shall execute the Certificates with the manual signature of an authorized signatory of the Trustee. If any person whose signature appears on any Certificate ceases to be an authorized signatory before the date of delivery of said Certificate, such signature shall nevertheless be as effective as if such person had remained an authorized signatory until such date.

SECTION 2.07. *Transfer and Exchange*.

(a) Transfer of Certificates. The registration of any Certificate may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by duly authorized attorney, upon surrender of such Certificate for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, manually executed. Whenever

any Certificate or Certificates is surrendered for registration of transfer, the Trustee shall execute and deliver a new Certificate or Certificates representing the same maturity, interest rate and aggregate principal amount, in any authorized denominations. The District shall pay all costs of the Trustee incurred in connection with any such transfer, except that the Trustee may require the payment by the Certificate Owner of any tax or other governmental charge required to be paid with respect to such transfer.

(b) Exchange of Certificates. Certificates may be exchanged at the Office of the Trustee, for a like aggregate principal amount of Certificates representing other authorized denominations of the same interest rate and maturity. The District shall pay all costs of the Trustee incurred in connection with any such exchange, except that the Trustee shall require the payment by the Certificate Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

(c) Limitations on Transfer or Exchange. The Trustee may refuse to transfer or exchange either (i) any Certificate during the period established by the Trustee for the selection of Certificates for prepayment, or (ii) any Certificate which the Trustee has selected for prepayment in whole or in part under the provisions of Section 3.02.

SECTION 2.08. *Certificates Mutilated, Lost, Destroyed or Stolen.* If any Certificate is mutilated, the Trustee, at the expense of the Owner of such Certificate, shall execute and deliver a new Certificate of like principal amount, interest rate and maturity in replacement for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. The Trustee shall cancel and destroy every mutilated Certificate so surrendered to it and shall deliver a certificate of destruction to the District at the request of the District. If any Certificate is lost, destroyed or stolen, evidence of such loss, destruction or theft must be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and if an indemnity satisfactory to the Trustee is given, the Trustee, at the expense of the Certificate Owner, shall execute and deliver a new Certificate of like principal amount, interest rate and maturity and numbered as the Trustee shall determine in lieu of and in replacement for the Certificate so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee for each replacement Certificate delivered under this Section 2.08 and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section 2.08. Any Certificate executed and delivered under the provisions of this Section 2.08 in lieu of any Certificate alleged to be lost, destroyed or stolen is equally entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The Trustee is not required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be executed and delivered hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate are treated as one and the same. Notwithstanding any other provision of this Section 2.08, in lieu of delivering a replacement for a Certificate which has been mutilated, lost, destroyed or stolen, and which has matured, the Trustee may make payment with respect to such Certificate upon receipt of indemnity satisfactory to the Trustee and the District.

SECTION 2.09. *Payment.* Payment of interest represented by any Certificate on any Interest Payment Date shall be made to the person appearing on the Registration Books as the Owner thereof as of the close of business on the Record Date immediately preceding such Interest Payment Date, such interest to be paid by check mailed to such Owner, by first class mail postage prepaid, at such Owner's address as it appears on the Registration Books. At the written request of the Owner of Certificates in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee prior to the Record

Date preceding any Interest Payment Date, the Trustee shall pay interest represented by such Certificates coming due and payable on such Interest Payment Date by wire transfer in immediately available funds to such account in the United States as is specified in such written request. The principal, interest and prepayment premium, if any, represented by any Certificate at maturity or upon prepayment are payable in lawful money of the United States of America upon surrender of such Certificate at the Office of the Trustee.

SECTION 2.10. *Execution of Documents and Proof of Ownership.* Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Certificates. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Certificates are sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

- (a) The fact and date of the execution by any Owner or any Owner's attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to acknowledgments of deeds to be recorded in such jurisdictions, that the persons signing such instruments acknowledged before him the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of authority.
- (b) The fact of the ownership of Certificates by any person and the amount, the maturity and the numbers of such Certificates and the date of such person's holding the same are proved by the Registration Books.

Nothing in this Section 2.10 limits the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which the Trustee may deem sufficient. Any request or consent of the Owner of any Certificate binds every future Owner of the same Certificate in respect of anything done or suffered to be done by the Trustee under such request or consent.

SECTION 2.11. *Registration Books.* The Trustee shall keep or cause to be kept sufficient records for the registration and registration of transfer of the Certificates, which shall at all reasonable times be open to inspection by the District, the Corporation and Certificate Insurer upon prior notice, during regular business hours; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Certificates as hereinbefore provided.

**ARTICLE III**

**PREPAYMENT OF CERTIFICATES**

SECTION 3.01. *Prepayment.*

(a) Optional Prepayment. The Certificates maturing on or before December 1, 20\_\_, are not subject to optional prepayment prior to their maturity dates. The Certificates maturing on or after December 1, 20\_\_, are subject to prepayment prior to their respective stated maturities, at the option of the District, in whole, or in part among maturities on such basis as designated by the District and by lot within any one maturity, on December 1, 20\_\_, or on any date thereafter, upon payment of a prepayment price equal to 100% of the principal amount to be prepaid, together with accrued interest to the date fixed for prepayment, without premium.

Notwithstanding the foregoing, the Certificates are not subject to optional prepayment by the District unless all amounts then due and owing to Certificate Insurer have been paid in full with respect to the reserve fund surety bond for the Certificates.

(b) Mandatory Prepayment. The Certificates maturing on December 1 in the years 20\_\_ and 20\_\_ (the "Term Certificates") are subject to mandatory prepayment in part by lot on December 1 in each year as set forth below, from the principal components of scheduled Lease Payment required to be paid by the District pursuant to the Lease Agreement with respect to each such prepayment date, at a prepayment price equal to the principal amount thereof to be prepaid, together with accrued interest to the date fixed for prepayment, without premium, as follows:

Term Certificates Maturing on December 1, 20\_\_

Prepayment Date (December 1)	Principal Amount To be Prepaid
20__	\$ _____
20__ (maturity)	\$ _____

Term Certificates Maturing on December 1, 20\_\_

Prepayment Date (December 1)	Principal Amount To be Prepaid
20__	\$ _____
20__	\$ _____
20__	\$ _____
20__ (maturity)	\$ _____

In the event that any Term Certificates are prepaid in part but not in whole pursuant to the optional, insurance, title insurance or condemnation prepayment provisions, each such prepayment shall reduce the amount of Certificates to be prepaid in each subsequent year pursuant to the mandatory prepayment provisions pro rata to correspond to the principal components of the Lease Payments prevailing following such prepayment.

(c) Prepayment From Net Proceeds of Insurance or Condemnation. The Certificates are subject to mandatory prepayment, in whole, on any Business Day, or in part on any Interest Payment Date among maturities on a pro rata basis and by lot within a maturity, from the Net Proceeds of insurance or eminent domain proceedings credited towards the prepayment of the Lease Payments under Section 8.3 of the Lease and Article VI, at a prepayment price equal to 100% of the principal amount to be prepaid, together with accrued interest represented thereby to the date fixed for prepayment, without premium.

SECTION 3.02. *Selection of Certificates for Prepayment*. Whenever provision is made in this Trust Agreement for the prepayment of Certificates and less than all Outstanding Certificates of any maturity are called for prepayment, the Trustee shall select Certificates of such maturity for prepayment by lot. For the purposes of such selection, Certificates are deemed to be composed of \$5,000 portions, and any such portion may be separately prepaid. The Trustee shall promptly notify the District and the Corporation in writing of the Certificates or portions thereof so selected for prepayment.

SECTION 3.03. *Notice of Prepayment*. When prepayment is authorized or required under Section 3.01, the Trustee shall give notice of the prepayment of the Certificates on behalf and at the expense of the District. Such notice must:

- (a) state the prepayment date and prepayment price;
- (b) state the numbers or maturities of the Certificates to be prepaid, if less than all of the then Outstanding Certificates are to be called for prepayment;
- (c) if a Certificate is to be prepaid only in part, identify the portion of the Certificate which is to be prepaid;
- (d) require that such Certificates be surrendered on the prepayment date at the Office of the Trustee for prepayment at said prepayment price;
- (e) state that interest represented by the Certificates will not accrue from and after the prepayment date; and
- (f) state that on the prepayment date the principal and premium, if any, represented by each Certificate will become due and payable, together with accrued interest represented thereby to the prepayment date, and that from and after such date interest represented thereby ceases to accrue and be payable.

The Trustee has no liability for any designation of the CUSIP numbers of the Certificates to be prepaid, and neither the failure to identify the CUSIP numbers of the Certificates to be prepaid nor any incorrect designation of such CUSIP numbers will affect the sufficiency of the proceedings for the prepayment of such Certificates or the cessation of accrual of interest represented thereby from and after the date fixed for prepayment.

The Trustee shall mail notice of prepayment by first class mail with postage prepaid, or deliver by an acceptable electronic means, to the Information Services and the Securities Depositories, and to the Owners of Certificates designated for prepayment at their respective addresses appearing on the Registration Books, at least 30 days but not more than 60 days prior to the prepayment date. Trustee shall also file such notice on the same day with the Municipal Securities Rulemaking Board ("MSRB") through its Electronic

Municipal Market Access ("EMMA") website. In addition, notice of prepayment of the Certificates shall be given to Certificate Insurer at the same time as such notice is given to Certificate Owners. Neither the failure to receive any such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of such Certificates or the cessation of accrual of interest represented thereby from and after the date fixed for prepayment.

SECTION 3.04. *Partial Prepayment of Certificates.* Upon surrender of any Certificate prepaid in part only, the Trustee shall execute and deliver to the Owner thereof, at the expense of the District, a new Certificate or Certificates of authorized denominations equal in aggregate principal amount to the unprepaid portion of the Certificate surrendered and of the same interest rate and the same maturity.

SECTION 3.05. *Effect of Notice of Prepayment.* Moneys for the prepayment (including the interest to the applicable date of prepayment) of Certificates having been set aside in the Lease Payment Fund, the Certificates shall become due and payable on the date of such prepayment, and, upon presentation and surrender thereof at the Office of the Trustee, said Certificates shall be paid at the unpaid principal amount (or applicable portion thereof) represented thereby plus interest accrued and unpaid to said date of prepayment.

If, on said date of prepayment, moneys for the prepayment of all the Certificates to be prepaid, together with interest represented thereby to said date of prepayment, shall be held by the Trustee so as to be available therefor on such date of prepayment, then, from and after said date of prepayment, interest represented by the Certificates shall cease to accrue and become payable. All moneys held by the Trustee for the prepayment of Certificates shall be held in trust for the account of the Owners of the Certificates so to be prepaid.

All Certificates paid at maturity or prepaid prior to maturity under the provisions of this Article III shall be canceled upon surrender thereof.

SECTION 3.06. *Purchase of Certificates.* In lieu of prepayment of Certificates as provided in this Article III, amounts held by the Trustee for such prepayment may, at the written request of the District Representative received by the Trustee at least 75 days prior to the selection of Certificates for prepayment, be applied by the Trustee to the purchase of Certificates at public or private sale as and when and at such prices (including brokerage, accrued interest and other charges) as the District may in its discretion direct, but not to exceed the prepayment price which would be payable if such Certificates were prepaid.

SECTION 3.07. *Payments under the Insurance Policy.*

If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date"), there is not on deposit with the Trustee under the Resolution, after making all transfers and deposits required under the Resolution, moneys sufficient to pay the principal of; and interest on, Certificates due on such Payment Date, the District shall give notice to Certificate Insurer and to its designated agent (if any) the "Insurer's Fiscal Agent"), by telephone or telecopy, of the amount of such deficiency by 10:00 a.m., New York City time, on such Business Day. If, on the Business Day prior to the related Payment Date, there is not on deposit with the Trustee moneys sufficient to pay the principal of, and interest on, the Certificates due on such Payment Date, the Trustee shall make a claim under the Insurance Policy and give notice to Certificate Insurer and Certificate Insurer's Fiscal Agent (if any) by telephone of the amount of any deficiency in the amount available to pay principal and interest, and the allocation of such deficiency



between the amount required to pay interest on the Certificates and the amount required to pay principal of the Certificates, confirmed in writing to the related Insurer and Certificate Insurer's Fiscal Agent by 10:00 a.m., New York City time, on such Business Day, by delivering the Notice of Nonpayment and Certificate.

For the purposes of the preceding paragraph, "Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from the Trustee to Certificate Insurer, which notice shall specify (a) the name of the entity making the claim, (b) the policy number, (c) the claimed amount and (d) the date such claimed amount will become Due for Payment. "Nonpayment" means the failure of District to have provided sufficient funds to the Trustee for payment in full of all principal of, and interest on, the Certificates that are Due for Payment. "Due for Payment", when referring to the principal of Certificates, means when the stated maturity date or mandatory redemption date for the application of a required sinking fund installment has been reached and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by application of required sinking fund installments, acceleration or other advancement of maturity, unless Certificate Insurer shall elect, in its sole discretion, to pay such principal due upon such acceleration; and when referring to interest on Certificates, means when the stated date for payment of interest has been reached. "Certificate" means a certificate in form and substance satisfactory to Certificate Insurer as to the Trustee's right to receive payment under the Insurance Policy.

The Trustee shall designate any portion of payment of principal on Certificates paid by Certificate Insurer at maturity on its books as a reduction in the principal amount of Certificates registered to the then current Owner, whether DTC or its nominee or otherwise, and shall issue a replacement Certificate to Certificate Insurer, registered in the name of Certificate Insurer, as the case may be, in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any -replacement Certificate shall have no effect on the amount of principal or interest payable by District on any Certificate or the subrogation rights of Certificate Insurer.

The Trustee shall keep a complete and accurate record of all funds deposited by Certificate Insurer into the Policy Payments Account (as hereinafter defined) and the allocation of such funds to payment of interest on and principal paid with respect to any Certificate. Certificate Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Trustee.

Upon payment of a claim under the Insurance Policy, the Trustee shall establish a separate special purpose trust account for the benefit of holders of Certificates referred to herein as the "Policy Payments Account" and over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall receive any amount paid under Insurance Policy in trust on behalf of holders of Certificates and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Trustee to holders of Certificates in the same manner as principal and interest payments are to be made with respect to the Certificates under the sections hereof regarding payment of Certificates. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments.

Funds held in the Policy Payments Account shall not be invested by the Trustee and may not be applied to satisfy any costs, expenses or liabilities of the Trustee.

Any funds remaining in the Policy Payments Account following a Certificate payment date shall promptly be remitted to Certificate Insurer.

#### ARTICLE IV

#### DISPOSITION OF PROCEEDS OF SALE

SECTION 4.01. *Application of Proceeds.* The Trustee shall apply the proceeds received by it from the sale of the Certificates on the Closing Date as follows (provided that the Trustee may, in its discretion, establish a temporary fund or account to facilitate any of the following transfers):

- (a) The Trustee shall deposit the amount of \$\_\_\_\_\_ in the Costs of Issuance Fund.
- (b) The Trustee shall deposit the amount of \$\_\_\_\_\_ in the Escrow Fund established pursuant to the Escrow Deposit and Trust Agreement, to be held and applied with other available funds in accordance with the terms therein, for the purpose of paying and prepaying the District's lease payment obligations under the 2002 Lease Agreement and thereby paying and prepaying all of the outstanding 2002 Certificates on December 1, 2012.
- (c) The Trustee shall deposit the amount \$\_\_\_\_\_, constituting the remainder of the Certificate proceeds, in the Reserve Fund.

#### SECTION 4.02. *Reserve Fund.*

(a) General Provisions. The Trustee shall establish a special fund designated as the "Reserve Fund" to be held by the Trustee in trust for the benefit of the District and the Owners of the Certificates, and applied solely as provided herein. The Trustee shall hold the Reserve Fund in trust as a reserve for the payment when due of the Lease Payments on behalf of the District.

The Trustee shall retain in the Reserve Fund all earnings on the investment of amounts therein to the extent required to maintain the full amount of the Reserve Requirement on deposit in the Reserve Fund. All amounts on deposit in the Reserve Fund in excess of the Reserve Requirement, and all amounts derived from the investment of amounts in the Reserve Fund which are not required to be retained therein to maintain the Reserve Requirement, shall be transferred by the Trustee to the Lease Payment Fund semiannually on or before each Lease Payment Date. Any recomputation of the Reserve Requirement shall be made by or on behalf of the District, and shall become effective upon the filing by the District with the Trustee of written notice thereof.

(b) Application of Reserve Fund. If on any Interest Payment Date the moneys available in the Lease Payment Fund do not equal the amount of the Lease Payment then coming due and payable, the Trustee shall apply the moneys available in the Reserve Fund to make such payments on behalf of the District by transferring the amount necessary for this purpose to the Lease Payment Fund. Upon receipt of any delinquent Lease Payment with respect to which moneys have been advanced from the Reserve Fund, such Lease Payment shall be deposited in the Reserve Fund to the extent of such advance.

If on any Interest Payment Date the moneys on deposit in the Reserve Fund and the Lease Payment Fund (excluding amounts required for payment of principal, interest and prepayment premium, if any, represented by any Certificates theretofore having come due but not presented for payment) are sufficient to pay or prepay all Outstanding Certificates, including all principal, interest and prepayment premiums (if any) represented thereby, the Trustee shall, upon the written request of the District, transfer all amounts then on deposit in the Reserve Fund to the Lease Payment Fund to be applied for such purpose to the payment of the Lease Payments on behalf of the District. Any amounts remaining in the Reserve Fund on the date of payment in full, or provision for such payment as provided in Section 13.01, of all obligations represented by the Outstanding Certificates and upon all amounts then due and owing to the Trustee, shall be withdrawn by the Trustee and at the written request of the District applied towards such payment or paid to the District.

(c) Reserve Fund Surety Bond. The District may satisfy the Reserve Requirement by the deposit of a Reserve Fund Surety Bond, insurance policy or letter of credit as set forth below:

1. A surety bond or insurance policy issued to the Trustee, as agent of the Owners, by a company licensed to issue an insurance policy guaranteeing the timely payment of debt service on the Certificates (a "municipal certificate insurer") may be deposited in the Reserve Fund to meet the Reserve Requirement if the claims paying ability of the issuer thereof shall be rated "AAA" or "Aaa" by S&P or Moody's, respectively.

2. A surety bond or insurance policy issued to the Trustee, as agent of the Owners, by an entity other than a municipal certificate insurer may be deposited in the Reserve Fund to meet the Reserve Requirement if the form and substance of such instrument and the issuer thereof shall be approved by Certificate Insurer.

3. An unconditional irrevocable letter of credit issued to the Trustee, as agent of the Owners, by a bank may be deposited in the Reserve Fund to meet the Reserve Requirement if the issuer thereof is rated at least "AA" by S&P. The letter of credit shall be payable in one or more draws upon presentation by the beneficiary of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal or interest on the Certificates. The draws shall be payable within two days of presentation of the sight draft. The letter of credit shall be for a term of not less than three years. The issuer of the letter of credit shall be required to notify the District and the Trustee, not later than 30 months prior to the stated expiration date of the letter of credit, as to whether such expiration date shall be extended, and if so, shall indicate the new expiration date.

4. If such notice indicates that the expiration date shall not be extended, the District shall deposit in the Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the Reserve Fund together with any other qualifying credit instruments, to equal the Reserve Requirement on all outstanding Certificates, such deposit to be paid in equal installments on at least a semi-annual basis over the remaining term of the letter of credit, unless the Reserve Fund credit instrument is replaced by a Reserve Fund credit instrument meeting the requirements in any of 1-3 above. The letter of credit shall permit a draw in full not less than two weeks prior to the expiration or termination of such letter of credit if the letter of credit has not been replaced or renewed. The Trustee shall draw upon the letter of credit prior to its expiration or termination unless an acceptable replacement is in place or the Reserve Fund is fully funded in its required amount.

5. The use of any Reserve Fund credit instrument pursuant to this Paragraph shall be subject to receipt of an opinion of counsel acceptable to Certificate Insurer and in form and substance satisfactory to Certificate Insurer as to the due authorization, execution, delivery and enforceability of such instrument in accordance with its terms, subject to applicable laws affecting creditors' rights generally, and, in the event the issuer of such credit instrument is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to Certificate Insurer. In addition, the use of an irrevocable letter of credit shall be subject to receipt of an opinion of counsel acceptable to Certificate Insurer and in form and substance satisfactory to Certificate Insurer to the effect that payments under such letter of credit would not constitute avoidable preferences under Section 547 of the U.S. Bankruptcy Code or similar state laws with avoidable preference provisions in the event of the filing of a petition for relief under the U.S. Bankruptcy Code or similar state laws by or against the District (or any other account party under the letter of credit).

6. The obligation to reimburse the issuer of a Reserve Fund credit instrument for any fees, expenses, claims or draws upon such Reserve Fund credit instrument shall be subordinate to the payment of debt service on the Certificates. The right of the issuer of a Reserve Fund credit instrument to payment or reimbursement of its fees and expenses shall be subordinated to cash replenishment of the Reserve Fund, and, subject to the second succeeding sentence, its right to reimbursement for claims or draws shall be on a parity with the cash replenishment of the Reserve Fund. The Reserve Fund credit instrument shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the issuer of the Reserve Fund credit instrument to reimbursement will be further subordinated to cash replenishment of the Reserve Fund to an amount equal to the difference between the full original amount available under the Reserve Fund credit instrument and the amount then available for further draws or claims. If (a) the issuer of a Reserve Fund credit instrument becomes insolvent or (b) the issuer of a Reserve Fund credit instrument defaults in its payment obligations thereunder or (c) the claims-paying ability of the issuer of the insurance policy or surety bond falls below a S&P "AAA" or a Moody's "Aaa" rating or (d) the rating of the issuer of the letter of credit falls below a S&P "AA", the obligation to reimburse the issuer of the Reserve Fund credit instrument shall be subordinate to the cash replenishment of the Reserve Fund.

7. If (a) the revolving reinstatement feature described in the preceding paragraph is suspended or terminated or (b) the rating of the claims paying ability of the issuer of the surety bond or insurance policy falls below a S&P "AAA" or a Moody's "Aaa" or (c) the rating of the issuer of the letter of credit falls below a S&P "AA", the District shall either (i) deposit into the Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the Reserve Fund to equal the Reserve Requirement on all outstanding Certificates, such amount to be paid over the ensuing five years in equal installments deposited at least semi-annually or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of 1-3 above within six months of such occurrence. In the event (a) the rating of the claims-paying ability of the issuer of the surety bond or insurance policy falls below "A" or (b) the rating of the issuer of the letter of credit falls below "A" or (c) the issuer of the Reserve Fund credit instrument defaults in its payment obligations or (d) the issuer of the Reserve Fund credit instrument becomes insolvent, the District shall either (i) deposit into the Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the Reserve Fund to equal to Reserve Requirement on all outstanding Certificates, such amount to be paid over the ensuing year in equal installments on at least a monthly basis or (ii)

replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of 1-3 above within six months of such occurrence.

8. Where applicable, the amount available for draws or claims under the Reserve Fund credit instrument may be reduced by the amount of cash or permitted investments deposited in the Reserve Fund pursuant to either clause (i) of the preceding subparagraph 7.

9. If the District chooses the above described alternatives to a cash-funded Reserve Fund, any amounts owed by the District to the issuer of such credit instrument as a result of a draw thereon or a claim thereunder, as appropriate, shall be included in any calculation of debt service requirements required to be made pursuant to the Trust for any purpose (e.g., rate covenant or additional Certificates test.)

10. The Trustee shall ascertain the necessity for a claim or draw upon the Reserve Fund credit instrument and provide notice to the issuer of the Reserve Fund credit instrument in accordance with its terms not later than three days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Reserve Fund credit instrument) prior to each Interest Payment Date.

11. Cash on deposit in the Reserve Fund shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Reserve Fund credit instrument. If and to the extent that more than one Reserve Fund credit instrument is deposited in the Reserve Fund, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

SECTION 4.03. *Establishment and Application of Costs of Issuance Fund.* The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Costs of Issuance Fund." The Trustee shall disburse moneys in the Costs of Issuance Fund to pay the Costs of Issuance upon submission of written requisitions executed by a District Representative stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. On January 1, 2013, the Trustee shall withdraw all remaining moneys in the Costs of Issuance Fund and transfer such moneys to the Lease Payment Fund and the costs for Issuance Fund shall be closed.

## ARTICLE V

### LEASE PAYMENTS; LEASE PAYMENT FUND

SECTION 5.01. *Assignment of Rights in Lease.* Under the Assignment Agreement, the Corporation has transferred, assigned and set over to the Trustee certain of its rights under the Lease, including but not limited to all of the Corporation's rights to receive and collect all of the Lease Payments and all other amounts required to be deposited in the Lease Payment Fund. The District shall pay to the Trustee all Lease Payments and other amounts which have been assigned to the Trustee under the Assignment Agreement. Any Lease Payments collected or received by the Corporation are deemed to be held and to have been collected or received by the Corporation as the agent of the Trustee, and the Corporation shall transfer all such Lease Payments and other amounts to the Trustee within five (5) business days.

SECTION 5.02. *Establishment of Lease Payment Fund.* The Trustee shall establish a special fund designated as the "Lease Payment Fund." All moneys at any time deposited by the Trustee in the Lease Payment Fund are held by the Trustee in trust for the benefit of the District and the Owners of the Certificates. So long as any Certificates are Outstanding, neither the District nor the Corporation has any beneficial right or interest in the Lease Payment Fund, or the moneys deposited therein, except only as provided in this Trust Agreement, and the Trustee shall apply the Lease Payment Fund solely as set forth in this Trust Agreement.

SECTION 5.03. *Deposits.* The Trustee shall deposit all Lease Payments received by it in the Lease Payment Fund, including any moneys received by the Trustee for deposit therein under Section 5.01 or under Article VI hereof, or Article III of the Lease, and any other moneys required to be deposited therein under the Lease or under this Trust Agreement.

SECTION 5.04. *Application of Moneys.* The Trustee shall apply amounts in the Lease Payment Fund solely for the purpose of paying the principal, interest and prepayment premiums (if any) represented by the Certificates as the same become due and payable, in accordance with the provisions hereof.

SECTION 5.05. *Surplus.* Any surplus remaining in the Lease Payment Fund, after prepayment and payment of all Certificates, including premiums and accrued interest (if any) and payment of any applicable fees and expenses to the Trustee and any amounts then due and payable to Certificate Insurer, or provision for such prepayment or payment having been made to the satisfaction of the Trustee, shall be withdrawn by the Trustee and remitted to the District.

## ARTICLE VI

### INSURANCE AND CONDEMNATION FUND

SECTION 6.01. *Establishment of Insurance and Condemnation Fund; Application of Net Proceeds of Insurance Award.* Any Net Proceeds of insurance collected by the District in the event of accident to or destruction of any component of the Leased Property shall be paid to the Trustee under Section 5.1 of the Lease and deposited by the Trustee promptly upon receipt thereof in a special fund designated as the "Insurance and Condemnation Fund" which the Trustee shall thereupon establish. If the District determines and notifies the Trustee in writing of its determination, within 90 days following the date of such deposit, that the replacement, repair, restoration, modification or improvement of the Leased Property is not economically feasible or in the best interests of the District, then such Net Proceeds shall be promptly transferred by the Trustee to the Lease Payment Fund and applied to the prepayment of Lease Payments under Section 8.3 of the Lease and the corresponding prepayment of Certificates under Section 3.01(b), which prepayment shall be made on the first prepayment date for which notice of prepayment can be timely given. Notwithstanding the foregoing provisions of this Section 6.01, the determination of the District to apply Net Proceeds to the prepayment of Certificates is subject to the following:

- (a) if the Leased Property is damaged or destroyed in full, such Net Proceeds may be transferred to the Lease Payment Fund to be used to prepay Outstanding Certificates only if such Net Proceeds, together with other available moneys, are sufficient to cause the corresponding prepayment of all Lease Payments allocable to the Leased Property; and
- (b) if the Leased Property is damaged or destroyed in part but not in whole, such Net Proceeds may be transferred to the Lease Payment Fund to be used to prepay Outstanding Certificates only if the Lease Payments which result after the corresponding abatement thereof under Section 5.3 of the Lease are sufficient to pay the full amount of principal and interest represented by the Certificates which remain Outstanding after such prepayment.

All Net Proceeds deposited in the Insurance and Condemnation Fund and not so transferred to the Lease Payment Fund shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Leased Property by the District, upon receipt of written requisitions of the District stating with respect to each payment to be made (a) the name and address of the person, firm or corporation to whom payment is due, (b) the amount to be paid and (c) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal, and specifying in reasonable detail the nature of the obligation. Any balance of the Net Proceeds remaining after the District shall file a written certificate with the Trustee stating that such work has been completed shall, after payment of all amounts then due and owing to the Trustee hereunder, be paid to the District.

SECTION 6.02. *Deposit and Application of Net Proceeds of Eminent Domain Award.* If all or any part of the Leased Property is taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited with the Trustee in the Insurance and Condemnation Fund, under Section 5.1 of the Lease, and shall be applied and disbursed by the Trustee as follows:

- (a) If the District gives written notice to the Trustee of its determination that (i) such eminent domain proceedings have not materially affected the interest of the District in the Leased Property or the ability of the District to meet any of its financial obligations under the Lease, and (ii) that such proceeds are not needed for repair, replacement or rehabilitation of the Leased Property, and the District has given written notice to the Trustee of such determination, the Trustee shall transfer such proceeds to the Lease Payment Fund to be credited towards the payment of the Lease Payments as they become due and payable.
- (b) If the District gives written notice to the Trustee of its determination that (i) such eminent domain proceedings have not materially affected the interest of the District in the Leased Property or the ability of the District to meet any of its financial obligations under the Lease, and (ii) such proceeds are needed for repair, replacement or rehabilitation of the Leased Property, the Trustee shall pay to the District, or to its order, from said proceeds such amounts as the District may expend for the repair or rehabilitation of the Leased Property, upon the filing of requisitions of the District Representative meeting the requirements of Section 6.01.
- (c) If (i) less than all of the Leased Property is taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the District gives written notice to the Trustee of its determination that such eminent domain proceedings have materially affected the interest of the District in the Leased Property or the ability of the District to meet any of its financial obligations under the Lease, or (ii) all of the Leased Property is taken in such eminent domain proceedings, then the Trustee shall transfer such proceeds to the Lease Payment Fund to be credited toward the prepayment of the Lease Payments under Section 8.3 of the Lease and applied to the corresponding prepayment of Certificates under Section 3.01(c), which prepayment shall be made on the first prepayment date for which notice of prepayment can be timely given.

In making any such determination whether to repair, replace or rehabilitate the Leased Property under this Section 6.02, the District may obtain, but is not required to obtain, at its expense, the report of an independent engineer or other independent professional consultant, a copy of which must be filed with the Trustee and Certificate Insurer. Any such determination by the District shall be final.



## ARTICLE VII

### MONEYS IN FUNDS; INVESTMENTS

SECTION 7.01. *Held in Trust.* The moneys and Permitted Investments held by the Trustee under this Trust Agreement are irrevocably held in trust for the benefit of the District and the Owners of the Certificates solely for the purposes herein specified, and such moneys, and any income or interest earned thereon, shall be expended only as provided in this Trust Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of the Corporation, the Trustee, the District, Certificate Insurer or the Owner of any Certificates.

SECTION 7.02. *Investments Authorized.* Upon the written request of the District filed with the Trustee from time to time, moneys held by the Trustee in any fund or account hereunder shall be invested and reinvested by the Trustee in Permitted Investments which mature not later than the date such moneys are required or estimated by the District to be required to be expended hereunder. In the absence of any written request of the District directing the investment of uninvested moneys held by the Trustee hereunder, the Trustee shall invest such moneys in Permitted Investments described in clause (4) of the definition thereof. Such investments, if registrable, shall be registered in the name of the Trustee, as trustee or in the name of its nominee, and shall be held by the Trustee. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section 7.02. Such investments and reinvestments shall be made giving full consideration to the time at which funds are required to be available. The Trustee may act as purchaser or agent in the making or disposing of any investment. Whenever in this Trust Agreement any moneys are required to be transferred by the District to the Trustee, such transfer may be accomplished by transferring a like amount of Permitted Investments. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee is not responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Section 7.02.

The District and the Corporation acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the District or the Corporation the right to receive brokerage confirmations of security transactions as they occur, the District and the Corporation will not receive such confirmations to the extent permitted by law. The Trustee will furnish the District periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

SECTION 7.03. *Accounting.* The Trustee shall furnish to the District, not less than monthly, an accounting (in the form customarily used by the Trustee) of all investments and other transactions made by the Trustee under this Trust Agreement.

SECTION 7.04. *Allocation of Earnings.* Any income, profit or loss on such investments shall be deposited in or charged to the respective funds from which such investments were made; *provided, however,* that all income received on the investment of amounts on deposit in the Reserve Fund shall be applied as set forth in Section 4.02.

SECTION 7.05. *Valuation and Disposition of Investments.*

(a) Except as otherwise provided in subsection (b) of this Section, the District covenants that all investments of amounts deposited in any fund or account created by or under this Trust Agreement, or otherwise containing gross proceeds of the Certificates (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued (as of the date that valuation is required by this Trust Agreement or the Tax Code) at Fair Market Value as such term is defined in subsection (d) below. The Trustee has no duty in connection with the determination of Fair Market Value other than to follow the express investment directions of the District in any written directions of a District Representative.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the Reserve Fund shall be valued by the District at their present value (within the meaning of Section 148 of the Tax Code); provided that the District shall provide written notice to the Trustee as to which funds are subject to a yield restriction.

(c) For the purpose of determining the amount in any fund, the value of Permitted Investments credited to such fund shall be valued by the Trustee at least quarterly at the market value thereof. In making any such valuations, the Trustee may utilize and rely upon computerized securities pricing services that may be available to it, including those available through its regular accounting system. The Trustee may sell, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

(d) For purposes of this Section 7.05, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security – State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the District and any related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

## ARTICLE VIII

### THE TRUSTEE

SECTION 8.01. *Appointment of Trustee.* U.S. Bank National Association is hereby appointed Trustee by the Corporation and the District for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Trust Agreement. The Corporation and the District agree that they will maintain a Trustee which (a) has a corporate trust office in the State of California, (b) has a combined capital and surplus (or whose related bank holding company has a combined capital and surplus) of at least \$50,000,000, and (c) is subject to supervision or examination by Federal or state authority, so long as any Certificates are Outstanding. If such bank or trust company publishes a report of condition at least annually under law or to the requirements of any supervising or examining authority above referred to then for the purpose of this Section 8.01 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The District and the Corporation covenant that they will maintain a Trustee acceptable to Certificate Insurer and qualified under the provisions of the foregoing provisions of this Section 8.01, so long as any Certificates are Outstanding.

The Trustee is hereby authorized to pay or prepay the Certificates when duly presented as provided herein for payment at maturity, or on prepayment, or on purchase by the Trustee as directed by the District prior to maturity in accordance with Section 3.06, and to cancel all Certificates upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Certificates paid and discharged. The Trustee shall be compensated for its services rendered under the provisions of this Trust Agreement.

SECTION 8.02. *Acceptance of Trusts.* The Trustee hereby accepts the express trusts imposed upon it by this Trust Agreement, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

- (a) The Trustee, prior to the occurrence of an Event of Default and after curing or waiver of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Trust Agreement. In case an Event of Default has occurred (which has not been cured or waived) the Trustee may exercise such of the rights and powers vested in it by this Trust Agreement, and shall use the same degree of care and skill in their exercise, as a reasonable corporate trustee would exercise or use under the circumstances.
- (b) No provision in this Trust Agreement requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not in the conclusive opinion of the Trustee satisfactorily assured to it.
- (c) The Trustee is not responsible or liable for any recital herein, or in the Certificates, or for any of the supplements thereto or instruments of

further assurance, or for the validity or sufficiency of the security for the Certificates executed and delivered hereunder or intended to be secured hereby and the Trustee shall not be bound at any time to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Corporation or the District under the Lease. The Trustee is not responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Article VII.

- (d) The Trustee is not accountable for the use of any Certificates executed and delivered hereunder. The Trustee may become the Owner of Certificates with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the District with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Certificates, whether or not such committee shall represent the Owners of the majority in aggregate principal amount of the Certificates then Outstanding.
- (e) The Trustee shall be protected in acting upon any notice, request, requisition, consent, certificate, order, affidavit, letter, telegram, direction, facsimile transmission, electronic mail or other paper or document believed by the trust officer responsible for the administrative of the trusts created hereunder to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith under this Trust Agreement 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 the Owner of any Certificate, shall be conclusive and binding upon all future Owners of the same Certificate and upon Certificates executed and delivered in exchange therefor or in place thereof. The Trustee is not bound to recognize any person as an Owner of any Certificate or to take any action at such person's request unless such Certificate shall be deposited with the Trustee or satisfactory evidence of the ownership of such Certificate shall be furnished to the Trustee.
- (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 certificate signed by a District Representative or a District Representative as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been given notice or is deemed to have notice, as provided in Section 8.02(h), shall also be at liberty to accept a similar 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 by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of a District Representative or a District Representative to the effect that an authorization in the form therein set forth has been adopted by the Corporation or the District, as the case may be, as conclusive evidence that such authorization has been duly adopted, and is in full force and effect.

- (g) The permissive right of the Trustee to do things enumerated in this Trust Agreement may not be construed as a duty and the Trustee is not answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Trustee extend to its officers, directors, employees and agents.
- (h) The Trustee is not required to take notice or be deemed to have notice of any Event of Default hereunder except failure by the District to make any of the Lease Payments to the Trustee required to be made by the District under the Lease or failure by the Corporation or the District to file with the Trustee any document required by this Trust Agreement or the Lease to be so filed subsequent to the delivery of the Certificates, unless the Trustee shall be specifically notified in writing of such default by the Corporation, the District, Certificate Insurer or the Owners of at least 25% in aggregate principal amount of Certificates then Outstanding. All notices or other instruments required by this Trust Agreement to be delivered to the Trustee must, in order to be effective, be delivered at the Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume 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, have the right (but not any duty) fully to inspect the Leased Property, including all books, papers and records of the Corporation or the District pertaining to the Leased Property and the Certificates, and to take such memoranda from and with regard thereto as may be desired.
- (j) The Trustee is not 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 Trust Agreement with respect to the execution of any Certificates, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Trust Agreement, the Trustee has the right, but is not required, to demand 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, which may be deemed desirable by the Trustee for the purpose of establishing the right of the Corporation or the District to the execution of any Certificates, the withdrawal of any cash, or the taking of any other action by the Trustee.
- (l) Before taking any action referred to in Section 12.03 at the direction of Certificate Insurer or the Certificate Owners, the Trustee may require that a satisfactory indemnity bond be furnished by Certificate Insurer or the Certificate Owners, or any of them, for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any such action.

- (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 law. The Trustee has no liability for interest on any moneys received hereunder except such as may be agreed upon, other than interest derived from investments made or required to be made under Section 7.02.
- (n) The Trustee is not responsible for the sufficiency of the Lease, its right to receive moneys under the Lease, or the value of or title to the Leased Property.
- (o) The Trustee is not liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of Certificate Insurer or the Owners of a majority in aggregate principal amount of the Outstanding Certificates 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 Trust Agreement.
- (p) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers and the Trustee is not responsible for any misconduct or negligence on the part of any attorney, agent, or receiver appointed with due care. The Trustee shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder and shall be protected in any action taken or suffered by it hereunder in reliance on such advice.
- (q) The Trustee is not liable for any error of judgment made in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.
- (r) The Trustee makes no representations with respect to any information, statement, or recital in, and shall have no liability with respect to, any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Certificates.
- (s) The Trustee is authorized and directed to execute in its capacity as Trustee the Assignment Agreement.

SECTION 8.03. *Fees, Charges and Expenses of Trustee.* The Trustee shall be entitled to payment and reimbursement by the District for reasonable fees for its services rendered hereunder and all advances, agent and counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. The Trustee has a first lien with right of payment prior to payment on account of principal, premium, if any, and interest represented by any Certificate upon the amounts held hereunder for the foregoing fees, charges and expenses incurred by it respectively. The Trustee shall be entitled to interest on all moneys advanced by it in the performance of its duties hereunder at the maximum legal rate allowable.

SECTION 8.04. *Notice to Certificate Insurer and Certificate Owners of Default.* If an Event of Default occurs of which the Trustee has been given or is deemed to have notice, as provided in Section 8.02(h), then the Trustee shall promptly give written notice thereof (a)

to Certificate Insurer by telephone confirmed in writing, and (b) by first class mail, postage prepaid, to the Owner of each Outstanding Certificate, unless such Event of Default has been cured before the giving of such notice; *provided, however* that unless such Event of Default consists of the failure by the District to make any Lease Payment when due, the Trustee may elect not to give such notice to the Certificate Owners if and so long as the Trustee in good faith determines that it is in the best interests of the Certificate Owners not to give such notice.

SECTION 8.05. *Removal of Trustee.* The District may remove the Trustee at any time, unless an Event of Default has occurred and is continuing, and shall remove the Trustee (a) if at any time requested to do so by an instrument or concurrent instruments in writing signed by Certificate Insurer or (with the prior written consent of Certificate Insurer) by the Owners of a majority in aggregate principal amount of the Certificates then Outstanding (or their attorneys duly authorized in writing) or (b) if at any time the Trustee ceases to be eligible in accordance with Section 8.01, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. In each case such removal shall be accomplished by the giving of 30 days' prior written notice of such removal by the District to the Trustee, whereupon the District shall appoint a successor Trustee in accordance with Section 8.07.

SECTION 8.06. *Resignation by Trustee.* The Trustee and any successor Trustee may at any time resign by giving written notice by registered or certified mail to the District and Certificate Insurer. Upon receiving such notice of resignation, the District shall promptly appoint a successor Trustee in accordance with Section 8.07. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. Upon such acceptance, the District shall mail notice thereof to Certificate Insurer and to the Certificate Owners at their respective addresses set forth on the Registration Books.

SECTION 8.07. *Appointment of Successor Trustee.* If the Trustee resigns or is removed under Sections 8.05 or 8.06, respectively, with the prior written consent of Certificate Insurer the District shall promptly appoint a successor Trustee. If the District for any reason whatsoever fails to appoint a successor Trustee within 30 days following the delivery to the Trustee of the instrument described in Section 8.05 or within 30 days following the receipt of notice by the District under Section 8.06, Certificate Insurer or the Trustee may apply to any federal or state court for the appointment of a successor Trustee meeting the requirements of Section 8.01. Any such successor Trustee appointed by such court will become the successor Trustee hereunder notwithstanding any action by the District purporting to appoint a successor Trustee following the expiration of such 30 day period.

SECTION 8.08. *Merger or Consolidation.* Any company or association into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company or association shall be eligible under Section 8.01, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 8.09. *Concerning any Successor Trustee.* Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to Certificate Insurer, the Corporation and the District an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the written request of the District, or of its successor, execute and deliver an instrument transferring to such successor 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 the Trustee hereunder to its successor. Should any instrument in writing from the District 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 District. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article VIII, shall be filed or recorded by the successor Trustee in each recording office where the Assignment Agreement has been filed or recorded.

SECTION 8.10. *Non-Liability of Trustee.* The recitals, statements and representations by the District and the Corporation contained in this Trust Agreement or in the Certificates shall be taken and construed as made by and on the part of the District and the Corporation, as the case may be, and not by the Trustee, and the Trustee has no responsibility, obligation or liability for the correctness of any thereof.

The Trustee makes no representation or warranty, express or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the District or the Corporation of the Leased Property. In no event shall the Trustee be liable for special or consequential damages in connection with or arising from the Lease for the existence, furnishing or use of the Leased Property.

The Trustee is not: (a) responsible for the sufficiency or enforceability of the Lease or the assignment under the Assignment Agreement of its rights to receive Lease Payments; (b) deemed to have knowledge of any Event of Default unless and until it has received written notice thereof or, with respect to Section 7.1(a) of the Lease, has actual knowledge thereof or except as provided in Section 8.02(h); or (c) accountable for the use or application by the District or the Corporation of any funds which the Trustee has released under this Trust Agreement.

SECTION 8.11. *Actions Through Agents.* The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Trustee is not answerable for the default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. The Trustee is not answerable for the exercise of any discretion or power under this Trust Agreement or for anything whatever in connection with the funds and accounts established hereunder, except only for its own negligence or willful misconduct.

SECTION 8.12. *Nature of Trust Engagement.* The Trustee undertakes to perform such duties and only such duties as are expressly and specifically set forth in the Trust Agreement and no implied covenants or obligations whatsoever shall be read into the Trust Agreement against the Trustee. In accepting the trusts hereby created, the Trustee acts



solely as Trustee and not in its individual capacity. All persons, including without limitation the Owners, Certificate Insurer, the District and the Corporation having any claim against the Trustee arising from the Trust Agreement shall look only to the funds and accounts hereunder for payment except as otherwise provided herein; *provided, however*, that nothing in this sentence is intended or shall be construed to apply to, or limit the source of payment of, claims against the Trustee arising from the negligence or willful misconduct of the Trustee. Under no circumstances shall the Trustee be liable in its individual capacity for payment of the obligations represented by the Certificates.

SECTION 8.13. *Certificate Insurer's Exercise of Rights Relating to the Trustee.* Certificate Insurer is deemed to be the sole holder of the Certificates insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners are entitled to take under this Article VIII.

## ARTICLE IX

### MODIFICATION OR AMENDMENT

SECTION 9.01. *Amendments Permitted.* This Trust Agreement and the rights and obligations of the Owners of the Certificates may be modified or amended at any time by a supplemental agreement which shall become effective when the written consents of Certificate Insurer and the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, exclusive of Certificates disqualified as provided in Section 13.04, has been filed with the Trustee. No such modification or amendment may (a) extend or have the effect of extending the fixed maturity of any Certificate or reducing the interest rate represented thereby or extending the time of payment of interest, or reducing the amount of principal represented thereby or reducing any premium payable upon the prepayment thereof, without the express consent of Certificate Insurer and the Owner of such Certificate, or (b) reduce or have the effect of reducing the percentage of Certificates required for the affirmative vote or written consent to an amendment or modification hereof, or (c) modify any of the rights or obligations of the Trustee without its written assent thereto. Any such supplemental agreement shall become effective as provided in Section 9.02.

This Trust Agreement and the rights and obligations of the Owners of the Certificates may be modified or amended at any time by a supplemental agreement, with the prior written consent of Certificate Insurer but without the consent of any Certificate Owners, but only to the extent permitted by law and only:

- (a) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein reserved to the Corporation or the District,
- (b) to cure, correct or supplement any ambiguous or defective provision contained herein,
- (c) in regard to questions arising hereunder, as the parties hereto or thereto may deem necessary or desirable and which shall not, in the opinion of Bond Counsel, materially adversely affect the interests of the Owners of the Certificates,

- (d) if and to the extent permitted in the opinion of Bond Counsel filed with the Trustee, the District and the Corporation, to delete or modify any of the provisions hereof or thereof relating to the exclusion from gross income of interest represented by the Certificates for federal income tax purposes, or
- (e) to conform to any amendments of the Lease which are permitted to be made under Section 6.6 thereof.

Any such supplemental agreement shall become effective upon execution and delivery by the parties hereto.

SECTION 9.02. *Procedure for Amendment with Written Consent of Certificate Owners.* If the consents of Certificate Insurer and the Owners of the Certificates are required to any amendment hereof under Section 9.01, such amendment shall be required to comply with the provisions of this Section 9.02. A copy of such supplemental agreement, together with a request to the Certificate Owners for their consent thereto, shall be mailed by the Trustee to each Owner of a Certificate at such Owner's address as set forth on the Registration Books, but failure to mail copies of such supplemental agreement and request shall not affect the validity of the supplemental agreement when assented to as provided in this Section.

Such supplemental agreement may not become effective unless there shall be filed with the Trustee the written consents of Certificate Insurer and the Owners of a majority in aggregate principal amount of the Certificates then Outstanding (exclusive of Certificates disqualified as provided in Section 13.04) and a notice has been mailed as hereinafter provided in this Section. Each such consent shall be effective only if accompanied by proof of ownership of the Certificates for which such consent is given, which proof shall be such as is permitted by Section 2.10. Any such consent shall be binding upon the Owner of the Certificate giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

After Certificate Insurer and the Owners of the required percentage of Certificates have filed their consents to such supplemental agreement, the Trustee shall mail a notice to the Owners of the Certificates in the manner hereinbefore provided in this Section for the mailing of such supplemental agreement of the notice of adoption thereof, stating in substance that such supplemental agreement has been consented to by the Owners of the required percentage of Certificates and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of such supplemental agreement or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be conclusive proof of the matters therein stated. Such supplemental agreement shall become effective upon the mailing of such last-mentioned notice, and such supplemental agreement shall be deemed conclusively binding upon the parties hereto and the Owners of all Certificates at the expiration of 60 days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such 60 day period.

SECTION 9.03. *Effect of Supplemental Agreement.* From and after the time any supplemental agreement becomes effective under this Article IX, this Trust Agreement shall

be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto, and the rights of Certificate Insurer and the affected Certificate Owners, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any supplemental agreement shall be deemed to be part of the terms and conditions of this Trust Agreement for any and all purposes.

SECTION 9.04. *Endorsement or Replacement of Certificates Delivered After Amendments.* The Trustee may determine that Certificates delivered after the effective date of any action taken as provided in this Article IX shall bear a notation, by endorsement or otherwise, in form approved by the Trustee, as to such action. In that case, upon demand on the Owner of any Certificate Outstanding at such effective date and presentation of such Owner's Certificate for the purpose at the Office of the Trustee, a suitable notation shall be made on such Certificate. The Trustee may determine that the delivery of substitute Certificates, so modified as in the opinion of the Trustee is necessary to conform to such Certificate Owners' action is necessary or desirable, which substitute Certificates shall thereupon be prepared, executed and delivered. In that case, upon demand on the Owner of any Certificate then Outstanding, such substitute Certificate shall be exchanged at the Office of the Trustee, without cost to such Owner, for a Certificate of the same character then Outstanding, upon surrender of such Outstanding Certificate.

SECTION 9.05. *Amendatory Endorsement of Certificates.* The provisions of this Article IX shall not prevent any Certificate Owner from accepting any amendment as to the particular Certificates held by him, provided that proper notation thereof is made on such Certificates.

SECTION 9.06. *Opinion of Counsel.* Prior to executing any supplemental Trust Agreement, the Trustee shall be furnished an opinion of counsel, upon which it may conclusively rely to the effect that all conditions precedent to the execution of such supplemental Trust Agreement under this Trust Agreement have been satisfied and such supplemental Trust Agreement is authorized and permitted under this Trust Agreement and does not adversely affect the exclusion of interest with respect to the Certificates from gross income for federal income tax purposes or adversely affect the exemption of interest with respect to the Certificates from personal income taxation by the State of California.

SECTION 9.07. *Notice to Rating Agencies.* The District shall send copies of any proposed amendment or modification hereof to each rating agency which then maintains a rating on the Certificates, at least 10 days prior to the effective date of any such amendment or modification.

## **ARTICLE X**

### **OTHER COVENANTS**

SECTION 10.01. *Compliance With and Enforcement of Lease.* The District covenants to perform all obligations and duties imposed on it under the Lease. The Corporation covenants and agrees with Certificate Insurer and the Owners of the Certificates to perform all obligations and duties imposed on it under the Lease.

The District will not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation or

termination of the Lease by the Corporation thereunder. The Corporation and the District, immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting their respective estates, or either of them, in the Leased Property, which may or can in any manner affect such estate of the District, will deliver the same, or a copy thereof, to Certificate Insurer and the Trustee.

SECTION 10.02. *Observance of Laws and Regulations.* The District will keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the District, including its right to exist and carry on business as a public agency, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

SECTION 10.03. *Prosecution and Defense of Suits.* The District shall promptly, upon request of the Trustee, Certificate Insurer or any Certificate Owner, from time to time take such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Leased Property, whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and shall indemnify and save the Trustee, Certificate Insurer and every Certificate Owner harmless from all loss, cost, damage and expense, including attorneys' fees, which they or any of them may incur by reason of any such defect, cloud, suit, action or proceeding.

SECTION 10.04. *Recordation and Filing.* The District shall record and file the Lease or a memorandum thereof, the Site Lease, the Assignment Agreement and all such documents as may be required by law (and shall take all further actions which may be necessary or be reasonably required by the Trustee), all in such manner, at such times and in such places as may be required by law in order fully to preserve, protect and perfect the security of the Trustee, Certificate Insurer and the Certificate Owners.

SECTION 10.05. *Tax Covenants.*

(a) Private Business Use Limitation. The District shall assure that the proceeds of the Certificates are not used in a manner which would cause any of the obligations of the District under the Lease to become "private activity bonds" under and within the meaning of Section 141(a) of the Tax Code.

(b) Private Loan Limitation. The District shall assure that no more than the lesser of \$5,000,000 or 5% of the aggregate amount of the proceeds of the Certificates are used, directly or indirectly, to make or finance a loan (other than loans constituting nonpurpose obligations as defined in the Tax Code or constituting assessments) to persons other than state or local government units.

(c) Federal Guarantee Prohibition. The District shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the obligations of the District under the Lease to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The District shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Certificates or of any other obligations which, if such action had been reasonably expected to have been taken, or

had been deliberately and intentionally taken, on the Closing Date, would have caused the obligations of the District under the Lease to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(e) Rebate of Excess Investment Earnings to United States. The District shall calculate or cause to be calculated all Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. The District shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by the District from any source of legally available funds of the District.

The District shall keep or cause to be kept, and retain or cause to be retained for a period of 6 years following the retirement of the Certificates, records of the determinations made under this subsection (e). In order to provide for the administration of this subsection (e), the District may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the District may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by the District of any of the requirements herein.

SECTION 10.06. *Continuing Disclosure.* The District shall comply with and carry out all of the provisions of that certain Continuing Disclosure Certificate executed by the District as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with its terms. Notwithstanding any other provision of this Trust Agreement, failure of the District to comply with such Continuing Disclosure Certificate does not constitute an Event of Default; except that any Participating Underwriter (as such term is defined in such Continuing Disclosure Certificate) or any Owner or beneficial owner of the Certificates may take such actions as may be necessary and appropriate to compel performance by the District of its obligations under this Section, including seeking mandate or specific performance by court order.

SECTION 10.07. *Rights Under Certificate Insurance Policy.* So long as the Certificate Insurance Policy remains in force and effect, the Trustee shall comply with all of the provisions thereof which are required to be complied with to ensure timely payment of the principal and interest represented by the Certificates when due. Without limiting the generality of the foregoing, in the event that, on the 2<sup>nd</sup> Business Day, and again on the Business Day, prior to any date on which the principal or interest represented by the Certificates becomes due and payable hereunder, the Trustee does not have on deposit in the funds and accounts established hereunder an amount of moneys sufficient to pay such principal and interest, the Trustee shall immediately notify Certificate Insurer or its designee on such Business Day by telephone or facsimile transmission, confirmed in writing by registered or certified mail, of the amount of such deficiency. In the event that such deficiency shall be made up in whole or in part prior to or on the date on which the principal or interest represented by the Certificates becomes due and payable hereunder, the Trustee shall so notify Certificate Insurer or its designee. In addition, if the Trustee receives actual notice that any Certificate Owner has been required to disgorge payments of principal or interest represented by the Certificates to a trustee in bankruptcy or creditors or others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes a voidable preference to such Certificate Owner within the meaning of any applicable bankruptcy law, then the Trustee shall notify Certificate Insurer or its designee of such fact by telephone or facsimile transmission, confirmed in writing by registered or certified mail.

SECTION 10.08. *Further Assurances.* The Corporation and the District will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Trust Agreement and the Lease, and for the better assuring and confirming to Certificate Insurer and the Owners of the Certificates the rights and benefits provided herein.

## ARTICLE XI

### LIMITATION OF LIABILITY

SECTION 11.01. *Limited Liability of District.* Except for the payment of Lease Payments when due in accordance with the Lease and the performance of the other covenants and agreements of the District contained in the Lease and this Trust Agreement, the District has no pecuniary obligation or liability to any of the other parties or to the Owners of the Certificates with respect to this Trust Agreement or the terms, execution, delivery or transfer of the Certificates, or the distribution of Lease Payments to the Owners by the Trustee, except as expressly set forth herein.

SECTION 11.02. *No Liability of the Corporation for Trustee Performance.* Neither the District nor the Corporation has any obligation or liability to any of the other parties or to the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed upon it under this Trust Agreement.

SECTION 11.03. *Indemnification of Trustee.* The Corporation and the District shall indemnify and save the Trustee, its directors, officers, agents and employees harmless from and against (whether or not litigated) all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of any of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on, the Leased Property by the Corporation or the District,
- (b) any breach or default on the part of the Corporation or the District in the performance of any of their respective obligations under this Trust Agreement and any other agreement made and entered into for purposes of the Leased Property,
- (c) any act of negligence of the Corporation or the District or of any of their respective agents, contractors, servants, employees, licensees with respect to the Leased Property,
- (d) any act of negligence of any assignee of, or purchaser from the Corporation or the District or of any of its or their respective agents, contractors, servants, employees or licensees with respect to the Leased Property,
- (e) the application of the proceeds of the Certificates,
- (f) the actions of any other party, including but not limited to the ownership, operation or use of the Leased Property by the Corporation or the District,
- (g) the Trustee's exercise and performance of its powers and duties hereunder or under the Lease; or
- (h) the presence on, under or about, or release from, the Leased Property, or any portion thereof of any substance, material or waste which is or becomes regulated or classified as hazardous or toxic under State, local or federal law and the violation of any such laws by the District or the Corporation.

No indemnification is made under this Section 11.03 or elsewhere in this Trust Agreement for willful misconduct, negligence under this Trust Agreement by the Trustee, its officers, agents, employees, successors or assigns. The Corporation's and the District's obligations hereunder will remain valid and binding notwithstanding maturity and payment or discharge of the Certificates and notwithstanding any resignation or removal of the Trustee.

SECTION 11.04. *Opinion of Counsel.* Before being required to take any action, the Trustee may, at the expense of the District, require an opinion of counsel acceptable to the Trustee, or an opinion of Bond Counsel acceptable to the Trustee with respect to any federal tax matters, or a verified certificate of any party hereto, or both, concerning the proposed action. If it does so in good faith, Trustee shall be absolutely protected in relying on any such opinion or certificate obtained by the Trustee.

SECTION 11.05. *Limitation of Rights to Parties and Certificate Owners.* Nothing in this Trust Agreement or in the Certificates expressed or implied is intended or shall be construed to give any person other than the District, the Corporation, the Trustee, Certificate Insurer and the Owners of the Certificates, any legal or equitable right, remedy or claim under or in respect of this Trust Agreement or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and shall be for the sole and exclusive benefit of the District, the Corporation, the Trustee, Certificate Insurer and said Owners.

## ARTICLE XII

### EVENTS OF DEFAULT AND REMEDIES

SECTION 12.01. *Assignment of Rights.* Under the Assignment Agreement the Corporation has transferred, assigned and set over to the Trustee certain of the Corporation's rights in and to the Lease, including without limitation all of the Corporation's rights to exercise such rights and remedies conferred on the Corporation under the Lease as may be necessary or convenient (a) to enforce payment of the Lease Payments and any other amounts required to be deposited in the Lease Payment Fund or the Insurance and Condemnation Fund, and (b) otherwise to exercise the Corporation's rights and take any action to protect the interests of the Trustee, Certificate Insurer or the Certificate Owners in an Event of Default.

SECTION 12.02. *Events of Default Defined.* As provided in Section 7.1 of the Lease, any one or more of the following events constitutes an Event of Default:

- (a) Failure by the District to pay any Lease Payment or other payment required to be paid hereunder at the time specified in the Lease.
- (b) Failure by the District to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Lease or in this Trust Agreement, other than as referred to in the preceding subsection (a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Corporation, the Trustee or Certificate Insurer; *provided, however,* that if in the reasonable opinion of the District the failure stated in the notice can be corrected, but not within such 30-day period, the failure will not



constitute an Event of Default if the District commences to cure the failure within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.

- (c) The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or attachment, or adjudication of the District as a bankrupt, or assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

For purposes of determining whether any Event of Default has occurred under and as described in the preceding clause (a), no effect may be given to payments made by Certificate Insurer under the Certificate Insurance Policy.

SECTION 12.03. *Remedies.* If an Event of Default happens, then and in each and every such case during the continuance of such Event of Default, with the prior written consent of Certificate Insurer the Trustee may, and at the written direction of Certificate Insurer or (with the prior written consent of Certificate Insurer) at the written direction of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding the Trustee shall, upon being indemnified to its satisfaction, exercise any and all remedies available under law or granted under the Lease; *provided, however,* that notwithstanding anything herein or in the Lease to the contrary, there shall be no right under any circumstances to accelerate the maturities of the Certificates or otherwise to declare any Lease Payment not then in default to be immediately due and payable.

SECTION 12.04. *Application of Funds.* All moneys received by the Trustee under any right given or action taken under the provisions of this Article XII or Article VII of the Lease shall be applied by the Trustee in the order following upon presentation of the several Certificates, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid -

*First,* to the payment of the fees, costs and expenses of the Trustee in declaring such Event of Default and in taking any remedial action with respect thereto, including reasonable compensation to its agents, attorneys and counsel, and including such other necessary costs relating to the administration of the foregoing and to events leading up thereto;

*Second,* to the payment of the whole amount then owing and unpaid with respect to the Certificates for principal and interest, and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid with respect to the Certificates, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest.

*Third,* to the payment of any amounts due or to become due to Certificate Insurer with respect to the Certificate Insurance Policy.

SECTION 12.05. *Institution of Legal Proceedings.* If one or more Events of Default occur and are continuing, with the prior written consent of Certificate Insurer the Trustee in

its discretion may, and upon the written request of Certificate Insurer or (with the prior written consent of Certificate Insurer) upon the written request of the Owners of a majority in principal amount of the Certificates then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of Certificate Insurer or the Owners of Certificates by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Trustee shall deem most effectual in support of any of its rights or duties hereunder.

SECTION 12.06. *Non-waiver.* Nothing in this Article XII or in any other provision of this Trust Agreement or in the Certificates, affects or impairs the obligation of the District, which is absolute and unconditional, to pay or prepay the Lease Payments as provided in the Lease. No delay or omission of the Trustee, Certificate Insurer or any Certificate Owner to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Article XII to the Trustee, Certificate Insurer or the Certificate Owners may be exercised from time to time and as often as shall be deemed expedient by the Trustee, Certificate Insurer or the Certificate Owners.

SECTION 12.07. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Trustee, Certificate Insurer or the Certificate Owners is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise.

SECTION 12.08. *Power of Trustee to Control Proceedings.* If the Trustee, upon the happening of an Event of Default, takes any action, by judicial proceedings or otherwise, under its duties hereunder, whether upon its own discretion or upon the direction of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, it has full power, in the exercise of its discretion for the best interests of the Owners of the Certificates, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; *provided, however,* that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by Certificate Insurer or (with the prior written consent of Certificate Insurer) by the Owners of a majority in aggregate principal amount of the Outstanding Certificates opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

SECTION 12.09. *Limitation on Certificate Owners' Right to Sue Exclusive.* No Owner of any Certificate executed and delivered hereunder may institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Trust Agreement, unless (a) such Owner has previously given to the Trustee written notice of the occurrence of an Event of Default hereunder; (b) the Owners of a majority in aggregate principal amount of all the Certificates then Outstanding have requested the Trustee in writing to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee has refused or omitted to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Certificates of any remedy hereunder; it being understood and intended that no one or more Owners of Certificates has any right in any manner whatever by its or their action to enforce any right under this Trust Agreement, except in the manner herein provided, and that all proceedings at law or in equity with respect to an Event of Default shall be instituted, had and maintained in the manner herein provided and for the equal benefit of Certificate Insurer and all Owners of the Outstanding Certificates.

SECTION 12.10. *Possession of Certificates by Trustee Not Required.* All rights and remedies granted to or exercisable by the Trustee hereunder or under the Lease may be exercised by the Trustee without possession of any of the Certificates or the production thereof at the trial or other proceeding relative thereto, and any suit, action or proceeding instituted by the Trustee hereunder or under the Lease shall be brought in its name for the benefit of all Certificate Insurer and the Owners of such Certificates, subject to the provisions of this Trust Agreement.

SECTION 12.11. *Rights of Certificate Insurer.* Anything in this Trust Agreement to the contrary notwithstanding, upon the occurrence and continuation of an Event of Default, Certificate Insurer is entitled to control and direct the enforcement of all rights and remedies granted hereunder to the Certificate Owners, or to the Trustee for the benefit of the Certificate Owners, including but not limited to the right to approve all waivers of any Events of Default. The rights granted to Certificate Insurer hereunder may not be exercised by Certificate Insurer during any period in which Certificate Insurer is in payment default under the Certificate Insurance Policy.

SECTION 12.12. *Subrogation.* If principal and/or interest due on the Certificates shall be paid by Certificate Insurer, the Certificates shall remain outstanding under this Trust Agreement for all purposes, and shall not be deemed defeased or otherwise satisfied, or paid by the District, and the assignment and pledge of the trust estate and all covenants, agreements and other obligations of the District to the Owners shall continue to exist and shall run to the benefit of Certificate Insurer, and Certificate Insurer shall be subrogated to the rights of such Owners.

### **ARTICLE XIII**

#### **DISCHARGE; ADMINISTRATIVE PROVISIONS**

SECTION 13.01. *Discharge Hereof.* If and when the obligations represented by any Outstanding Certificates shall be paid and discharged in any one or more of the following ways:

- (a) by well and truly paying or causing to be paid the principal, interest and prepayment premiums (if any) represented by such Certificates Outstanding, as and when the same become due and payable, or
- (b) by depositing with the Trustee, under an escrow deposit and trust agreement, security for the payment of Lease Payments relating to such Certificates as more particularly described in Section 8.1 of the Lease, said security to be held by the Trustee on behalf of the District to be

applied by the Trustee to pay or prepay such Lease Payments as the same become due, under Section 8.1 of the Lease,

then notwithstanding that such Certificates have not been surrendered for payment, all rights hereunder of the Owners of such Certificates and all obligations of the Corporation, the Trustee and the District with respect to such Certificates shall cease and terminate, except only the obligations of the Corporation and the District under Section 11.03 and the obligations of the Trustee under Sections 2.07 and 2.08, and the obligation of the Trustee to pay or cause to be paid, from Lease Payments paid by or on behalf of the District from funds deposited under paragraph (b) of this Section, to the Owners of such Certificates not so surrendered and paid all sums represented thereby when due and in the event of deposits under paragraph (b), such Certificates shall continue to represent direct, undivided fractional interests of the Owners thereof in the Lease Payments.

Any funds held by the Trustee, at the time of discharge of the obligations represented by all Outstanding Certificates as a result of one of the events described in paragraphs (a) or (b) of this Section, which are not required for the payment to be made to Owners, shall, upon payment in full of all fees and expenses of the Trustee (including attorneys' fees) then due, be paid over to the District.

Notwithstanding the foregoing provisions of this Section 13.01, if the principal and interest represented by the Certificates are paid by Certificate Insurer under the Certificate Insurance Policy, (a) the Certificates will remain Outstanding and will not be deemed to have been paid and discharged under this Section 13.01, (b) the obligations of the Trustee and the District will continue in full force and effect with respect to such Certificates, and (c) Certificate Insurer will be fully subrogated to the rights of all Owners of the Certificates so paid. The Certificates may not be discharged hereunder with the effect set forth in this Section 13.01 unless all amounts then due and owing to Certificate Insurer under the Certificate Insurance Policy have been paid in full. Without limiting the generality of the foregoing sentence, the Trustee shall not release to the District any amounts held hereunder in accordance with this Section 13.01 unless the District has certified to the Trustee that there are no obligations then due and owing by the District to Certificate Insurer under the Certificate Insurance Policy.

SECTION 13.02. *Records.* The Trustee shall keep complete and accurate records of all moneys received and disbursed under this Trust Agreement, which shall be available for inspection by the District, the Corporation, Certificate Insurer and any Owner, or the agent of any of them, at any reasonable time during regular business hours upon prior notice.

SECTION 13.03. *Notices.*

Any notice, request, complaint, demand or other communication under this Trust Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 72 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Corporation, the District, the Trustee or Certificate Insurer may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the District:* Capistrano Unified School District  
33122 Valle Road  
San Juan Capistrano, CA 92675  
Attention: Superintendent  
Fax: (949) 234-9200

*If to the Corporation:* Capistrano Unified School District School  
Facilities Corporation  
33122 Valle Road  
San Juan Capistrano, CA 92675  
Attention: Executive Director  
Fax: (949) 234-9200

*If to the Trustee:* U.S. Bank National Association  
633 West Fifth Street, 24th floor  
Los Angeles, CA 90071  
Attn: Global Corporate Trust Services  
Fax: (\_\_\_\_) \_\_\_\_-\_\_\_\_

*If to Certificate Insurer:* \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_-\_\_\_\_

So long as the Certificate Insurance Policy remains in effect, the Trustee shall furnish to Certificate Insurer a copy of any notice required to be given hereunder to the Certificate Owners and any certification required to be given hereunder relating to the security for the Certificates or the Lease Payments.

SECTION 13.04. *Disqualified Certificates.* In determining whether the Owners of the requisite aggregate principal amount of Certificates have concurred in any demand, request, direction, consent or waiver under this Trust Agreement, Certificates which are owned or held by or for the account of the District (but excluding Certificates held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, *provided, however,* that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Certificates which the Trustee knows to be so owned or held shall be disregarded.

SECTION 13.05. *Payment of Certificates After Discharge of Trust Agreement.* Notwithstanding any provisions of this Trust Agreement, but subject to any applicable laws of the State of California relating to the escheat of funds or property, any moneys held by the Trustee in trust for the payment of the principal or interest represented by any Certificates and remaining unclaimed for 2 years after the principal represented by all of the Certificates has become due and payable (whether at maturity or upon call for prepayment as provided in this Trust Agreement), if such moneys were so held at such date, or 2 years after the date of deposit of such moneys if deposited after said date when all of the Certificates became due and payable, shall be repaid to the District free from the trusts created by this Trust Agreement, and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however,* that before the repayment of such moneys to the District as aforesaid, the Trustee shall (at the request of and at the cost of the District) mail, by first class mail postage prepaid, to the Owners of Certificates which

have not yet been paid, at the respective addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Certificates so payable and not presented and with respect to the provisions relating to the repayment to the District of the moneys held for the payment thereof.

SECTION 13.06. *Governing Law.* This Trust Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 13.07. *Binding Effect; Successors.* This Trust Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Trust Agreement either the Corporation, the District, Certificate Insurer or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Trust Agreement contained by or on behalf of the Corporation, the District, Certificate Insurer or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 13.08. *Corporation and District Representatives.* Whenever under the provisions of this Trust Agreement the Corporation or the District is required or permitted to take some action, including but not limited to the giving of any approval or the execution of some request, direction or other instrument, such action shall be made on behalf of the Corporation by a Corporation Representative and on behalf of the District by a District Representative, and any party hereto shall be fully authorized to rely upon any such action by a Corporation Representative or a District Representative.

SECTION 13.09. *Third-Party Beneficiary.* Certificate Insurer is made a third-party beneficiary of this Trust Agreement, with all rights of a third-party beneficiary.

SECTION 13.10. *Execution in Counterparts.* This Trust 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 agreement.

SECTION 13.11. *Delivery of Canceled Certificates.* Whenever in this Trust Agreement provision is made for the surrender to or cancellation by the Trustee of any Certificates, the Trustee shall cancel and, unless directed in writing by the District Representative, destroy such Certificates and shall deliver a certificate of destruction with respect thereto to the District.

SECTION 13.12. *Headings.* The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Trust Agreement.

SECTION 13.13. *Waiver of Notice.* Whenever in this Trust Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice are not conditions precedent to the validity of any action taken in reliance upon such waiver.

SECTION 13.14. *Separability of Invalid Provisions.* In case any one or more of the provisions contained in this Trust Agreement or in the Certificates shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of this Trust Agreement, and this Trust

Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Corporation and the District hereby declare that they would have entered into this Trust Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Certificates pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Trust Agreement may be held illegal, invalid or unenforceable.

IN WITNESS WHEREOF, the parties have executed this Trust Agreement as of the date and year first above written.

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

By \_\_\_\_\_  
\_\_\_\_\_, [TITLE]

**CAPISTRANO UNIFIED SCHOOL DISTRICT  
FACILITIES CORPORATION**

By \_\_\_\_\_  
Dr. Joseph M. Farley,  
Executive Director

Attest:

By \_\_\_\_\_  
Julie Hatchel, Secretary

**CAPISTRANO UNIFIED SCHOOL DISTRICT**

By \_\_\_\_\_  
Dr. Joseph M. Farley, Superintendent

Attest:

By \_\_\_\_\_  
Lynn Hatton, Clerk of the Board

## APPENDIX A

### DEFINED TERMS

Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in this Appendix A have the respective meanings given them in this Appendix when used in this Trust Agreement and when used in the Lease Agreement.

"Additional Payments" means the amounts payable by the District under Section 3.9 of the Lease.

"Assignment Agreement" means the Assignment Agreement, dated as of November 1, 2012, between the Corporation as assignor and the Trustee as assignee, as originally executed or as thereafter amended under any duly authorized and executed amendments thereto.

"Bond Counsel" means Dannis Woliver Kelley, or any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

"Business Day" means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State of California, or in any state in which any Office of the Trustee is located.

"Certificate Insurance Policy" means the policy of municipal bond insurance issued by Certificate Insurer, insuring payment when due of principal and interest represented by the Certificates.

"Certificate Insurer" or "Insurer" means [\_\_\_\_\_] Insurance Corporation.

"Certificates" means the \$23,000,000 aggregate principal amount of 2012 Refunding Certificates of Participation, executed and delivered and at any time Outstanding hereunder.

"Corporation" means the Capistrano Unified School District Facilities Corporation, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California.

"Corporation Representative" means the President, Treasurer or Executive Director of the Corporation, or any other person authorized by resolution of the Board of Directors of the Corporation to act on behalf of the Corporation under or with respect to this Trust Agreement.

"Closing Date" means November 20, 2012, being the day when the Certificates, duly executed by the Trustee, are delivered to the Original Purchaser.

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the District or the Corporation relating to the execution and delivery of the Lease, the refunding of the 2002 Certificates, and the execution, sale and delivery of the Certificates. Costs of Issuance include (but are not limited to) the following: filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee and the trustee for the 2002 Certificates (which may include



legal fees and the first annual administration fee), financing discounts, legal fees and charges, Certificate Insurance Policy premium, insurance fees and charges, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Certificates, and any charges and fees in connection with the foregoing.

"Costs of Issuance Fund" means the fund by that name established and held by the Trustee under Section 4.03.

"Depository" means (a) initially, DTC, and (b) any other Securities Depository acting as Depository under Section 2.05.

"Depository System Participant" means any participant in the Depository's book-entry system.

"District" means the Capistrano Unified School District, a school district duly organized and existing under the Constitution and laws of the State of California.

"District Representative" means the Superintendent, Assistant Superintendent – Business Services, Clerk of the Board or any other person authorized by resolution of the Board of Supervisors of the District to act on behalf of the District under or with respect to the Lease Agreement and this Trust Agreement.

"DTC" means The Depository Trust Company, New York, New York, and its successors and assigns.

"Event of Default" means an event of default under the Lease, as defined in Section 7.1 thereof.

"Excess Investment Earnings" means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Certificates at a yield in excess of the yield on the Lease Payments.

"Federal Securities" means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), the payment of principal of and interest on which are unconditionally and fully guaranteed by the United States of America; and (b) any obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

"Fiscal Year" means the twelve-month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period by the District as its fiscal year under written notice filed with the Trustee.

"Information Services" means Financial Information, Inc.'s "Daily Called Bond Service", 30 Montgomery Street, 10<sup>th</sup> Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services' "Called Bond Service," 65 Broadway, 16<sup>th</sup> Floor, New York, New York 10006; Moody's Investors Service "Municipal and Government," 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28217, Attn.: Called Notes Dept.; Standard & Poor's Corporation "Called Bond Record," 25 Broadway, 3<sup>rd</sup> Floor, New York, New York 10004; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing

information with respect to called bonds as the District may designate in a written request delivered to the Trustee.

"Insurance and Condemnation Fund" means the fund by that name to be established and held by the Trustee under Section 6.01.

"Interest Payment Date" means December 1, 2012, and each June 1 and December 1 thereafter to and including the final date of maturity of the Certificates.

"Lease" means the Lease Agreement dated as of November 1, 2012, between the Corporation as lessor and the District as lessee, as originally executed or as thereafter amended under any duly authorized and executed amendments and supplements thereto.

"Lease Payment Date" means, with respect to any Interest Payment Date, the 15<sup>th</sup> calendar day of the month immediately preceding such Interest Payment Date.

"Lease Payment Fund" means the fund by that name established and held by the Trustee under Section 5.02.

"Lease Payments" means all payments required to be paid by the District under Section 3.5(a) of the Lease, including any prepayment thereof under Article XIII of the Lease.

"Leased Property" means the real property described more fully in Appendix A attached to the Lease Agreement; except that if the District exercises its option under Section 3.8 of the Lease with respect to the substitution of property or its option under Section 3.5 of the Lease with respect to the release of property, the term "Leased Property" will thereupon be modified accordingly.

"Moody's" means Moody's Investors Service, its successors and assigns.

"Net Proceeds" means any insurance proceeds or eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to the Leased Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

"2002 Certificates" means the \$31,950,000 aggregate principal amount of 2002 Refunding Certificates of Participation executed and delivered under the Trust Agreement dated as of April 1, 2002, among the District, the Corporation and U.S. Bank National Association, as the trustee for the 2002 Certificates.

"2002 Site Lease" means the Site Lease dated as of April 1, 2002, between the District as sublessor and the Corporation as sublessee of the Leased Property.

"2002 Lease Agreement" means the Lease Agreement dated as of April 1, 2002, between the Corporation as sub-sublessor and the District as sub-sublessee of the Leased Property.

"2002 Trustee" means U.S. Bank National Association, as trustee for the 2002 Certificates.

"Nominee" means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.05(a).

"Office" means the corporate trust office of the Trustee in Los Angeles, California, or such other or additional offices as the Trustee may designate in writing to the Corporation from time to time as the corporate trust office for purposes of this Trust Agreement, provided, however, for transfer, registration, exchange, payment and surrender of Certificates means care of the corporate trust office of U.S. Bank National Association in St. Paul, Minnesota, or such other office designated by the Trustee from time to time.

"Original Purchaser" means [\_\_\_\_\_], as original purchaser of the Certificates.

"Outstanding", when used as of any particular time with respect to Certificates, means (subject to the provisions of Section 13.04) all Certificates theretofore executed and delivered by the Trustee under this Trust Agreement except (a) Certificates theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Certificates deemed to have been paid under Section 13.01; and (c) Certificates in lieu of or in exchange for which other Certificates has been executed and delivered by the Trustee under Section 2.08.

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

"Permitted Encumbrances" means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid pursuant to Article V of the Lease; (b) the Lease and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued as of the Closing Date by Stewart Title Insurance Co.; and (e) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the District certifies in writing will not materially impair the use of the Leased Property for its intended purposes.

"Permitted Investments" means any of the following which at the time of investment are legal investments under the laws of the State of California for the moneys proposed to be invested therein (the Trustee is entitled to rely upon the investment direction of the District as a determination that such investment is such a legal investment):

1. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America

2. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

- a. Farmers Home Administration (FmHA)  
Certificates of beneficial ownership
- b. Federal Housing Administration Debentures (FHA)
- c. General Services Administration  
Participation certificates
- d. Government National Mortgage Association (GNMA or "Ginnie Mae")

- GNMA - guaranteed mortgage-backed bonds
  - GNMA - guaranteed pass-through obligations (participation certificates) (not acceptable for certain cash-flow sensitive issues.)
  - e. U.S. Maritime Administration  
Guaranteed Title XI financing
  - f. U.S. Department of Housing and Urban Development (HUD) Project Notes  
Local Authority Bonds
3. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):
- a. Federal Home Loan Bank System - Senior debt obligations (Consolidated debt obligations)
  - b. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac") Participation Certificates (Mortgage-backed securities); Senior debt obligations
  - c. Federal National Mortgage Association (FNMA or "Fannie Mae") - Mortgage-backed securities and senior debt obligations (excluded are stripped mortgage securities which are valued greater than par on the portion of unpaid principal.)
  - d. Student Loan Marketing Association (SLMA or "Sallie Mae") - Senior debt obligations
  - e. Resolution Funding Corp. (REFCORP) - Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable.
  - f. Farm Credit System - Consolidated system - ~ ide bonds and notes
4. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of "AAAm-G"; "AAAm"; or "AA-m" or a rating by Moody's of "Aaa", "Aa1" or "Aa2".
5. Certificates of deposit secured at all times by collateral described in (1) and/or (2) above. CD's must have a maturity of one year or less. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks whose short term obligations are rated "A-1+" by S&P and "Prime-1" by Moody's.
- The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.
6. Certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.
7. Investment Agreements, including GIC's, acceptable to [\_\_\_\_\_]  
(Investment Agreement criteria is available upon request).
8. Commercial paper rated "Prime-1" by Moody's and "A-1+" by S&P.
9. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest long-term rating categories assigned by such agencies.

10. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and non-guaranteed obligation rating of "Prime-1" or "A3" or better by Moody's and "A-1+" or "A-" or better by S&P.

11. Repurchase agreements that provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to the trustee (buyer/lender), and the transfer of cash from the trustee to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the trustee in exchange for the securities at a specified date. Repurchase agreements must satisfy the following criteria:

- a. Repurchase agreements must be between the municipal entity and a dealer bank or securities firm which includes:
  - (i) Primary dealers on the Federal Reserve reporting dealer list which fall under the jurisdiction of the SIPC and which are rated "A" or better by S&P and "A2" or better by Moody's, or
  - (ii) Banks rated "A" or above by S&P and rated "A2" or better by Moody's.
- b. The written repurchase contract must include the following provisions:
  - (i) Securities which are acceptable for transfer are:
    - (a) Direct U.S. government securities
    - (b) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)
  - (ii) The term of the repurchase agreement may be up to 30 days
  - (iii) The collateral must be delivered to the municipal entity, trustee (if trustee is supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).
  - (iv) The trustee has a perfected first priority security interest in the collateral.
  - (v) Collateral is free and clear of third-party liens, and in the case of SIPC broker, was not acquired pursuant to a repurchase agreement or reverse repurchase agreement.
  - (vi) Failure to maintain the requisite collateral percentage, after a two day restoration period, will require the trustee to liquidate collateral.
  - (vii) Valuation of Collateral
    - (a) The securities must be valued weekly, marked-to-market at current market price plus accrued interest
    - (b) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repurchase agreement plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.
- c. A legal opinion must be delivered from the governmental entity which attests that the repurchase agreement meets guidelines under state law for legal investment of public funds.

12. Pre-refunded municipal bonds rated "#Aaa" by Moody's and "AAA" by S&P. If, however, the issue is only rated by S&P (i.e., there is no Moody's rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or "AAA" rated pre-refunded municipals to satisfy this condition.

"Record Date" means the close of business on the 15<sup>th</sup> day of the month preceding each Interest Payment Date, whether or not such 15<sup>th</sup> day is a Business Day.

"Registration Books" means the records maintained by the Trustee under Section 2.11 for the registration of the ownership and transfer of ownership of the Certificates.

"Rental Period" means each period during the Term of the Lease commencing on and including December 2 in each year and extending to and including the next succeeding December 1, except that the first Rental Period begins on the Closing Date and ends on December 1, 2012.

"Reserve Fund" means the fund by that name established and held by the Trustee under Section 4.02.

"Reserve Requirement" means, as of the date of calculation thereof by the District, an amount equal to the lesser of (a) 10% of the original principal amount of the Certificates, or (b) the maximum amount of Lease Payments (excluding Lease Payments with respect to which the District will have posted a security deposit pursuant to Section 8.1 of the Lease Agreement) coming due in the current or any future Fiscal Year, or (c) 125% of average annual Lease Payments.

"Securities Depositories" means The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax-(516) 227-4171; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the District designates in written notice filed with the Trustee.

"Site Lease" means the Site Lease dated as of November 1, 2012, between the District as lessor and the Corporation as lessee of the Leased Property, as originally executed or as thereafter amended under any duly authorized and executed amendments and supplements thereto.

"S&P" means Standard & Poor's Corporation, a division of the McGraw Hill Companies, of New York, New York, its successors and assigns.

"Tax Code" means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

"Term of the Lease" means the time during which the Lease is in effect, as provided in Section 3.4 thereof.

"Trust Agreement" means this Trust Agreement, as originally executed or as thereafter amended under any amendments or supplements hereto which are permitted to be made hereunder.

"Trustee" means U.S. Bank National Association, or any successor thereto acting as Trustee hereunder.

**APPENDIX B**

**FORM OF CERTIFICATE OF PARTICIPATION**

No. R-\_\_\_\_\_

\*\*\*\$\_\_\_\_\_\*\*\*

**2012 REFUNDING CERTIFICATE OF PARTICIPATION**

Evidencing the Direct, Undivided Fractional Interest of the  
Owner Hereof in Lease Payments to be Made by the

**CAPISTRANO UNIFIED SCHOOL DISTRICT**

RATE OF INTEREST:	MATURITY DATE:	DATED DATE:	CUSIP:
_____	_____	_____	_____
%			

REGISTERED OWNER:

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

THIS IS TO CERTIFY THAT the Registered Owner identified above, or registered assigns, as the registered owner (the "Registered Owner") of this Certificate of Participation (this "Certificate") is the owner of a direct, undivided fractional interest in Lease Payments (the "Lease Payments") payable under a Lease Agreement dated as of November 1, 2012 (the "Lease"), between the Capistrano Unified School District Facilities Corporation, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation") and the Capistrano Unified School District, a unified school district duly organized and existing under the Constitution and laws of the State of California (the "District"), which Lease Payments and certain other rights and interests under the Lease have been assigned to U.S. Bank National Association, as trustee (the "Trustee"), having a corporate trust office in Los Angeles, California (the "Office"), or such other or additional offices as the Trustee may designate from time to time as the corporate trust office; provided, however, for transfer, registration, exchange, payment and surrender of Certificates means care of the corporate trust office of the Trustee in St. Paul, Minnesota, or such other office designated by the Trustee from time to time.

The Registered Owner of this Certificate is entitled to receive, subject to the terms of the Lease, on the Maturity Date identified above, or any earlier prepayment date, the Principal Amount identified above representing a direct, undivided fractional share of the portion of the Lease Payments designated as principal, and to receive on December 1, 2012, and semiannually thereafter on June 1 and December 1 of each year (the "Interest Payment Dates") until payment in full of said principal, the Registered Owner's direct, undivided fractional share of the Lease Payments designated as interest coming due during the period immediately preceding each of the Interest Payment Dates.

Interest represented hereby shall be payable from the Interest Payment Date next preceding the date of execution of this Certificate unless (a) this Certificate is executed on



an Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (b) unless this Certificate is executed on or before December 1, 2012, in which event interest is payable from the Dated Date identified above. The Registered Owner's share of the portion of the Lease Payments designated as interest is the result of the multiplication of the aforesaid share of the portion of the Lease Payments designated as principal by the Rate of Interest per annum identified above, calculated on the basis of a 360-day year comprised of twelve 30-day months. Principal represented hereby is payable in lawful money of the United States of America, upon presentation and surrender hereof at the Trust Office of the Trustee, and interest represented hereby is payable by check mailed by first class mail by the Trustee on each Interest Payment Date to the Registered Owner at such Owner's address as it appears on the registration books of the Trustee as of the close of business on the 15<sup>th</sup> day of the month preceding such Interest Payment Date.

This Certificate has been executed and delivered by the Trustee under the terms of a Trust Agreement dated as of November 1, 2012, among the Trustee, the Corporation and the District (the "Trust Agreement"). The District has certified that it is authorized to enter into the Lease and the Trust Agreement under the laws of the State of California, for the purpose of leasing certain real property (the "Leased Property") used for the educational purposes of the District. Reference is hereby made to the Lease and the Trust Agreement (copies of which are on file at the Trust Office of the Trustee) for a description of the terms on which the Certificates are delivered, the rights thereunder of the owners of the Certificates, the rights, duties and immunities of the Trustee and the rights and obligations of the District under the Lease, to all of the provisions of the Lease and the Trust Agreement the Registered Owner of this Certificate, by acceptance hereof, assents and agrees.

The District is obligated under the Lease to pay the Lease Payments for the Leased Property from any source of available funds, subject to certain exceptions as set forth in the Lease. As more fully described in the Lease, the Lease Payments are subject to abatement during any period in which by reason of damage or destruction to the Leased Property in whole or in part, or by reason of eminent domain proceedings with respect to the Leased Property in whole or in part, there is substantial interference with the use and occupancy by the District of the Leased Property or any portion thereof; such abatement shall be in an amount agreed upon by the District and the Corporation such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining portions of the Leased Property. The obligation of the District to pay the Lease Payments does not constitute an obligation of the District for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. The obligation of the District to pay the Lease Payments does not constitute a debt of the District, the State of California or any of its political subdivisions, and does not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

The Certificates maturing on or before December 1, 20\_\_, are not subject to optional prepayment. The Certificates maturing on or after December 1, 20\_\_, are subject to prepayment prior to their respective stated maturities, at the option of the District, in whole, or in part among maturities on such basis as designated by the District and by lot within any one maturity, on December 1, 20\_\_, or on any date thereafter, upon payment of a prepayment price equal to 100% of the principal amount to be prepaid, together with accrued interest to the date fixed for prepayment, without premium.

The Certificates maturing on December 1 in the years 20\_\_ and 20\_\_ (the "Term Certificates") are subject to mandatory prepayment in part by lot on December 1 in each

year as set forth below, from the principal components of scheduled Lease Payment required to be paid by the District pursuant to the Lease Agreement with respect to each such prepayment date, at a prepayment price equal to the principal amount thereof to be prepaid, together with accrued interest to the date fixed for prepayment, without premium, as follows:

Term Certificates Maturing on December 1, 20\_\_

Prepayment Date (December 1)	Principal Amount To be Prepaid
20__	\$ _____
20__ (maturity)	\$ _____

Term Certificates Maturing on December 1, 20\_\_

Prepayment Date (December 1)	Principal Amount To be Prepaid
20__	\$ _____
20__	\$ _____
20__	\$ _____
20__ (maturity)	\$ _____

In the event that any Term Certificates are prepaid in part but not in whole pursuant to the optional, insurance, title insurance or condemnation prepayment provisions, each such prepayment shall reduce the amount of Certificates to be prepaid in each subsequent year pursuant to the mandatory prepayment provisions pro rata to correspond to the principal components of the Lease Payments prevailing following such prepayment.

The Certificates are subject to mandatory prepayment, in whole, on any business day, or in part on any Interest Payment Date among maturities on a pro rata basis and by lot within a maturity, from certain proceeds of insurance or eminent domain proceedings credited towards the prepayment of the Lease Payments under the Lease and the Trust Agreement, at a prepayment price equal to 100% of the principal amount to be prepaid, together with accrued interest represented thereby to the date fixed for prepayment, without premium.

As provided in the Trust Agreement, the Trustee shall mail notice of prepayment of the Certificates by first class mail, postage prepaid, not less than 30 nor more than 60 days before the prepayment date, to the registered owners of the Certificates to be prepaid, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for prepayment or the cessation of accrual of interest represented thereby. If this Certificate is called for prepayment and payment is duly provided therefor as specified in the Trust Agreement, interest represented hereby shall cease to accrue from and after the date fixed for prepayment.

This Certificate is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Trust Agreement and upon surrender and cancellation of this Certificate. Upon such

transfer a new Certificate or Certificates, of authorized denomination or denominations, representing the same aggregate principal amount and representing the same rate of interest, will be delivered to the transferee in exchange herefor. The District, the Corporation and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, whether or not this Certificate shall be overdue, and the District, the Corporation and the Trustee shall not be affected by any notice to the contrary.

The Trustee is not required to register the transfer or exchange of any Certificate during the period in which the Trustee is selecting certificates for prepayment or any Certificate selected for prepayment.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto with the written consent of the owners of a majority in aggregate principal amount of the Certificates then outstanding, and may be amended without such consent under certain circumstances; provided that no such amendment shall extend the fixed maturity of any Certificate or reduce the interest or principal represented thereby, without the express consent of the owner of such Certificate.

The Trustee has no obligation or liability to the owners of the Certificate to make any payment of the interest, principal or premium (if any) represented by the Certificates, other than as provided in the Trust Agreement from the Lease Payments and amounts credited thereto received or held by the Trustee. The recitals herein shall be taken as statements of the Corporation and the District and not of the Trustee. The Trustee has executed this Certificate solely in its capacity as Trustee under the Trust Agreement and not in its individual or personal capacity.

Unless this Certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC") to the Trustee for registration of transfer, exchange or payment, and any Certificate executed and delivered is registered in the name of Cede & Co. or such other name as 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 since the registered owner hereof, Cede & Co., has an interest herein.

The District has certified, recited and declared that all things, conditions and acts required by the laws of the State of California, the Lease and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of the Certificates, do exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, this Certificate has been executed and delivered by U.S. Bank National Association, as Trustee, acting under the Trust Agreement.

Execution Date: \_\_\_\_\_

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

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

**STATEMENT OF INSURANCE**

[INSERT STATEMENT OF INSURANCE]

**FORM OF ASSIGNMENT**

For value received the undersigned do(es) hereby sell, assign and transfer unto

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name, Address and Tax Identification or Social Security Number of Assignee)

the within registered Certificate and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
Note: Signature(s) must be guaranteed by an eligible guarantor institution (banks, stockbrokers, saving and loan associations and credit unions with membership in an approved signature medallion program) pursuant to Securities and Exchange Commission Rule 17Ad-15.

\_\_\_\_\_  
Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Certificate in every particular without alteration or enlargement or any change whatsoever.

---

---

**ESCROW DEPOSIT AND TRUST AGREEMENT**

by and between the

**CAPISTRANO UNIFIED SCHOOL DISTRICT**

and

**U.S. BANK NATIONAL ASSOCIATION,**  
as Escrow Agent

Dated as of November 1, 2012

**Relating to the current refunding and defeasance of**

**\$31,950,000**

**Capistrano Unified School District  
Certificates of Participation (Education and Support Facilities) Series 2002**

---

---

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. <i>Definition of Federal Securities</i> .....	1
SECTION 2. <i>Appointment of Escrow Agent</i> .....	1
SECTION 3. <i>Establishment of Escrow Fund</i> .....	1
SECTION 4. <i>Deposit into Escrow Fund; Investment of Amounts</i> .....	2
SECTION 5. <i>Instructions as to Application of Deposit</i> .....	2
SECTION 6. <i>Investment of Any Remaining Moneys</i> .....	2
SECTION 7. <i>Substitution or Withdrawal of Federal Securities</i> .....	3
SECTION 8. <i>Application of Certain Terms of Prior Bond Resolution</i> .....	3
SECTION 9. <i>Compensation and Indemnification to Escrow Agent</i> .....	3
SECTION 11. <i>Resignation of Escrow Agent</i> .....	4
SECTION 12. <i>Amendment</i> .....	4
SECTION 13. <i>Successors</i> .....	4
SECTION 14. <i>Execution in Counterparts</i> .....	4
SECTION 15. <i>Applicable Law</i> .....	4
SECTION 16. <i>Immunities and Liability of Escrow Agent</i> .....	4
SECTION 17. <i>Termination of Agreement</i> .....	5



## ESCROW DEPOSIT AND TRUST AGREEMENT

This ESCROW DEPOSIT AND TRUST AGREEMENT (this "Agreement") is dated as of November 1, 2012, by and between the CAPISTRANO UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the Constitution and laws of the State of California (the "District"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, acting as Escrow Agent hereunder (the "Escrow Agent");

### WITNESSETH:

**WHEREAS**, the District has previously issued its Capistrano Unified School District Certificates of Participation (Education and Support Facilities) Series 2002 in the original aggregate principal amount of \$31,950,000, of which [\$\_\_\_\_,\_\_\_\_,000] principal amount is outstanding as of the date hereof (the "Prior Certificates") pursuant to a resolution of the Governing Board of the District (the "Prior Resolution"); and

**WHEREAS**, the District has determined that it is in the economic interests of the District at this time to provide for the refunding of the outstanding Prior Certificates, and to that end the District has issued its Capistrano Unified School District 2012 Refunding Certificates of Participation in the aggregate principal amount of \$23,000,000 (the "Refunding Certificates") pursuant to a resolution adopted by the Governing Board of the District on October 24, 2012 (the "Refunding Certificate Resolution") and a Trust Agreement, dated November 1, 2012, between the District, the Capistrano Unified School District School Facilities Corporation and U.S. Bank National Association, as trustee ("Trust Agreement"); and

**WHEREAS**, the District and the Escrow Agent wish to enter into this Agreement for the purpose of providing the terms and conditions relating to the deposit and application of moneys and federal securities to provide for the payment and redemption of a the outstanding Prior Certificates as set forth on Exhibit B, in accordance with the provisions of the Prior Resolution;

*NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:*

Section 1. *Definition of Federal Securities.* As used herein, the term "Federal Securities" means non-callable United States Treasury notes, bonds, bills or certificates of indebtedness, or any other obligations the timely payment of which is directly or indirectly guaranteed by the faith and credit of the United States of America.

Section 2. *Appointment of Escrow Agent.* The District hereby appoints the Escrow Agent as Escrow Agent for all purposes of this Agreement and in accordance with the terms and provisions of this Agreement, and the Escrow Agent hereby accepts such appointment.

Section 3. *Establishment of Escrow Fund.* There is hereby created a fund (the "Escrow Fund") to be held by the Escrow Agent as an irrevocable escrow securing the payment of the Prior Certificates, subject to and in accordance with the provisions of this Agreement.

Section 4. *Deposit into Escrow Fund; Investment of Amounts.* Concurrently with delivery of the Refunding Certificates on November 20, 2012 (the "Refunding Certificate Issuance Date"), the Escrow Agent shall deposit in the Escrow Fund, from the proceeds of the Refunding Certificates, the amount of \$\_\_\_\_,\_\_\_\_,\_\_\_\_ in immediately available funds.

The Escrow Agent shall invest \$\_\_\_\_,\_\_\_\_,\_\_\_\_ of the amounts so deposited into the Escrow Fund in the Federal Securities set forth in Exhibit A attached hereto and by this reference incorporated herein. All Federal Securities and cash shall be deposited with and held by the Escrow Agent in the Escrow Fund solely for the uses and purposes set forth herein. The Escrow Agent shall have no lien upon or right of set off against the Federal Securities and cash at any time on deposit in the Escrow Fund.

SECTION 5. *Instructions as to Application of Deposit.* From and after the Refunding Certificates Issuance Date, all cash and Federal Securities in the Escrow Fund shall be and are hereby irrevocably pledged as a special fund for the payment of the principal of, premium, if any, and interest on the Prior Certificates in accordance with the Prior Resolutions. For such purpose, the total amount of Federal Securities and cash deposited in the Escrow Fund pursuant to Section 4 shall be applied by the Escrow Agent for the sole purpose of paying the principal of, premium, if any, and interest on the Prior Certificates to U.S. Bank National Association, as successor Trustee for the Prior Certificates (the "Prior Certificates Trustee"), at the times and in the amounts set forth in the schedule shown in Exhibit B attached hereto and by this reference incorporated herein. If at any time the Escrow Agent shall receive actual knowledge that the Federal Securities in the Escrow Fund will not be sufficient to make any payment required by this Section 5, the Escrow Agent shall notify the District of such fact and the District shall immediately cure such deficiency from any source of legally available funds. Following the transfer to the Prior Certificates Trustee for the payment in full of the principal of, premium if any and interest on the Prior, all amounts on deposit in the Escrow Fund shall be transferred by the Escrow Agent to Lease Payment Fund to be used in accordance with section 5.04 of the Trust Agreement.

The Prior Certificates Trustee, on behalf of the District, shall cause notice of the prepayment of the Prior Certificates to be given, pursuant to the refunding instructions given to the Prior Certificates Trustee in substantially the form attached hereto as Exhibit C, and shall carry out the refunding as directed by such instructions.

SECTION 6. *Investment of Any Remaining Moneys.* Following the Refunding Certificate Issuance Date, at the written direction of the District, the Escrow Agent shall invest and reinvest any cash received from any of the Federal Securities for a period ending not later than the date on which such cash is required for the purposes specified in Section 4, in additional Federal Securities; *provided, however,* that with respect to any such reinvestment, such written directions of the District shall be accompanied by: (a) a certification of an independent certified public accountant or firm of certified public accountants of favorable national reputation experienced in the refunding of obligations of political subdivisions (an "Independent Accountant") stating such investment or reinvestment will not cause the amounts on deposit in the Escrow Fund to be insufficient to make the payments specified in Section 5; and (b) an opinion of nationally recognized bond counsel ("Bond Counsel") that investment in accordance with such directions will not affect, for federal income tax purposes, the exemption from federal income taxes of the interest on the Prior Certificates. In the event any such investment or reinvestment is required to be made in United States Treasury Securities - State and Local Government Series ("SLGS"), the District shall at its cost cause to be prepared all necessary subscription forms therefor in

sufficient time to enable the Escrow Agent to acquire such SLGS. In the event that the District shall fail to file any such written directions with the Escrow Agent concerning the reinvestment of any such proceeds, such proceeds shall be held uninvested by the Escrow Agent. Any interest income resulting from investment or reinvestment of moneys pursuant to this Section 6, except to the extent required to make any payment required pursuant to Section 5 as set forth in the certification of an Independent Accountant rendered pursuant to the foregoing provisions of this Section 6, shall, at the written direction of the District filed with the Escrow Agent, be paid to the District as its sole property, free and clear of the pledge established hereunder, to be used for any lawful purposes of the District after payment of any amounts then owed to the Escrow Agent.

SECTION 7. *Substitution or Withdrawal of Federal Securities.* The District may at any time direct the Escrow Agent to substitute Federal Securities for any or all of the Federal Securities then deposited in the Escrow Fund, or to withdraw and transfer to the District any portion of the Federal Securities then deposited in the Escrow Fund, provided that any such direction and substitution or withdrawal shall be accompanied by: (a) a certification of an Independent Accountant that the Federal Securities then to be so deposited in the Escrow Fund together with interest to be derived therefrom, or in the case of withdrawal the Federal Securities to be remaining in the Escrow Fund following such withdrawal together with the interest to be derived therefrom, shall be in an amount at all times at least sufficient to make the payments specified in Section 5; and (b) an opinion of Bond Counsel that the substitution or withdrawal will not affect, for Federal income tax purposes the exclusion from gross income for federal income tax purposes of the interest on the Prior Certificates. In the event that, following any such substitution of Federal Securities pursuant to this Section 7, there is an amount of moneys or Federal Securities in excess of an amount sufficient to make the payments required by Section 5, as set forth in the certification of an Independent Accountant rendered pursuant to the foregoing provisions of this Section 7, such excess shall, after payment of any amounts then owed to the Escrow Agent, be paid to (or at the written direction of) the District as its sole property free and clear of the pledge established hereunder, to be used for any lawful purposes of the District.

SECTION 8. *Application of Certain Terms of Prior Resolution.* All of the terms of the Prior Resolution relating to the making of payments of principal of and interest and prepayment premium on the Prior Certificates are incorporated in this Agreement as if set forth in full herein. To the extent the terms of the Prior Resolution are inconsistent herewith, the terms of the Prior Resolution shall control.

SECTION 9. *Compensation to and Indemnification of Escrow Agent.* The District shall pay the Escrow Agent full compensation for its duties under this Agreement, including out-of-pocket costs such as publication costs, prepayment expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase of any Federal Securities after the date hereof. The Escrow Agent shall have no lien on amounts on deposit in the Escrow Fund for such compensation.

The District agrees to indemnify and hold the Escrow Agent, its officers, employees, directors and agents harmless from and against any and all losses, costs, expenses, claims and liabilities whatsoever (including, without limitation, fees and expenses of attorneys) which may be imposed on, asserted against or incurred by the Escrow Agent related to or arising from the acceptance and performance by the Escrow Agent of its duties hereunder.

The obligations of the District under this Section shall survive the termination or discharge of this Agreement.

SECTION 10. [Intentionally Deleted]

SECTION 11. *Resignation of Escrow Agent.* The Escrow Agent may at any time resign by giving written notice to the District of such resignation. The District shall promptly appoint a successor Escrow Agent by the resignation date. Resignation of the Escrow Agent will be effective only upon acceptance of appointment by a successor Escrow Agent. If the District does not appoint a successor, the Escrow Agent may at the expense of the District petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Escrow Agent. After receiving a notice of resignation of Escrow Agent, the District may appoint a temporary Escrow Agent to replace the resigning Escrow Agent until the District appoints a successor Escrow Agent. Any such temporary Escrow Agent so appointed by the District, shall immediately and without further act be superseded by the successor Escrow Agent so appointed.

SECTION 12. *Amendment.* This Agreement may be amended by the parties hereto, but only if there shall have first been filed with the District and the Escrow Agent a written opinion of Bond Counsel stating that such amendment will not materially adversely affect the interests of the owners of the Prior Certificates, and that such amendment will not cause interest on the Prior Certificates to become includable in the gross income of the owners thereof for federal income tax purposes.

SECTION 13. *Successors.* Whenever in this Agreement either the District or the Escrow Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the District or the Escrow Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not. Any company into which the Escrow Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business, shall be the successor hereunder to the Escrow Agent without the execution or filing of any paper or any further act.

SECTION 14. *Execution in Counterparts.* This 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 15. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 16. *Immunities and Liability of Escrow Agent.* The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Agent.

The Escrow Agent shall not have any liability hereunder except to the extent of its gross negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special, indirect or consequential damages.

The Escrow Agent shall not be liable for any loss from any investments or substitution of Federal Securities made by it in accordance with the terms of this Agreement.

The Escrow Agent may consult with legal counsel of its own choice and the Escrow Agent shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel.

The Escrow Agent shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Fund or the moneys and Federal Securities or any substitute Federal Securities to pay the principal, interest and redemption premium on the Prior Certificates.

Whenever in the administration of this Agreement the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the District and shall be full protection for any action taken or not taken by the Escrow Agent in good faith reliance thereon.

The Escrow Agent may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Agent in connection with this Agreement and believed by the Escrow Agent to be signed by the proper party, and it need not investigate any fact or matter stated therein.

SECTION 17. *Termination of Agreement.* Upon payment in full of the principal of, interest and prepayment premium on the Prior Certificates and all fees, expense and charges of the Escrow Agent as described above, this Agreement shall terminate and the Escrow Agent shall be discharged from any further obligation or responsibility hereunder.

IN WITNESS WHEREOF, the District and the Escrow Agent have each caused this Agreement to be executed by their duly authorized officers all as of the date first above written.

**CAPISTRANO UNIFIED SCHOOL  
DISTRICT**

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

**U.S. BANK NATIONAL ASSOCIATION,  
*as Escrow Agent***

By \_\_\_\_\_  
Linda Verstuyft, Vice President

**EXHIBIT A**

**IDENTIFICATION OF ORIGINAL FEDERAL SECURITIES**

<b><u>Type</u></b>	<b><u>Principal Amount</u></b>	<b><u>Maturity Date</u></b>	<b><u>Coupon Rate</u></b>	<b><u>Purchase Price</u></b>
SLGS	\$____,____,____	12/1/2012	____%	\$____,____,____

**EXHIBIT B**

**PAYMENT SCHEDULE OF THE PRIOR CERTIFICATES**

<u>Payment Date</u>	<u>Interest</u>	<u>Maturing Principal</u>	<u>Principal Prepaid</u>	<u>Prepayment Premium</u>	<u>Total</u>
12/1/2012					





**EXHIBIT C**  
**FORM OF REFUNDING INSTRUCTIONS**  
**(2002 Certificates of Participation)**

[Attachment 1 to Refunding Instructions]

FORM OF NOTICE OF PREPAYMENT

NOTICE to Holders of:

**Capistrano Unified School District Certificates of  
Participation (Refunding and Capital Improvement  
Projects) Series 2002**

TO BE RECORDED AND WHEN RECORDED  
 RETURN TO:  
 Samuel R. Santana  
 301 E. Ocean Blvd., Suite 1750  
 Long Beach, CA 90807

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11928 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

**ASSIGNMENT AGREEMENT**

**Relating to**

**\$23,000,000**

**Capistrano Unified School District  
 2012 Refunding Certificates of Participation**

THIS ASSIGNMENT AGREEMENT, made and entered into as of November 1, 2012, is by and between the CAPISTRANO UNIFIED SCHOOL DISTRICT SCHOOL FACILITIES CORPORATION, a nonprofit public benefit corporation organized and existing under the laws of the State of California (the "Corporation"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the "Trustee");

**WITNESSETH:**

In the joint and mutual exercise of their powers, in consideration of the mutual covenants herein contained, and for other valuable consideration, the parties hereto recite and agree as follows:

**RECITALS:**

**WHEREAS**, in 2002 the District and the Corporation financed the acquisition, construction and installation of certain capital improvements (the "2002 School Facilities Project") for use by the District, by entering into that certain Lease, dated as of April 1, 2002 (the "2002 Lease"), between the District and the Corporation, pursuant to which the District leased certain property described in Exhibit A thereto (the "Leased Property") from the Corporation; and

**WHEREAS**, \$31,950,000 Certificates of Participation (2002 School Facilities Project) (the "2002 Certificates") were executed and delivered pursuant to a Trust Agreement, dated as of April 1, 2002, among the District, U.S. Bank National Association, as Trustee (the "2002 Trustee") and the Corporation (the "2002 Trust Agreement"); and

**WHEREAS**, the District wishes to refinance its lease payment obligation under the 2002 Lease; and

**WHEREAS**, for the purpose of obtaining money for prepaying the 2002 Certificates, the Corporation has assigned to the Trustee certain of its rights under a First Amended and Restated Lease Agreement, dated as of November 1, 2012, between the District and the Corporation (the "2012 Lease Agreement"), a memorandum of which is recorded concurrently herewith, and in consideration of such assignment and the execution of that certain Trust Agreement, dated as of November 1, 2012 (the "2012 Trust Agreement"), by and among the Corporation, the District and the Trustee, the Trustee will execute the 2012 Refunding Certificates of Participation (the "2012 Refunding Certificates"), each evidencing a direct, undivided fractional interest in the Lease Payments to be made by the District under the 2012 Lease Agreement;

**WHEREAS**, for the purpose of obtaining such moneys, the Corporation is willing to convey to certain persons (the "Owners") direct, undivided fractional interests in the Lease Payments, such interests to be evidenced by the aggregate principal amount of the 2012 Refunding Certificates;

**WHEREAS**, in order to make such interests marketable on terms acceptable to the Corporation, the Corporation is willing to assign and transfer certain of its rights under the 2012 Lease Agreement to the Trustee for the benefit of the Owners;

**WHEREAS**, concurrently with the delivery of this Assignment Agreement, the Trustee is executing and delivering the 2012 Refunding Certificates to the original purchasers thereof and the proceeds of sale of the 2012 Refunding Certificates are anticipated by the Corporation to be sufficient to permit the Corporation to make the deposits required under the 2012 Lease Agreement and the 2012 Trust Agreement and to permit the refunding of the 2002 Certificates.

#### **Section 1. Authority.**

Each of the parties has authority to enter into this Assignment Agreement, and has taken all actions necessary to authorize its officers to execute it.

#### **Section 2. Assignment.**

The Corporation hereby transfers, assigns and sets over to the Trustee, for the benefit of the Owners of Certificates executed and delivered under the 2012 Trust Agreement, all of the Corporation's rights under the 2012 Lease Agreement (excepting only the Corporation's rights under Sections 3.9, 4.11, 6.3 and 7.4 of the Lease Agreement; provided, however, the Trustee shall be entitled to recover advances and attorneys' fees and expenses pursuant to Sections 4.10 and 8.4, respectively, to the extent such advances are made or attorneys' fees and expenses are incurred by the Trustee), including without limitation (a) the right to receive and collect all of the Lease Payments from the District under the 2012 Lease Agreement, (b) the right to receive and collect any proceeds of any insurance maintained thereunder, or any eminent domain award (or proceeds of sale under

threat of eminent domain) paid with respect to the Project, and (c) the right to exercise such rights and remedies conferred on the Corporation pursuant to the 2012 Lease Agreement as may be necessary or convenient (i) to enforce payment of the Lease Payments and any other amounts required to be deposited in the Lease Payment Fund or the Insurance and Condemnation Fund established under the 2012 Trust Agreement, or (ii) otherwise to protect the interests of the Owners in the event of a default by the District under the 2012 Lease Agreement. All rights assigned by the Corporation shall be administered by the Trustee in accordance with the provisions of the 2012 Trust Agreement and for the benefit of the Owners of the 2012 Refunding Certificates.

### **Section 3. Acceptance.**

The Trustee hereby accepts the assignments made herein for the purpose of securing the payments due pursuant to the 2012 Lease Agreement and Trust Agreement to, and the rights under the 2012 Lease Agreement and Trust Agreement of, the Owners of the 2012 Refunding Certificates delivered pursuant to the 2012 Trust Agreement, all subject to the provisions of the 2012 Trust Agreement. The recitals contained herein are those of the Corporation and not of the Trustee, and the Trustee assumes no responsibility for the correctness thereof.

### **Section 4. Conditions.**

This Assignment Agreement shall confer no rights or impose no duties or obligations upon the Trustee beyond those expressly provided in the 2012 Trust Agreement.

### **Section 5. Execution in Counterparts.**

This Assignment Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same agreement. It is also agreed that separate counterparts of this Assignment Agreement may be separately executed by the Corporation and the Trustee, all with the same force and effect as though the same counterpart had been executed by both the Corporation and the Trustee.

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement by their officers thereunto duly authorized as of the day and year first written above.

CAPISTRANO UNIFIED SCHOOL DISTRICT  
SCHOOL FACILITIES CORPORATION

By \_\_\_\_\_  
Dr. Joseph M. Farley, Executive Director

Attest:

\_\_\_\_\_  
Julie Hatchel, Secretary

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By \_\_\_\_\_  
\_\_\_\_\_, [TITLE]



STATE OF CALIFORNIA                    )  
  )  
COUNTY OF \_\_\_\_\_                ) ss

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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

Notary Public Seal

STATE OF CALIFORNIA            )  
   ) ss  
 COUNTY OF \_\_\_\_\_ )

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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

Notary Public Seal

**PURCHASE CONTRACT**

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

**2012 REFUNDING CERTIFICATES OF PARTICIPATION  
Evidencing Direct, Undivided Fractional Interest of the  
Owners thereof in Lease Payments to be Made by the  
CAPISTRANO UNIFIED SCHOOL DISTRICT**

October \_\_, 2012

Capistrano Unified School District School Facilities Corporation  
33122 Valle Road  
San Juan Capistrano, CA 92675

Capistrano Unified School District  
33122 Valle Road  
San Juan Capistrano, CA 92675

Ladies and Gentlemen:

\_\_\_\_\_ (the "Purchaser") offers to enter into this purchase contract (this "Purchase Contract") with the Capistrano Unified School District (the "District") and the Capistrano Unified School District School Facilities Corporation (the "Corporation"), which will be binding upon the District, the Corporation and the Purchaser upon the District's and the Corporation's acceptance. This offer is made subject to its acceptance by the District by execution of this Purchase Contract and its delivery to the Purchaser on or before 5:00 p.m., California time, on the date hereof. All terms used herein and not otherwise defined have the meanings given to those terms in the Trust Agreement (as hereafter defined).

**1. Purchase and Sale.** The Purchaser shall purchase, if any are purchased, and the District shall sell and cause to be delivered to the Purchaser, all (but not less than all) of the \$\_\_\_\_\_ aggregate principal amount of the 2012 Refunding Certificates of Participation (the "Certificates") at a purchase price of \$\_\_\_\_\_ (being an amount equal to the principal amount of the Certificates, less/plus a net original issue discount/premium of \$\_\_\_\_\_ and less an purchaser's discount of \$\_\_\_\_\_).

**2. Identification of Legal Documents.** Reference is made to the following documents relating to the Certificates:

- First Amended and Restated Site Lease dated as of November 1, 2012 (the "Site Lease") between the Corporation and the District, whereby the District has leased certain real property and the improvements thereon (the "Leased Property") to the Corporation.
- First Amended and Restated Lease Agreement dated as of November 1, 2012 (the "Lease Agreement"), whereby the Corporation has leased the Leased Property back to the District.

- Trust Agreement, dated as of November 1, 2012 (the "Trust Agreement"), between U.S. Bank National Association, as trustee (the "Trustee"), the Corporation and the District.
- Assignment Agreement, dated as of November 1, 2012 (the "Assignment Agreement"), between the Corporation and the Trustee.
- Irrevocable Refunding Instructions dated as of the date of delivery of the Certificates (the "Refunding Instructions"), given by the District to U.S. Bank National Association, as trustee for the Certificates of Participation (Education and Support Facilities), Series 2002 being refunded (the "2002 Certificates").
- Preliminary Official Statement dated as of \_\_\_\_\_, 2012, describing the Certificates (the "Preliminary Official Statement").
- Final Official Statement dated as of the date of this Purchase Contract, describing the Certificates (the "Final Official Statement").

**3. Purpose of Financing.** The Certificates will be executed and delivered to (i) defease all of the District's 2002 Certificates issued to finance certain public school improvements of the District, (ii) fund a reserve fund for the Certificates and (iii) pay the costs related to the execution and delivery of the Certificates. The refunding will be accomplished under the Refunding Instructions.

Payment of principal and interest represented by the Certificates will be insured by a policy of municipal bond insurance the ("Bond Insurance Policy") issued by \_\_\_\_\_ (the "Insurer").

**4. Public Offering of Certificates.** The Purchaser agrees to make a bona fide public offering of all the Certificates initially at the public offering prices (or yields) set forth on Appendix A attached hereto and incorporated herein by reference. Subsequent to the initial public offering, the Purchaser reserves the right to change the public offering prices (or yields) as it deems necessary in connection with the marketing of the Certificates, provided that the Purchaser shall not change the interest rates set forth on Appendix A. The Certificates may be offered and sold to certain dealers at prices lower than such initial public offering prices.

**5. Delivery of Official Statement; Continuing Disclosure.** Under the authorization of the District, the Purchaser has distributed copies of the Preliminary Official Statement to prospective purchasers of the Certificates. By its acceptance of this proposal, the District hereby ratifies such use by the Purchaser of the Preliminary Official Statement; and the District agrees to approve the Final Official Statement which will consist of the Preliminary Official Statement with such changes as may be made thereto, with the approval of the District and the Purchaser, and to provide copies thereof to the Purchaser as set forth in Section 6. The Purchaser hereby agrees to deposit the Official Statement with a nationally recognized municipal securities information depository. The District hereby authorizes the Purchaser to use and distribute, in connection with the offer and sale of the Certificates, the Preliminary Official Statement, the Official Statement, the Trust Agreement, the Lease Agreement, the Site Lease, the Assignment Agreement, the Continuing Disclosure Certificate (as defined below) and this Purchase Contract and all information contained

herein, and all other documents, certificates and statements furnished by the District to the Purchaser in connection with the transactions contemplated by this Purchase Contract.

The District will undertake, under the Trust Agreement and a Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"), to provide certain annual financial and operating information and notices of the occurrence of certain events, if material. A description of such undertaking is set forth in the Preliminary Official Statement and will also be set forth in the final Official Statement.

**6. The Closing.** At 8:00 a.m., California time, on November 20, 2012, or at such other time or on such earlier or later business day as shall have been mutually agreed upon by the District and the Purchaser, the District will cause to be delivered (i) the Certificates, through the facilities of The Depository Trust Company, to the Purchaser, and (ii) the closing documents hereinafter mentioned at the offices of Dannis Woliver Kelley ("Special Counsel"), Long Beach, California, or another place to be mutually agreed upon by the District and the Purchaser. The Purchaser will accept such delivery and pay the purchase price of the Certificates as set forth in Section 1 hereof in immediately available funds. This payment and delivery, together with the delivery of the aforementioned documents, is herein called the "Closing." The Certificates will be delivered in such denominations and deposited in the account or accounts specified by the Purchaser under written notice to the District not later than five business days prior to Closing.

**7. Representations, Warranties and Covenants of the District.** The District represents, warrants to and covenants with the Purchaser that:

- (a) Due Organization Existence and Authority. The District is a unified school district duly organized and validly existing under the laws of the State of California, with full right, power and authority to execute, deliver and perform its obligations under this Purchase Contract, the Trust Agreement, the Site Lease, the Lease Agreement, the Refunding Instructions and the Continuing Disclosure Certificate (the "District Documents") and to carry out and consummate the transactions on its part contemplated by the District Documents and the Official Statement.
- (b) Due Authorization and Approval. By all necessary official action of the Board, the District has duly authorized and approved the execution and delivery of, and the performance by the District of the obligations on its part contained in the District Documents; and as of the date hereof, such authorizations and approvals are in full force and effect and have not been amended, modified or rescinded. The District has complied, and will at the Closing be in compliance in all respects, with its obligations under the District Documents.
- (c) Official Statement Accurate and Complete. The Preliminary Official Statement was as of its date, and the Official Statement is, and at all times subsequent to the date of the Official Statement up to and including the Closing will be, true and correct in all material respects, and the Preliminary Official Statement and the Official Statement contain and up to and including the Closing will contain no misstatement of any material fact and do not, and up to and including the Closing will not, omit any statement necessary to make the statements contained therein, in the light of the circumstances in which such statements were made, not misleading.

- (d) Purchaser's Consent to Amendments and Supplements. The District will advise the Purchaser promptly of any proposal to amend or supplement the Official Statement and will not effect or consent to any such amendment or supplement without the consent of the Purchaser, which consent will not be unreasonably withheld. The District will advise the Purchaser promptly of the institution of any proceedings known to it by any governmental agency prohibiting or otherwise affecting the use of the Official Statement in connection with the offering, sale or distribution of the Certificates.
- (e) Agreement to Amend or Supplement Official Statement. If after the date of this Purchase Contract and until 25 days after the end of the "underwriting period" (as defined below), any event occurs as a result of which the Official Statement as then amended or supplemented would include an untrue statement of a material fact, or omit to state any material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading, and, in the reasonable opinion of the Purchaser, an amended or supplemented Official Statement should be delivered in connection with the offers or sales of the Certificates to reflect such event, the District promptly will prepare at its expense an amendment or supplement which will correct such statement or omission and the District shall promptly furnish to the Purchaser a reasonable number of copies of such amendment or supplement. Unless the Purchaser otherwise advises the District in writing that the end of the underwriting period shall be another specified date, the end of the underwriting period shall be the day of Closing.
- (f) No Material Change in Finances. At the time of the Closing, there will not have been any material adverse changes in the financial condition of the District since the date hereof.
- (g) No Litigation. As of the time of acceptance hereof and as of the date of the Closing, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending with respect to which the District has been served with process, to the best knowledge of the District after due investigation, threatened (i) in any way questioning the existence of the District or the titles of the officers of the District to their respective offices; (ii) affecting, contesting or seeking to prohibit, restrain or enjoin the execution and delivery of the Certificates, or in any way contesting or affecting the validity of the District Documents or the consummation of the transactions contemplated thereby, or contesting the exclusion of interest evidenced and represented by the Certificates from gross income for federal income tax purposes or contesting the powers of the District to enter into the District Documents; (iii) which may result in any material adverse impact on the financial condition of the District; or (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and there is no known basis for any action, suit, proceeding, inquiry or investigation of the nature described in clauses (i) through (iv) of this sentence.

- (h) Permitted Encumbrances. As of the time of acceptance hereof and as of the date of the Closing, the Leased Property shall be free of all liens other than Permitted Encumbrances (as defined in the Lease Agreement).
- (i) Further Cooperation; Blue Sky. The District will furnish such information, execute such instruments and take such other action in cooperation with the Purchaser as the Purchaser may reasonably request in order (i) to qualify the Certificates for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Purchaser may designate and (ii) to determine the eligibility of the Certificates for investment under the laws of such states and other jurisdictions. The District will not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determination in any jurisdiction.
- (j) Validity of District Documents. The District Documents, when executed and delivered by the District and other parties thereto, will be legally valid and binding obligations of the District enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally.
- (k) Compliance With Rule 15c2-12. The Preliminary Official Statement heretofore delivered to the Purchaser is deemed final by the District as of its date and as of the date hereof, except for the omission of such information as is permitted to be omitted in accordance with paragraph (b)(1) of Rule 15c2-12. The District hereby covenants and agrees that, within seven business days from the date hereof, the District will cause a final printed form of the Official Statement to be delivered to the Purchaser in sufficient quantity to comply with paragraph (b)(4) of Rule 15c2-12 and Rules of the Municipal Securities Rulemaking Board.

**8. Closing Conditions.** The Purchaser has entered into this Purchase Contract in reliance upon the representations, warranties and covenants of the District herein and the performance by the District of its obligations hereunder, both as of the date hereof and as of the date of the Closing. The Purchaser's obligations under this Purchase Contract are and shall be subject to the following additional conditions:

- (a) Bring-Down Representation. The representations, warranties and covenants of the District contained herein shall be true and correct at the date hereof and at the time of the Closing, as if made on the date of the Closing.
- (b) Executed Agreements and Performance Thereunder. At the time of the Closing (i) the District Documents and the Assignment Agreement are in full force and effect, and shall not have been amended, modified or supplemented except with the written consent of the Purchaser, (ii) there is in full force and effect such resolutions (the "Resolutions") as, in the opinion of Special Counsel, shall be necessary in connection with the transactions contemplated by the Official Statement, the District Documents and the Assignment Agreement, (iii) the District has performed its obligations required as specified in this Purchase Contract or the District Documents to be performed at or prior to Closing, (iv) the Corporation has performed its obligations required as specified in the Trust Agreement, the Site Lease, the Lease Agreement, and the Assignment Agreement (the "Corporation Documents") to be performed at or prior to

Closing, and (v) the Official Statement shall not have been supplemented or amended, except under Paragraph 6(e) or as otherwise may have been agreed to in writing by the Purchaser.

- (c) No Default. At the time of the Closing, no default has occurred under the Resolutions, the Corporation Documents or the District Documents, and the District is not in default in the payment of any of its bonded indebtedness or any of its other obligations, which default would adversely impact the ability of the District to make Lease Payments.
- (d) Termination Events. The Purchaser has the right to terminate this Purchase Contract, without liability therefor, by written notification to the Corporation and the District if at any time at or prior to the Closing any Termination Event occurs, as defined in Appendix B.
- (e) Closing Documents. At or prior to the Closing, the Purchaser shall receive (unless the context otherwise indicates) the following documents:
  - (1) *Final Opinion*. An approving opinion of Special Counsel dated the date of the Closing and substantially in the form included as Appendix D to the Official Statement, together with a letter from Special Counsel, dated the date of the Closing and addressed to the Purchaser, to the effect that said opinion may be relied upon by the Purchaser to the same extent as if addressed to the Purchaser.
  - (2) *District Certificate*. A certificate of the District, dated the date of the Closing, signed on behalf of the District by an authorized officer of the District, Finance Director or other duly authorized officer of the District, in substantially the form attached as Appendix D to this Purchase Contract.;
  - (3) *Corporation Certificate*. A certificate of the Corporation, dated the date of the Closing, signed on behalf of the Corporation by Executive Director, Treasurer or other duly authorized officer of the Corporation, in substantially the form attached as Appendix E to this Purchase Contract.
  - (4) *Trustee's Certificate*. A certificate of the Trustee, dated the date of Closing, addressed to the District and the Purchaser, in form and substance acceptable to the Purchaser, in substantially the form attached as Appendix F to this Purchase Contract.
  - (5) *Official Statement*. The Official Statement and each supplement or amendment, if any, thereto, executed on behalf of the District by a duly authorized officer of the District.
  - (6) *Documents*. An original executed copy of each of the Corporation Documents and each of the District Documents.
  - (7) *Resolutions*. Certified copies of the resolution(s) of the Board of Trustees of the District (the "Board") approving the District Documents and the Official Statement, and the resolution(s) of the Board of Directors of the Corporation approving the Corporation Documents.



- (8) *Form 8038*. Evidence that the federal tax information form 8038-G has been prepared for filing.
- (9) *Arbitrage Certificate*. A certificate assuring compliance with federal arbitrage law, in form satisfactory to Special Counsel.
- (10) *CDIAC Statements*. A copy of the Notices of Sale required to be delivered to the California Debt Investment Advisory Commission under Section 53583 of the California Government Code.
- (11) *Title Insurance*. Evidence of arrangements for the issuance of a binder for a CLTA title insurance policy insuring the District's leasehold interest in the Leased Property under the Lease Agreement, in form and substance acceptable to Special Counsel. Such title insurance policy shall insure that the Leased Property is free of all liens other than Permitted Encumbrances.
- (12) *Municipal Bond Insurance Policy*. Receipt by the Trustee of the Bond Insurance Policy.
- (13) *Ratings*. Evidence that the Certificates have been rated "Aaa" by Moody's Investors Service, Inc.
- (14) *Additional Documents*. Such additional certificates, instruments and other documents as the Purchaser may reasonably deem necessary.

If the District is unable to satisfy the conditions contained in this Section 8, or if the obligations of the Purchaser are terminated for any reason permitted by this Purchase Contract, this Purchase Contract will terminate and neither the Purchaser nor the District will have further obligations hereunder, except as further set forth in Section 9.

**9. Expenses.** The Purchaser is under no obligation to pay, and the District shall pay or cause to be paid, the expenses incident to the performance of the obligations of the District hereunder including but not limited to (a) the costs of the preparation and printing, or other reproduction (for distribution on or prior to the date hereof) of the Corporation Documents, the District Documents and this Agreement, and the cost of preparing, printing, executing and delivering the Certificates; (b) the fees and disbursements of the Trustee, the 1997 Trustee, any accountants or other experts or consultants retained by the District; (c) the fees and disbursements of Special Counsel; (d) the cost of preparation and printing of the Preliminary Official Statement and the Official Statement, including a reasonable number of copies thereof for distribution by the Purchaser; (e) premiums payable to the Insurer for the Bond Insurance Policy, and (f) the costs of ratings and any rating agency presentations.

The Purchaser shall pay, and the District has no obligation to pay, all expenses incurred by it in connection with the public offering and distribution of the Certificates, applicable CDIAC fees and any advertising expenses.

**10. Notice.** Any notice or other communication to be given to the District under this Purchase Contract may be given by delivering the same in writing to such entity at the address set forth above. Any notice or other communication to be given to the Purchaser

under this Purchase Contract may be given by delivering the same in writing to \_\_\_\_\_, \_\_\_\_\_, Attention: \_\_\_\_\_.

**11. Entire Agreement.** This Purchase Contract, when accepted by the District, constitutes the entire agreement between the District and the Purchaser and is made solely for the benefit of the District, the Corporation and the Purchaser (including their successors or assigns). No other person has any right hereunder by virtue hereof, except as provided herein. All of the District's representations, warranties and agreements in this Purchase Contract shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the Purchaser, until the earlier of (a) delivery of and payment for the Certificates hereunder, and (b) any termination of this Purchase Contract.

**12. Counterparts.** This Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

**13. Severability.** In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

**14. State Law Governs.** The validity, interpretation and performance of this Purchase Contract is governed by the laws of California.

**15. No Assignment.** The rights and obligations created by this Purchase Contract shall not be subject to assignment by the Purchaser or the District without the prior written consent of the other party hereto.

\_\_\_\_\_

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

[TITLE]

Accepted as of the date first stated above:

**CAPISTRANO UNIFIED SCHOOL  
DISTRICT**

By:

\_\_\_\_\_  
Superintendent

**CAPISTRANO UNIFIED SCHOOL  
DISTRICT SCHOOL FACILITIES  
CORPORATION**

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

\_\_\_\_\_  
Executive Director

**APPENDIX A**  
**MATURITY SCHEDULE**

<u>Maturity Date</u> <u>(December 1)</u>	<u>Principal</u> <u>Maturity</u>	<u>Interest</u> <u>Rate</u>	<u>Reoffering</u> <u>Yield</u>
---	-------------------------------------	--------------------------------	-----------------------------------

**Prepayment Provisions**

*Optional Prepayment.* The Certificates maturing on or before December 1, 20\_\_\_, are not subject to redemption prior to their maturity dates. The Certificates maturing on or after December 1, 20\_\_\_, are subject to redemption prior to their respective stated maturity dates, at the option of the District, from any source of available funds, in whole or in part, on any date on or after December 1, 20\_\_\_, at a redemption price equal to the principal amount to be redeemed, plus accrued interest to the date fixed for redemption, without premium.

*Extraordinary Prepayment from General Obligation Bond Proceeds or State Funds.* The Certificates are subject to extraordinary prepayment from the proceeds of general obligation bonds or facility construction payments received from the State of California, prior to their respective stated maturities, at the option of the District, in whole, or in part among maturities on such basis as shall be designated by the District and by lot within any one maturity, on any date, upon payment of a prepayment price equal to 100% of the principal amount to be prepaid, together with accrued interest to the date fixed for prepayment.

## **APPENDIX B**

### **TERMINATION EVENTS**

The following events are grounds for termination of this Purchase Contract by the Purchaser under Section 8(d) of this Purchase Contract:

- (1) Any event which causes any statement contained in the Official Statement to be materially misleading or results in a failure of the Official Statement to state a material fact necessary to make the statements in the Official Statement, in the light of the circumstances under which they were made, not misleading.
- (2) The marketability of the Certificates or the market price thereof, in the reasonable opinion of the Purchaser, has been materially adversely affected by an amendment to the Constitution of the United States or by any legislation in or by the Congress of the United States or any branch of the California State Legislature, or the amendment of legislation pending as of the date of this Purchase Contract in the Congress of the United States, or the recommendation to Congress or endorsement for passage (by press release, other form of notice or otherwise) of legislation by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or the proposal for consideration of legislation by either such Committee or by any member thereof, or the presentment of legislation for consideration as an option by either such Committee, or by the staff of the Joint Committee on Taxation of the Congress of the United States, or the favorable reporting for passage of legislation to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or any decision of any federal or State court or any ruling or regulation (final, temporary or proposed) or official statement on behalf of the United States Treasury Department, the Internal Revenue Service or other federal or State authority materially adversely affecting the federal or State tax status of the District or the Corporation, or the interest on bonds or notes or obligations of the general character of the Certificates.
- (3) Any legislation, ordinance, rule or regulation is introduced in or enacted by any governmental body, department or agency of California, or a decision by any court of competent jurisdiction within California or any court of the United States is rendered which, in the reasonable opinion of the Purchaser, materially adversely affects the market price of the Certificates.
- (4) Legislation is enacted by the Congress of the United States, or a decision by a court of the United States is rendered by or on behalf of the Securities and Exchange Commission or any other governmental agency of competent jurisdiction, to the effect that either (A) the execution, delivery, offering or sale of the Certificates or securities of the general character of the Certificates violates or is not exempt from

registration under any provision of the federal securities laws, including the Securities Act of 1933, as amended and as then in effect, or (B) the Trust Agreement needs to be qualified under the Trust Indenture Act of 1939, as amended and as then in effect.

- (5) Additional material restrictions not in force as of the date hereof are imposed upon trading in securities generally by any governmental authority or by any national securities exchange which restrictions materially adversely affect the Purchaser's ability to trade the Certificates.
- (6) A general banking moratorium is established by federal or State authorities.
- (7) The United States becomes engaged in hostilities resulting in a declaration of war or a national emergency, or there occurs any other outbreak of hostilities or a national or international calamity or crisis, financial or otherwise, the effect of which on the financial markets of the United States, in the reasonable opinion of the Purchaser, materially and adversely affects the ability of the Purchaser to market or deliver the Certificates.
- (8) Any rating on the District's securities is downgraded, suspended or withdrawn by a national rating service, which, in the Purchaser's reasonable opinion, materially adversely affects the marketability or market price of the Certificates.
- (9) The commencement of any action, suit or proceeding described in paragraph 7(g) which, in the judgment of the Purchaser, materially adversely affects the market price of the Certificates.
- (10) There is a general suspension of trading on the New York Stock Exchange.

**APPENDIX C**

**[RESERVED]**

## **APPENDIX D**

### **DISTRICT OFFICER CLOSING CERTIFICATE**

The Certificate of an authorized officer of the District to be delivered at the Closing must be substantially to the following effect:

- (1) The resolution (the "District Resolution") of the Board of Trustees of the District (the "Board") approving and authorizing the execution and delivery of the District Documents and approving the Official Statement, was duly adopted at a meeting of the Board called and held under law and with all public notice required by law and at which a quorum was present and acting throughout and the District Resolution is in full force and effect and has not been modified, amended or rescinded.
- (2) The execution and delivery of the District Documents and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with, or constitute on the part of the District a breach of or default under, any agreement or other instrument to which the District is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the District is subject.
- (3) Except as otherwise disclosed in the Official Statement, there is no litigation, proceeding, action, suit, or investigation at law or in equity before or by any court, governmental agency or body, pending or, to the best knowledge of the undersigned after due investigation, threatened against the District, challenging the creation, organization or existence of the District, or the validity of the District Documents or seeking to restrain or enjoin the Lease Payments or in any way contesting or affecting the validity of the District Documents or any of the transactions referred to therein or contemplated thereby or contesting the authority of the District to enter into or perform its obligations under any of the District Documents, or under which a determination adverse to the District would have a material adverse effect upon the financial condition or the revenues of the District, or which, in any manner, questions or affects the right or ability of the District to enter into the District Documents or affects in any manner the right or ability of the District to make Lease Payments.
- (4) The representations, warranties and covenants of the District contained herein are true and correct in all material respects on and as of the date of the Closing as if made on the date of the Closing and the District has complied with all of the terms and conditions of this Purchase Contract required to be complied with by the District at or prior to the date of the Closing.
- (5) No event affecting the District has occurred since the date of the Official Statement which has not been disclosed therein or in any supplement or amendment thereto which event should be disclosed in the Official Statement in order to make the statements therein, in the



light of the circumstances under which they were made, not misleading.

## **APPENDIX E**

### **CORPORATION OFFICER CLOSING CERTIFICATE**

The Certificate of an authorized officer of the Corporation to be delivered at the Closing must be substantially to the following effect:

- (1) The Corporation is a nonprofit public benefit corporation duly created and lawfully existing under the laws of California, with full right, power and authority to execute, deliver and perform its obligations under the Corporation Documents and to carry out and consummate the transactions on its part contemplated by the Corporation Documents and the Official Statement.
  
- (2) The Corporation is not, in any manner which would adversely affect the transactions contemplated by the Corporation Documents, in breach of or in default under any applicable constitutional provision, law or administrative rule or regulation of California or the United States, or any applicable judgment or decree or any trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which the Corporation is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute, in any manner which would adversely affect the transactions contemplated by the Corporation Documents, a default or event of default under any such instrument; and the authorization, execution and delivery of the Corporation Documents and compliance with the provisions of each of such agreements or instruments do not and will not conflict with or constitute a breach of or default under any applicable constitutional provision, law or administrative rule or regulation of California or the United States or any applicable judgment, decree, license, permit, trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which the Corporation (or any of its officers in their respective capacities as such) is subject, or by which it or any of its properties is bound, nor will any such authorization, execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its assets or properties or under the terms of any such law, regulation or instrument, except as may be provided by the Corporation Documents.
  
- (3) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending with respect to which the Corporation has been served with process or, to the best knowledge of the Corporation after due investigation, threatened (a) in any way questioning the existence of the Corporation or the titles of the officers of the Corporation to their respective offices; or (b) affecting, contesting or seeking to prohibit, restrain or enjoin the execution and delivery of the Certificates, or in any way contesting or affecting the validity of the Corporation Documents or the consummation of the transactions contemplated thereby, or contesting the powers of the Corporation to enter into the Corporation Documents, and there is no basis for any action, suit,

proceeding, inquiry or investigation of the nature described in clauses (a) and (b) of this sentence.

## **APPENDIX F**

### **TRUSTEE CLOSING CERTIFICATE**

The Certificate of an authorized officer of the Trustee to be delivered at the Closing must be substantially to the following effect:

- (1) The Trustee is a national banking association duly organized and validly existing under the laws of the United States of America having full power and being qualified to enter into and perform its obligations under the Trust Agreement and the Assignment Agreement.
- (2) The Trust Agreement and the Assignment Agreement have been duly authorized, executed and delivered by the Trustee and the Trust Agreement and the Assignment Agreement constitute the legal, valid and binding obligations of the Trustee enforceable in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought.
- (3) No consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the Trustee that has not been obtained is or will be required for the execution and delivery of the Trust Agreement or the Assignment Agreement or the performance by the Trustee of its duties and obligations under the Trust Agreement or the Assignment Agreement.
- (4) The Certificates have been executed by a duly authorized officer of the Trustee.
- (5) The execution and delivery by the Trustee of the Trust Agreement and the Assignment Agreement and compliance with the terms thereof will not conflict with, or result in a violation or breach of, or constitute a default under, any loan agreement, indenture, bond, note, resolution or any other agreement or instrument to which the Trustee is a party or by which it is bound, or any law or any rule, regulation, order or decree of any court or governmental agency or body having jurisdiction over the Trustee or any of its activities or properties.
- (6) There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental agency, public board or body pending, or to the best knowledge of the Trustee, threatened against the Trustee which in the reasonable judgment of the Trustee would affect the existence of the Trustee or in any way contesting or affecting the validity or enforceability of the Trust Agreement or the Assignment Agreement or contesting the powers of the Trustee or its authority to enter into and perform its obligations thereunder.

## CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the CAPISTRANO UNIFIED SCHOOL DISTRICT (the "District") in connection with the issuance by the District of its \$23,000,000 Capistrano Unified School District 2012 Refunding Certificates of Participation (the "Certificates"). The Certificates are being issued pursuant to a resolution adopted by the Board of Trustees of the District on October 24, 2012 (the "Resolution"). The District covenants and agrees as follows:

Section 1. Definitions. In addition to the definitions set forth in the Resolution, which apply to any capitalized term used in this Disclosure Certificate, unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings when used in this Disclosure Certificate:

"*Annual Report*" shall mean any Annual Report provided by the District pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"*Beneficial Owner*" shall mean any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Certificates (including persons holding Certificates through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Certificates for federal income tax purposes.

"*Dissemination Agent*" shall mean [\_\_\_\_\_] or any successor Dissemination Agent designated in writing by the District and which has filed with the District a written acceptance of such designation. In the absence of such a designation, the District shall act as the Dissemination Agent.

"*EMMA*" or "*Electronic Municipal Market Access*" means the centralized on-line repository for documents to be filed with the MSRB, such as official statements and disclosure information relating to municipal bonds, notes and other securities as issued by state and local governments.

"*Listed Events*" shall mean any of the events listed in Section 5(a) or 5(b) of this Disclosure Certificate.

"*MSRB*" means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule, or any other repository of disclosure information which may be designated by the Securities and Exchange Commission as such for purposes of the Rule in the future.

"*Participating Underwriter*" shall mean [\_\_\_\_\_], or the original underwriter of the Certificates, required to comply with the Rule in connection with offering of the Certificates.

"*Rule*" shall mean Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

Section 2. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the District for the benefit of the owners and Beneficial Owners of the Certificates and in order to assist the Participating Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5).

Section 3. Provision of Annual Reports.

(a) *Delivery of Annual Report*. The District shall, or shall cause the Dissemination Agent to, not later than eight months after the end of the District's fiscal year (which currently ends on June 30), commencing with the report for the 2011-12 Fiscal Year, which is due not later than March 1, 2013, file with the Participating Underwriter and with EMMA, in a readable PDF or other electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. The Annual Report may be submitted as a single document or as separate documents comprising a package and may cross-reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the District may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date.

(b) *Change of Fiscal Year*. If the District's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(c), and subsequent Annual Report filings shall be made no later than nine months after the end of such new fiscal year end.

(c) *Delivery of Annual Report to Dissemination Agent*. Not later than fifteen (15) Business Days prior to the date specified in subsection (a) (or, if applicable, subsection (b)) of this Section 3 for providing the Annual Report to EMMA, the District shall provide the Annual Report to the Dissemination Agent (if other than the District), if by such date, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall notify the District.

(d) *Report of Non-Compliance*. If the District is the Dissemination Agent and is unable to file an Annual Report by the date required in subsection (a) (or, if applicable, subsection (b)) of this Section 3, the District shall send a notice to EMMA substantially in the form attached hereto as Exhibit A. If the District is not the Dissemination Agent and is unable to provide an Annual Report to the Dissemination Agent by the date required in subsection (c) of this Section 3, the Dissemination Agent shall send a notice to EMMA in substantially the form attached hereto as Exhibit A.

(e) *Annual Compliance Certification*. The Dissemination Agent shall, if the Dissemination Agent is other than the District, file a report with the District certifying that the Annual Report has been filed with EMMA pursuant to Section 3 of this Disclosure Certificate, stating the date it was so provided and filed.

Section 4. Content of Annual Reports. The Annual Report shall contain or incorporate by reference the following:

(a) *Financial Statements.* Audited financial statements of the District for the preceding fiscal year, prepared in accordance with generally accepted accounting principles, if the District's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) *Other Annual Information.* To the extent not included in the audited financial statements of the District, the Annual Report shall also include financial and operating data with respect to the District for preceding fiscal year, substantially similar to that provided in the corresponding tables and charts in the official statement for the Certificates, as follows:

- (i) average daily attendance of the District for the last completed fiscal year;
- (ii) outstanding District indebtedness;
- (iii) tax delinquencies, to the extent the County is no longer on the Teeter Plan;
- (iv) assessed value of real property for the most recent tax year; and
- (v) summary financial information on revenues, expenditures and fund balances for the District's general fund reflecting adopted budget for the current fiscal year.

(c) *Cross References.* Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the District or related public entities, which are available to the public on EMMA. The District shall clearly identify each such other document so included by reference.

If the document included by reference is a final official statement, it must be available from EMMA.

(d) In addition to any of the information expressly required to be provided under paragraph (b) of this Section 4, the District shall provide such further information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

Section 5. Reporting of Listed Events.

(a) *Reportable Events.* The District shall, or shall cause the Dissemination Agent (if not the District) to, give notice of the occurrence of any of the following events with respect to the Certificates:

- (1) Principal and interest payment delinquencies.
- (2) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (3) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (4) Substitution of credit or liquidity providers, or their failure to perform.
- (5) Defeasances.
- (6) Rating changes.
- (7) Tender offers.

- (8) Bankruptcy, insolvency, receivership or similar event of the obligated person.
- (9) 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.

(b) *Material Reportable Events.* The District shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Certificates, if material:

- (1) Non-payment related defaults.
- (2) Modifications to rights of security holders.
- (3) Bond calls.
- (4) The release, substitution, or sale of property securing repayment of the securities.
- (5) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, 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.
- (6) Appointment of a successor or additional trustee, or the change of name of a trustee.

(c) *Time to Disclose.* Whenever the District obtains knowledge of the occurrence of a Listed Event, the District shall, or shall cause the Dissemination Agent (if not the District) to, file a notice of such occurrence with EMMA, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of 10 business days after the occurrence of the Listed Event. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(5) and (b)(3) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to owners of affected Certificates under the Resolution.

Section 6. Identifying Information for Filings with EMMA. All documents provided to EMMA under this Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. Termination of Reporting Obligation. The District's obligations under this Disclosure Certificate shall terminate upon the defeasance, prior redemption or payment in full of all of the Certificates. If such termination occurs prior to the final maturity of the Certificates, the District shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

Section 8. Dissemination Agent.

(a) *Appointment of Dissemination Agent.* The District may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate and may discharge any such agent, with or without appointing a



successor Dissemination Agent. If the Dissemination Agent is not the District, the Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the District pursuant to this Disclosure Certificate. It is understood and agreed that any information that the Dissemination Agent may be instructed to file with EMMA shall be prepared and provided to it by the District. The Dissemination Agent has undertaken no responsibility with respect to the content of any reports, notices or disclosures provided to it under this Disclosure Certificate and has no liability to any person, including any Certificate holder, with respect to any such reports, notices or disclosures. The fact that the Dissemination Agent or any affiliate thereof may have any fiduciary or banking relationship with the District shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition, except as may be provided by written notice from the District.

(b) *Compensation of Dissemination Agent.* The Dissemination Agent shall be paid compensation by the District for its services provided hereunder in accordance with its schedule of fees as agreed to between the Dissemination Agent and the District from time to time and all expenses, legal fees and expenses and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder. The Dissemination Agent shall not be deemed to be acting in any fiduciary capacity for the District, owners or Beneficial Owners, or any other party. The Dissemination Agent may rely, and shall be protected in acting or refraining from acting, upon any direction from the District or an opinion of nationally recognized bond counsel. The Dissemination Agent may at any time resign by giving written notice of such resignation to the District. The Dissemination Agent shall not be liable hereunder except for its negligence or willful misconduct.

(c) *Responsibilities of Dissemination Agent.* In addition of the filing obligations of the Dissemination Agent set forth in Sections 3(e) and 5, the Dissemination Agent shall be obligated, and hereby agrees, to provide a request to the District to compile the information required for its Annual Report at least 30 days prior to the date such information is to be provided to the Dissemination Agent pursuant to subsection (c) of Section 3. The failure to provide or receive any such request shall not affect the obligations of the District under Section 3.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the District may amend this Disclosure Certificate (and the Dissemination Agent shall agree to any amendment so requested by the District that does not impose any greater duties or risk of liability on the Dissemination Agent), and any provision of this Disclosure Certificate may be waived, provided that all of the following conditions are satisfied:

(a) *Change in Circumstances.* If the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a) or (b), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the Certificates, or the type of business conducted.

(b) *Compliance as of Issue Date.* The undertaking, as amended or taking into account such waiver, would, in the opinion of a nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Certificates, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances.

(c) *Consent of Holder; Non-impairment Opinion.* The amendment or waiver either (i) is approved by the Certificate holders in the same manner as provided in the Resolution for amendments to the Resolution with the consent of Certificate holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Certificate holders or Beneficial Owners.

If this Disclosure Certificate is amended or any provision of this Disclosure Certificate is waived, the District shall describe such amendment or waiver in the next following Annual Report and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the District. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(c), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the District chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the District shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the District to comply with any provision of this Disclosure Certificate, any Certificate holder or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Disclosure Certificate. The sole remedy under this Disclosure Certificate in the event of any failure of the District to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Duties, Immunities and liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and no implied covenants or obligations shall be read into this Disclosure Certificate against the Dissemination Agent, and the District agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees and expenses) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have the same rights, privileges and immunities hereunder as are afforded to the Paying Agent under the Resolution. The obligations of the District under this Section 12 shall survive resignation or removal of the Dissemination Agent and payment of the Certificates.

Section 13. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the District, the Dissemination Agent, the Participating Underwriter and the owners and Beneficial Owners from time to time of the Certificates, and shall create no rights in any other person or entity.

Date: [November 20, 2012]

CAPISTRANO UNIFIED SCHOOL DISTRICT

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

ACKNOWLEDGED:

[\_\_\_\_\_] , as Dissemination  
Agent

By \_\_\_\_\_

**EXHIBIT A**

**NOTICE TO EMMA OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Capistrano Unified School District

Name of Issue: \$ \_\_\_\_\_. Capistrano Unified School District 2012 Refunding  
Certificates of Participation

Date of Issuance: \_\_\_\_\_, 2012

NOTICE IS HEREBY GIVEN that the Issuer has not provided an Annual Report with respect to the above-named Certificates as required by the Continuing Disclosure Certificate, dated \_\_\_\_\_, 2012, furnished by the Issuer in connection with the Issues. The Issuer anticipates that the Annual Report will be filed by

Dated:

[\_\_\_\_\_] , as Dissemination  
Agent

By \_\_\_\_\_

Title \_\_\_\_\_

Cc: Paying Agent

The information contained in this PRELIMINARY OFFICIAL STATEMENT has been deemed by the District to be final as of the date hereof; however, the information contained herein is subject to completion or amendment. These securities may not be sold, nor may offers to buy be accepted, prior to the time the Official Statement is delivered in final form. Under no circumstances shall this PRELIMINARY OFFICIAL STATEMENT constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities, in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

PRELIMINARY OFFICIAL STATEMENT  
Dated \_\_\_\_\_, 2012 [DRAFT October 15, 2012]

NEW ISSUE  
DTC BOOK-ENTRY ONLY

S&P Insured Rating: “\_\_\_” (\_\_\_ outlook)  
S&P Underlying Rating: “\_\_\_” (\_\_\_ outlook)  
See “RATINGS” herein

In the opinion of Dannis Woliver Kelley, San Diego, California (“Special Counsel”), based upon an analysis of existing statutes, regulations, rulings and judicial decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants and requirements described herein, the portion of Lease Payments designated as and comprising interest and received by the owners of the Certificates is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. In the further opinion of Special Counsel, such interest is exempt from California personal income taxes. See “TAX MATTERS.”



\$\_\_\_\_\_,000\*  
**2012 REFUNDING CERTIFICATES OF PARTICIPATION**  
Evidencing And Representing Direct, Undivided Fractional Interests Of The Owners Thereof In Lease Payments  
To Be Made By The  
**CAPISTRANO UNIFIED SCHOOL DISTRICT**  
(ORANGE COUNTY, CALIFORNIA)  
As The Rental For Certain Property Pursuant To A Lease Agreement With The  
**CAPISTRANO UNIFIED SCHOOL DISTRICT FACILITIES CORPORATION**

**DATED: Date of Delivery**

**DUE: June 1, as shown below**

The 2012 Refunding Certificates of Participation (the “Certificates”) are being executed and delivered in the aggregate principal amount of \$\_\_\_\_\_,000\*. The Certificates are being sold for the purpose of currently refunding certain outstanding lease financings of the District. See “PLAN OF REFUNDING” herein.

The Certificates evidence and represent direct, undivided fractional interests of the Owners thereof in Lease Payments to be made by the Capistrano Unified School District (the “District”) pursuant to a lease agreement dated April 1, 2002, as amended by a first amended and restated lease agreement dated as of November 1, 2012 (together, the “Lease Agreement”), between the Capistrano Unified School District Facilities Corporation, a California nonprofit public benefit corporation (the “Corporation”) and the District. The Certificates are being delivered pursuant to a trust agreement dated November 1, 2012 (the “Trust Agreement”) by and among U.S. Bank National Association (the “Trustee”), the Corporation and the District. Interest with respect to the Certificates is first payable on June 1, 2013, and semiannually thereafter on each June 1 and December 1. The Certificates are subject to prepayment. See “THE CERTIFICATES—Prepayment Provisions” herein.

THE DISTRICT HAS COVENANTED IN THE LEASE AGREEMENT TO TAKE SUCH ACTION AS MAY BE NECESSARY TO INCLUDE AND MAINTAIN ALL LEASE PAYMENTS AS AND WHEN DUE FOR THE LEASE AGREEMENT, SUBJECT TO ABATEMENT, AS FURTHER DESCRIBED HEREIN, IN ITS ANNUAL BUDGET AND TO MAKE THE NECESSARY ANNUAL APPROPRIATIONS FOR ALL SUCH LEASE PAYMENTS. THE OBLIGATION OF THE DISTRICT TO MAKE LEASE PAYMENTS IS A SPECIAL OBLIGATION OF THE DISTRICT AND DOES NOT CONSTITUTE A DEBT OF THE DISTRICT OR THE COUNTY OR THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION AND DOES NOT CONSTITUTE AN OBLIGATION FOR WHICH THE DISTRICT IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE DISTRICT HAS LEVIED OR PLEDGED ANY FORM OF TAXATION. THE CORPORATION HAS NO OBLIGATION OR LIABILITY WHATSOEVER TO THE OWNERS OF THE CERTIFICATES.

The scheduled payment of principal of and interest on the Certificates when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Certificates by \_\_\_\_\_.

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT INTENDED TO BE A SUMMARY OF ALL FACTORS RELEVANT TO AN INVESTMENT IN THE CERTIFICATES. INVESTORS SHOULD READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION. CAPITALIZED TERMS USED ON THIS COVER PAGE NOT OTHERWISE DEFINED WILL HAVE THE MEANING SET FORTH HEREIN.

**MATURITY SCHEDULE**

Maturity Date	Principal Amount*	Coupon Rate	Reoffering Yield	Maturity Date	Principal Amount*	Coupon Rate	Reoffering Yield
December 1				December 1			
2013	\$,000	___ %	___ %	2020	\$,000	___ %	___ %
2014	,000	___	___	2021	,000	___	___
2015	,000	___	___	2022	,000	___	___
2016	,000	___	___	2023	,000	___	___
2017	,000	___	___	2024	,000	___	___
2018	,000	___	___	2025	,000	___	___
2019	,000	___	___	2026	,000	___	___

The Certificates are being purchased for re-offering by \_\_\_\_\_ as Underwriter of the Certificates. The Certificates will be offered when, as and if executed and delivered and received by the Underwriter, subject to the approval as to their legality by Dannis, Woliver, Kelley, \_\_\_\_\_, California, Special Counsel. It is anticipated that the Certificates, in definitive form, will be available for delivery through the facilities of DTC in New York, New York on or about November 20, 2012.

This Official Statement is dated \_\_\_\_\_, 2012

\* Preliminary; subject to adjustment.

NO DEALER, BROKER, SALESPERSON OR OTHER PERSON HAS BEEN AUTHORIZED BY THE DISTRICT OR THE UNDERWRITER TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS, OTHER THAN THOSE CONTAINED HEREIN, AND IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE DISTRICT OR THE UNDERWRITER. THIS OFFICIAL STATEMENT DOES NOT CONSTITUTE AN OFFER TO SELL NOR THE SOLICITATION OF AN OFFER TO BUY, NOR SHALL THERE BE ANY SALE OF THE CERTIFICATES BY A PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE AN OFFER, SOLICITATION OR SALE. THIS OFFICIAL STATEMENT IS NOT TO BE CONSTRUED AS A CONTRACT WITH THE PURCHASERS OF THE CERTIFICATES. STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT WHICH INVOLVE ESTIMATES, PROJECTIONS, FORECASTS OR MATTERS OF OPINION, WHETHER OR NOT EXPRESSLY SO DESCRIBED HEREIN, ARE INTENDED SOLELY AS SUCH AND ARE NOT TO BE CONSTRUED AS REPRESENTATIONS OF FACT.

THE INFORMATION SET FORTH HEREIN HAS BEEN OBTAINED FROM SOURCES BELIEVED TO BE RELIABLE. THE UNDERWRITER HAS REVIEWED THE INFORMATION IN THIS OFFICIAL STATEMENT IN ACCORDANCE WITH, AND PART OF, ITS 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 INFORMATION AND EXPRESSIONS OF OPINION HEREIN ARE SUBJECT TO CHANGE WITHOUT NOTICE AND NEITHER 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 DISTRICT SINCE THE DATE HEREOF.

THIS OFFICIAL STATEMENT IS SUBMITTED WITH RESPECT TO THE SALE OF THE CERTIFICATES REFERRED TO HEREIN AND MAY NOT BE REPRODUCED OR USED, IN WHOLE OR IN PART, FOR ANY OTHER PURPOSE, UNLESS AUTHORIZED IN WRITING BY THE DISTRICT. ALL SUMMARIES OF THE DOCUMENTS AND LAWS ARE MADE SUBJECT TO THE PROVISIONS THEREOF AND DO NOT PURPORT TO BE COMPLETE STATEMENTS OF ANY OR ALL SUCH PROVISIONS.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE DISTRICT AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFICIAL STATEMENT.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN MARKET PRICES OF THE CERTIFICATES OFFERED HEREBY AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITER MAY OFFER AND SELL THE CERTIFICATES TO CERTAIN DEALERS, INSTITUTIONAL INVESTORS, BANKS OR OTHERS AT PRICES LOWER OR YIELDS HIGHER THAN THE PUBLIC OFFERING PRICES OR YIELDS STATED ON THE COVER PAGE HEREOF AND SAID PUBLIC OFFERING PRICES OR YIELDS MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITER.

\_\_\_\_\_ (“AGM”) MAKES NO REPRESENTATION REGARDING THE CERTIFICATES OR THE ADVISABILITY OF INVESTING IN THE CERTIFICATES. IN ADDITION, AGM HAS NOT INDEPENDENTLY VERIFIED, MAKES NO REPRESENTATION REGARDING, AND DOES NOT ACCEPT ANY RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT OR ANY INFORMATION OR DISCLOSURE CONTAINED HEREIN, OR OMITTED HEREFROM, OTHER THAN WITH RESPECT TO THE ACCURACY OF THE INFORMATION REGARDING AGM SUPPLIED BY AGM AND PRESENTED UNDER THE HEADING “BOND INSURANCE” AND “EXHIBIT E - SPECIMEN MUNICIPAL BOND INSURANCE POLICY”.

---



---

CUSIP\* Numbers

Maturity Date December 1	CUSIP Number	Maturity Date December 1	CUSIP Number
2013	139702 ___	2020	139702 ___
2014	139702 ___	2021	139702 ___
2015	139702 ___	2022	139702 ___
2016	139702 ___	2023	139702 ___
2017	139702 ___	2024	139702 ___
2018	139702 ___	2025	139702 ___
2019	139702 ___	2026	139702 ___

---

\* CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. Neither the District nor the Underwriter is responsible for the selection or correctness of the CUSIP numbers set forth herein.

\$ \_\_, \_\_, 000\*  
CAPISTRANO UNIFIED SCHOOL DISTRICT  
2012 Refunding Certificates of Participation

---

---

THE BOARD OF TRUSTEES

Dr. Gary Pritchard, President  
John M. Alpay, Vice President  
Lynn Hatton, Clerk  
Ellen M. Addonizio, Member  
Jack R. Brick, Member  
Anna Bryson, Board Member  
Sue Palazzo, Board Member

DISTRICT ADMINISTRATION

Dr. Joseph M. Farley, Superintendent  
Clark Hampton, Deputy Superintendent, Business & Support Services

Capistrano Unified School District  
33122 Valle Road  
San Juan Capistrano, California 92675  
(949) 234-9200

FINANCIAL ADVISOR

Government Financial Strategies inc.  
1228 N Street, Suite 13  
Sacramento, California 95814  
(916) 444-5100

SPECIAL COUNSEL

Dannis Woliver Kelley  
750 B Street, Suite 2310  
San Diego, California 92101  
(619) 595-0202

TRUSTEE AND ESCROW AGENT

U.S. Bank National Association  
633 West 5<sup>th</sup> Street, 24<sup>th</sup> Floor  
Los Angeles, California 90017  
(213) 615-6052

---

\* Preliminary; subject to adjustment.

\$ \_\_, \_\_, 000\*  
**CAPISTRANO UNIFIED SCHOOL DISTRICT**  
**2012 Refunding Certificates of Participation**

---

**TABLE OF CONTENTS**

	<u>Page #</u>
INTRODUCTORY STATEMENT .....	1
The District .....	1
The Corporation .....	1
The Certificates .....	2
Authority for Leasing and Source of Repayment for the Certificates .....	2
Tax Matters .....	3
Bond Insurance .....	3
Continuing Disclosure .....	3
Professionals Involved .....	3
Other Information .....	3
THE CERTIFICATES .....	4
General Provisions .....	4
Registration, Transfer, and Exchange .....	4
Prepayment Provisions .....	5
DTC Book-Entry Only .....	6
Sources and Uses of Funds .....	8
Lease Payments .....	8
Sources of Payment for the Certificates .....	10
Certificate Reserve Fund .....	11
BOND INSURANCE .....	11
Bond Insurance Policy .....	11
THE FACILITIES .....	12
The Facilities Subject to Site Lease and Lease Agreement .....	12
PLAN OF REFUNDING .....	12
SPECIAL RISK FACTORS .....	12
Payments Not District Debt .....	12
Abatement .....	13
No Earthquake Insurance Coverage .....	13
No Acceleration Upon Default .....	13
Enforcement of Remedies .....	14
Loss of Tax Exemption .....	14
THE DISTRICT .....	14
General Information .....	14
The Board of Trustees and Key Administrative Personnel .....	15
Average Daily Attendance .....	15
Charter Schools .....	16
Employee Relations .....	16
Pension Plans .....	17
Other Post-Employment Benefits .....	17

---

\* Preliminary; subject to adjustment.





[THIS PAGE INTENTIONALLY LEFT BLANK]

## OFFICIAL STATEMENT

\$\_\_\_\_,000\*

### 2012 Refunding Certificates of Participation

Evidencing And Representing Direct, Undivided Fractional Interests Of The Owners Thereof  
In Lease Payments To Be Made By The

### CAPISTRANO UNIFIED SCHOOL DISTRICT

(ORANGE COUNTY, CALIFORNIA)

As The Rental For Certain Property Pursuant To A Lease Agreement With The  
CAPISTRANO UNIFIED SCHOOL DISTRICT FACILITIES CORPORATION

### INTRODUCTORY STATEMENT

*The purpose of this Official Statement, which includes the cover page, table of contents and attached appendices (the "Official Statement"), is to provide certain information concerning the sale and delivery of the Capistrano Unified School District 2012 Refunding Certificates of Participation (the "Certificates"). The Certificates are being sold for the purpose of refunding the District's 2002 Certificates of Participation. See "PLAN OF REFUNDING" herein.*

*This INTRODUCTORY STATEMENT is not a summary of this Official Statement. It is only a brief description of and guide to this Official Statement. This INTRODUCTORY STATEMENT is qualified by more complete and detailed information contained in the entire Official Statement, including the cover page and attached appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement by prospective investors in the Certificates. The offering of the Certificates to potential investors is made only by means of the entire Official Statement.*

#### The District

The Capistrano Unified School District (the "District") is a political subdivision of the State of California (the "State") and is governed by a seven member Board of Trustees (the "Board"). Founded in 1965, the District encompasses 195 square miles in seven cities and a portion of the unincorporated area of Orange County (the "County"). The District includes all or part of the cities of San Clemente, Dana Point, San Juan Capistrano, Laguna Niguel, Aliso Viejo, Mission Viejo and Rancho Santa Margarita, and the communities of Las Flores, Coto de Caza, Dove Canyon, Ladera Ranch, and Wagon Wheel. See "THE DISTRICT" herein.

#### The Corporation

The Capistrano Unified School District Facilities Corporation (the "Corporation") is a nonprofit public benefit corporation duly organized in 1997 at the request of the District and existing under the laws of the State and entitled, by virtue of its Articles of Incorporation and Bylaws, to provide financial assistance to the District by financing and refinancing the acquisition of real property and construction and the acquisition of facilities and improvements. The Corporation is not capitalized and has no assets. The Corporation has no liability to the owners of the Certificates.

---

\* Preliminary; subject to adjustment.

### The Certificates

The Certificates are being executed and delivered in the aggregate principal amount of \$\_\_\_\_,000\*. The Certificates evidence and represent direct, undivided fractional interests of registered owners thereof (the "Owners") in lease payments (the "Lease Payments") to be made by the District as the rental for the use and possession of certain facilities at 26301 Via Escolar, Mission Viejo, California 92692, known as the Capistrano Valley High School (the "Facilities"), leased from the Corporation pursuant to a lease agreement dated April 1, 2002, as first amended and restated by a lease agreement dated November 1, 2012 (collectively, the "Lease Agreement"). See "APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—FACILITIES LEASE" herein.

Proceeds from the sale and delivery of the Certificates will be deposited into the funds and accounts as established under a trust agreement dated November 1, 2012 (the "Trust Agreement") by and among the District, the Corporation and the U.S. Bank National Association as trustee (the "Trustee")], and into funds and accounts as established under an escrow agreement dated November 1, 2012 (the "Escrow Agreement") by and among the District, the Corporation and the U.S. Bank National Association as escrow agent (the "Escrow Agent")]. See "APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—TRUST AGREEMENT" herein. Proceeds from the sale and delivery of the Certificates will be utilized by the District for the purpose of refunding the District's 2002 Certificates of Participation (the "2002 Certificates"). See "PLAN OF REFUNDING" herein.

The Certificates will be executed and delivered in fully registered form, without coupons, in denominations of \$5,000 principal amount or any integral multiple thereof.

The Certificates will be registered initially in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (or any subsequent nominee of future depository, the "Nominee"). The Depository Trust Company (the "DTC") will initially act as securities depository for the Certificates (the "Depository"). Individual purchases of the Certificates will be made in book-entry only form, and no physical certificates will be made available to the Owners to represent their ownership interests in the Certificates. So long as Cede & Co. is the registered owner of the Certificates, principal of and interest on the Certificates will be payable to Cede & Co., as nominee for DTC, which is obligated to remit such principal and interest to the DTC Participants, as defined by DTC, for subsequent disbursement to the Owners of the Certificates. See "THE CERTIFICATES—DTC Book-Entry Only" herein. In the event that the book-entry-only system described below is no longer used with respect to the Certificates, the Certificates will be registered in accordance with the Trust Agreement.

The Certificates are being issued in the form of current interest certificates. Interest payable with respect to the Certificates will be calculated based on a 360-day year consisting of twelve 30-day months. The Certificates will be dated and interest with respect thereto will be payable from the date of delivery at the rates per annum as shown on the cover page hereto, first payable on December 1, 2012, and semiannually thereafter on June 1 and December 1 (individually, an "Interest Payment Date"), and will mature on June 1 in each of the designated years (individually, a "Principal Payment Date" and, together with an Interest Payment Date, a "Payment Date") and in the principal amounts as shown on the cover page hereto.

### Authority for Leasing and Source of Repayment for the Certificates

The District is authorized under provisions of the Constitution and laws of the State to enter into lease or lease purchase agreements relating to real property and buildings, facilities and equipment. The District approved the Lease Agreement, Trust Agreement and related legal documents by adopting a resolution on October 24, 2012 (the "Resolution"), which authorizes and directs the execution of the documents relating to the sale and delivery of the Certificates.

Under the terms of a site lease dated April 1, 2002 as first amended and restated by a site lease dated November 1, 2012 (collectively, the "Site Lease") between the District and the Corporation, the District will lease the Facilities to the Corporation. See "APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—SITE LEASE" herein.

Under the terms of the Lease Agreement, the District will lease back the Facilities from the Corporation and is required to pay Lease Payments from any source of legally available funds for the use and possession of the Facilities, which amounts are sufficient in both time and aggregate amount to pay the principal and interest payable with respect to the Certificates. The District is also required to make additional payments as necessary to pay all Certificate Reserve Fund (as defined herein) deficiencies, fees, costs and expenses of the Trustee and Corporation (the "Additional Payments") in performance of the Lease Agreement and Trust Agreement.

Pursuant to the Trust Agreement, the Corporation has assigned to the Trustee, for the benefit of the Owners of the Certificates, its rights under the Lease Agreement, including (i) all its rights to receive Lease Payments from the District under the Lease Agreement, and (ii) all its other rights under the Site Lease and the Lease Agreement as may be necessary to enforce payment of Lease Payments when due or otherwise to protect the interests of the Owners of the Certificates.

The District, pursuant to the Lease Agreement, will take such action as may be necessary to include all Lease Payments with respect to the Facilities in its annual budget and to make the necessary annual appropriation therefor.

The amount of Lease Payments will be abated during any period in which, by reason of damage, destruction, condemnation or material title defect, there is substantial interference with the District's use and possession of any portion of the Facilities, except to the extent of the moneys on deposit in the reserve fund (the "Certificate Reserve Fund") established under the Trust Agreement are used, or to the extent moneys are received from hazard or rental interruption insurance, if any, with respect to the Facilities. The Certificate Reserve Fund will be funded with a debt service reserve insurance policy upon delivery of the Certificates issued by \_\_\_\_\_. ("\_\_\_\_\_"). See "APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—FACILITIES LEASE—Lease Payments; Additional Payments" and "SPECIAL RISK FACTORS" herein, for a further discussion of the abatement provisions.

#### Tax Matters

In the opinion of Dannis, Woliver, Kelley, San Diego, California, Special Counsel, based on an analysis of existing statutes, regulations, rulings, and court decisions and assuming, among other things, the accuracy of certain representations and compliance with certain covenants, the portion of the Lease Payments designated as and constituting interest paid by the District under the Lease Agreement and received by the owners of the Certificates is excludable from gross income for federal income tax purposes and is exempt from State of California personal income taxes. Special Counsel is also of the opinion that such interest is not an item of tax preference for purposes of the federal individual and corporate alternative minimum taxes, although Special Counsel observes that such interest is included in adjusted current earnings in calculating corporate alternative minimum taxable income. See "LEGAL MATTERS- Tax Matters" herein. A complete copy of the proposed opinion of Special Counsel is attached hereto as "APPENDIX D – FORM OF OPINION OF SPECIAL COUNSEL."

#### Bond Insurance

The scheduled payment of principal of and interest on the Certificates when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Certificates by \_\_\_\_\_.

#### Continuing Disclosure

The District will covenant for the benefit of Owners to make available certain financial information and operating data relating to the District and to provide significant events notices as required under federal securities laws, in compliance with S.E.C. Rule 15c2-12(b)(5). The specific nature of the information to be made available and significant events notices are set forth in "APPENDIX C – FORM OF CONTINUING DISCLOSURE CERTIFICATE." See also "CONTINUING DISCLOSURE" herein.

#### Professionals Involved

Government Financial Strategies inc., Sacramento, California, has acted as a financial advisor (the "Financial Advisor") to the District with respect to the sale and delivery of the Certificates. See "FINANCIAL ADVISOR" herein. All proceedings in connection with the sale and delivery of the Certificates are subject to the approving legal opinion of Dannis, Woliver, Kelley \_\_\_\_\_, Special Counsel to the District with respect to the Certificates. U.S. Bank National Association, will act as the Trustee, registrar, and transfer agent with respect to the Certificates.

#### Other Information

This Official Statement may be considered current only as of its dated date affixed to the cover page hereof, and the information contained herein is subject to change. Brief descriptions of the Certificates, the security for the Certificates and the District are

included in this Official Statement, together with summaries of certain provisions relating to the Trust Agreement, the Lease Agreement, and the Site Lease (collectively, the "Legal Documents"). Such descriptions do not purport to be comprehensive or definitive, and all references made herein to the Legal Documents approved by the District are qualified in their entirety by reference to such document, and all references herein to the Certificates are qualified in their entirety by reference to the form thereof included in the Legal Documents.

Information concerning this Official Statement, the Certificates, the District, the Legal Documents or any other information relating to the sale and delivery of the Certificates is available for public inspection and may be obtained by contacting the District or by contacting the Financial Advisor, Government Financial Strategies inc., 1228 N Street, Suite 13, Sacramento, California 95814-5609, telephone (916) 444-5100, facsimile telephone (916) 444-5109.

## THE CERTIFICATES

### General Provisions

The Certificates will be executed and delivered in the aggregate principal amount of \$\_\_\_\_,000\*. The Certificates will be executed and delivered in fully registered form, without coupons, in denominations of \$5,000 principal amount or any integral multiple thereof. The Certificates will mature on each Principal Payment Date in the principal amounts as shown on the cover page hereto.

Interest is first payable on June 1, 2013, and semiannually thereafter on each Interest Payment Date. Interest payable with respect to the Certificates will be calculated based on a 360-day year consisting of twelve 30-day months. Each Certificate shall be dated as of the date on the cover of this Official Statement and interest represented thereby shall be payable from the Interest Payment Date next preceding the date of execution thereof, unless:

- it is executed following the close of business on the 15th day of the month preceding each Interest Payment Date, whether or not such 15<sup>th</sup> day is a Business Day (each a "Record Date") and on or before the next succeeding Interest Payment Date, in which event interest represented thereby will be payable from such Interest Payment Date,
- unless it is executed on or before the first Record Date, in which event interest represented thereby will be payable from the date as of the date on the cover of this Official Statement, or
- if, as of the date of any Certificate, interest represented by such Certificate is in default, in which event interest represented thereby will be payable from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to such Certificate.

### Registration, Transfer, and Exchange

The Trustee will keep or cause to be kept a register (the "Registration Books") in which, subject to such reasonable regulations as it may prescribe, the Trustee will provide for the registration and transfer of Certificates. The Certificates will be initially delivered in the form of a separate single fully registered Certificate (which may be typewritten) for each maturity of the Certificates. Upon initial delivery, the ownership of each such Certificate will be registered on the Registration Books in the name of Cede & Co.

If either (i) the Depository (initially, DTC) determines not to continue to act as Depository for the Certificates, or (ii) the District determines to terminate the Depository as such, then the District shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the District and the Trustee in the execution and delivery of replacement Certificates by providing the Trustee with a list showing the interests of the Depository System Participants in the Certificates, and by surrendering the Certificates, registered in the name of the Nominee (initially Cede & Co., as Nominee of DTC), to the Trustee on or before the date such replacement Certificates are to be executed and delivered. If, prior to the termination of the Depository acting as such, the District fails to identify another Securities Depository to replace the Depository, then the Certificates shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Certificates shall designate, in accordance with the provisions hereof.

---

\* Preliminary; subject to adjustment.

The registration of any Certificate may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by duly authorized attorney, upon surrender of such Certificate for cancellation at the office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, manually executed. Whenever any Certificate or Certificates is surrendered for registration of transfer, the Trustee shall execute and deliver a new Certificate or Certificates representing the same maturity, interest rate and aggregate principal amount, in any authorized denominations. The District shall pay all costs of the Trustee incurred in connection with any such transfer, except that the Trustee may require the payment by the Certificate Owner of any tax or other governmental charge required to be paid with respect to such transfer.

Certificates may be exchanged at the office of the Trustee, for a like aggregate principal amount of Certificates representing other authorized denominations of the same interest rate and maturity. The District shall pay all costs of the Trustee incurred in connection with any such exchange, except that the Trustee shall require the payment by the Certificate Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

Prepayment Provisions

*Optional Prepayment.* The Certificates maturing on or before December 1, 2022, are not subject to prepayment prior to their respective stated maturities. Certificates maturing on or after December 1, 2023, are subject to prepayment prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part, on any date on or after December 1, 2022, at a prepayment price equal to the principal amount of the Certificates called for prepayment plus accrued interest to the date fixed for prepayment, without premium.

[  
*Mandatory Sinking Fund Prepayment.* The Certificates maturing on December 1, 20\_\_\_, (the “Term Certificates”) are subject to prepayment prior to their stated maturity, in part, at random from amounts deposited into the 20\_\_\_ Sinking Account in the following amounts and on the following dates, at the principal amount thereof on the date fixed for prepayment, without premium, but which amounts will be proportionately reduced by the principal amount of all Term Certificates redeemed.

**Mandatory Sinking Fund Account Payments**

December 1	Sinking Fund Amount	December 1	Sinking Fund Amount
------------	---------------------	------------	---------------------

(1) Indicates maturity date of the \$\_\_\_ Term Certificate due December 1, 20\_\_\_ ]

*Extraordinary Prepayment From Net Proceeds of Insurance and Condemnation.* The Certificates are subject to mandatory prepayment, in whole, on any Business Day, or in part on any Interest Payment Date among maturities on a *pro rata* basis and by lot within a maturity, from the Net Proceeds of insurance or eminent domain proceedings credited towards the prepayment of the Lease Payments from net proceeds of insurance or eminent domain, pursuant to the Lease Agreement, at a prepayment price equal to the principal amount to be prepaid, together with accrued interest represented thereby to the date fixed for prepayment, without premium.

*Selection of Certificates for Prepayment.* If less than all outstanding Certificates of any maturity are called for prepayment, the Trustee shall select Certificates of such maturity for prepayment by lot. For the purposes of such selection, Certificates are deemed to be composed of \$5,000 portions, and any such portion may be separately prepaid. The Trustee shall promptly notify the District and the Corporation in writing of the Certificates or portions thereof so selected for prepayment.

*Notice of Prepayment.* [Notice of prepayment will be (i) mailed (first class postage prepaid), or delivered by an acceptable electronic means, by the Trustee, not fewer than 30 nor more than 60 days prior to the prepayment date, to the respective Owners of any Certificates designated for prepayment at their addresses appearing on the Registration Books, and (ii) filed on the same day with the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access (“EMMA”) website.]

Each notice of prepayment will:

- state the prepayment date and prepayment price;
- state the numbers or maturities of the Certificates to be prepaid, if less than all of the then Outstanding Certificates are to be called for prepayment;

- if a Certificate is to be prepaid only in part, identify the portion of the Certificate which is to be prepaid;
- require that such Certificates be surrendered on the prepayment date at the office of the Trustee for prepayment at said prepayment price;
- state that interest represented by the Certificates will not accrue from and after the prepayment date; and
- state that on the prepayment date the principal and premium, if any, represented by each Certificate will become due and payable, together with accrued interest represented thereby to the prepayment date, and that from and after such date interest represented thereby ceases to accrue and be payable.

The Trustee has no liability for any designation of the CUSIP numbers of the Certificates to be prepaid, and neither the failure to identify the CUSIP numbers of the Certificates to be prepaid nor any incorrect designation of such CUSIP numbers will affect the sufficiency of the proceedings for the prepayment of such Certificates or the cessation of accrual of interest represented thereby from and after the date fixed for prepayment.

*Effect of Prepayment.* If, on said date of prepayment, moneys for the prepayment of all the Certificates to be prepaid, together with interest represented thereby to said date of prepayment, shall be held by the Trustee so as to be available therefor on such date of prepayment, then, from and after said date of prepayment, interest represented by the Certificates shall cease to accrue and become payable. All moneys held by the Trustee for the prepayment of Certificates shall be held in trust for the account of the Owners of the Certificates so to be prepaid.

#### DTC Book-Entry Only

*The following information concerning DTC and DTC's book-entry-only system has been provided by DTC for use in securities disclosure documents. Bracketed material may apply only to certain issues. The District takes no responsibility for the accuracy or completeness thereof. There can be no assurance that DTC will abide by its procedures or that such procedures will not be changed from time to time.*

*The following description includes the procedures and record-keeping with respect to beneficial ownership interests in the Certificates payment of principal and interest, other payments with respect to the Certificates to Direct Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interests in such Certificates, notices to beneficial owners and other related transactions by and between DTC, the Participants, and the Beneficial Owners. However, DTC, the Participants, and the Beneficial Owners should not rely on the following information with respect to such matters, but should instead confirm the same with DTC or the Direct Participants, as the case may be.*

DTC will act as securities depository for the Certificates (in this Section, the "Securities"). The Securities 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 Security certificate will be issued for the Securities, in the aggregate principal amount of such issue, and will be 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 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).

Purchases of the Notes under the DTC system must be made by or through Direct Participants, which will receive a credit for the Notes on DTC's records. The ownership interest of each actual purchaser of each Note ("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 Notes 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 Notes, except in the event that use of the book-entry system for the Notes is discontinued.

To facilitate subsequent transfers, all Securities 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 Securities 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 the Notes; DTC's records reflect only the identity of the Direct Participants to whose accounts such Notes 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 Securities may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Notes, such as redemptions, tenders, defaults, and proposed amendments to the security documents. For example, Beneficial Owners of Notes may wish to ascertain that the nominee holding the Notes 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 Paying Agent and request that copies of the notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Securities unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to 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 Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Securities 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 Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Direct and Indirect 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 Direct or Indirect Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or Agent, 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 Securities at any time by giving reasonable notice to the Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

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

Sources and Uses of Funds

The proceeds from the sale of the Certificates, along with available moneys from the 2002 Certificates including cash held in a debt service reserve fund and a lease payment fund, will be paid a) to \_\_\_\_ for the purchase of the municipal bond insurance premium and debt service reserve insurance policy premium and b) to the Trustee who will transfer or deposit such proceeds:

- into a fund established with the Trustee to pay the costs of issuance of the Certificates (the "Costs of Issuance Fund");
- into a fund established with the Trustee to refund the 2002 Certificates (the "Escrow Fund").

Moneys in the funds will be invested in any one or more investments generally permitted to school districts under the laws of the State of California and will be applied solely as described above. Interest earned on the investment of the moneys in the Escrow Fund and Costs of Issuance Fund will be retained within the respective fund.

The sources and uses of funds in connection with the sale and delivery of the Certificates are set forth in the following schedule.

**Sources and Uses of Funds  
2012 Refunding Certificates of Participation**

---

SOURCES OF FUNDS

Par Amount of the Certificates  
 Original Issue Premium / (Discount)  
 Available Amount from 2002 Certificates

TOTAL SOURCES OF FUNDS \_\_\_\_\_

USES OF FUNDS

Escrow Fund  
 Costs of Issuance<sup>1</sup>  
 Underwriting Discount

TOTAL USES OF FUNDS \_\_\_\_\_

<sup>1</sup> This figure includes the fees and expenses of special counsel, financial advisor, rating agency and other costs.

Lease Payments

The Trustee will establish a special fund designated as the "Lease Payment Fund." The Lease Agreement requires that Lease Payments be deposited in the Lease Payment Fund maintained by the Trustee. All moneys at any time deposited by the Trustee in the Lease Payment Fund are held by the Trustee in trust for the benefit of the District and the Owners of the Certificates. So long as any Certificates are outstanding, neither the District nor the Corporation has any beneficial right or interest in the Lease Payment Fund, or the moneys deposited therein, except only as provided in the Trust Agreement.

Lease Payments are required to be made by the District under the Lease Agreement on or before May 15 and November 15 of each year the Certificates are outstanding, commencing on May 15, 2013, for the use and possession of the Facilities. On each Payment Date, the Trustee will withdraw from the Lease Payment Fund the aggregate amount necessary to make annual principal and/or semi-annual interest payments with respect to the Certificates, as shown in the following table of the Payments Schedule.

**Payments Schedule\***  
**2012 Refunding Certificates of Participation**

Date	Principal Amount	Interest	Semi-Annual Debt Service
June 1, 2013	[to come]		
December 1, 2013			
June 1, 2014			
December 1, 2014			
June 1, 2015			
December 1, 2015			
June 1, 2016			
December 1, 2016			
June 1, 2017			
December 1, 2017			
June 1, 2018			
December 1, 2018			
June 1, 2019			
December 1, 2019			
June 1, 2020			
December 1, 2020			
June 1, 2021			
December 1, 2021			
June 1, 2022			
December 1, 2022			
June 1, 2023			
December 1, 2023			
June 1, 2024			
December 1, 2024			
June 1, 2025			
December 1, 2025			
Total			

\* Preliminary; subject to adjustment.

Upon issuance of the Certificates and without regard to optional prepayment, scheduled debt service on the District's outstanding certificates of participation is shown in the following table. See "DISTRICT FINANCIAL INFORMATION – Long Term Borrowings" for more information on the District's outstanding debt.

### Outstanding Certificates of Participation Capistrano Unified School District

---

<u>Fiscal Year</u>	<u>2002 Certificates of Participation</u>	<u>2012 Refunding Certificates of Participation</u>	<u>Combined Debt Service</u>
2012 - 13	[to come]		
2013 - 14	--		
2014 - 15	--		
2015 - 16	--		
2016 - 17	--		
2017 - 18	--		
2018 - 19	--		
2019 - 20	--		
2020 - 21	--		
2021 - 22	--		
2022 - 23	--		
2023 - 24	--		
2024 - 25	--		
2025 - 26	--		
2026 - 27	--		
2027 - 28	--		
2028 - 29	--		
2029 - 30	--		
2030 - 31	--		
2031 - 32	--	--	
2032 - 33	--	--	
2033 - 34	--	--	
2034 - 35	--	--	
2035 - 36	--	--	
2036 - 37	--	--	
2037 - 38	--	--	
2038 - 39	--	--	

---

#### Sources of Payment for the Certificates

Each Certificate represents proportionate interest in the Lease Payments to be made by the District to the Corporation. The Corporation, pursuant to the Trust Agreement, will assign its rights under the Lease Agreement to the Trustee for the benefit of the Owners, including its right to receive Lease Payments thereunder and its right to exercise such rights and remedies as may be necessary to enforce Lease Payments when due or otherwise to protect its interests if an Event of Default (as defined in the Lease Agreement) occurs. Principal and interest with respect to the Certificates when due will be made from Lease Payments payable by the District for the use and occupancy of the Facilities, rental interruption insurance proceeds, if any, insurance net proceeds pertaining to the Facilities to the extent that such net proceeds are not used for repair or replacement, and from money in the Certificate Reserve Fund.

The District has covenanted under the Lease Agreement to take such action as may be necessary to include all Lease Payments and any Additional Payments due under the Lease Agreement in its annual budget and to make the necessary annual appropriations therefor. The Lease Agreement requires that the District furnish annually to the Trustee a certificate stating that all

Lease Payments and Additional Payments for the applicable fiscal year have been included in its annual budget. Such covenants are deemed in the Lease Agreement to be duties imposed by law and the ministerial duty of each and every public official of the District.

The amount of Lease Payments due under the Lease Agreement will be abated during any period in which by reason of damage, destruction, eminent domain, material title defect or otherwise there is substantial interference with the use and occupancy of the Facilities or any portion thereof by the District. If abatement occurs, the amount of abatement will be such that the resulting Lease Payments and Additional Payments represent fair consideration for use of that portion of the Facilities that is available for use. See "SPECIAL RISK FACTORS – Abatement" herein. The abated Lease Payments will be payable solely from moneys deposited in the Certificate Reserve Fund, Lease Payment Fund, or from the proceeds of rental interruption insurance, if any. See "APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—FACILITIES LEASE—Abatement of Rental" herein. If the Lease Payments remain abated and the rental interruption insurance is exhausted and the Certificate Reserve Fund is depleted, the diminished Lease Payments, if any, may not be sufficient to pay the principal and interest with respect to the Certificates when due. See "SPECIAL RISK FACTORS" herein. The failure to make such payments of principal and interest with respect to the Certificates due to such abatement does not constitute an Event of Default under the Trust Agreement, the Lease Agreement or the Certificates.

The obligation of the District to make Lease Payments does not constitute an obligation for which the District is obligated to pledge any tax revenues. Neither the Certificates nor the obligation of the District to make Lease Payments constitutes an indebtedness of the District, the Corporation, the State or any of its political subdivisions within the meaning of the Constitution of the State or otherwise or a pledge of the full faith and credit of the District.

The District is obligated under the Lease Agreement to pay Lease Payments from any source of legally available funds (subject to the exceptions under which the Lease Payments may be abated; see "SPECIAL RISK FACTORS—Abatement") from within the unrestricted moneys of the General Fund of the District. The General Fund finances the legally authorized activities of the District not provided for by other funds of the District that are restricted to the specific purposes for which those moneys were received. The District has covenanted in the Lease Agreement that, for as long as the Facilities are available for its use, it will make the necessary annual appropriations within its budget for all Lease Payments.

Although not pledged for repayment, in addition to other legally available unrestricted revenues, the District intends to use (i) tax increment revenues from the San Juan Capistrano Community Redevelopment Agency, (ii) tax increment revenues from the Mission Viejo Community Redevelopment Agency and (iii) community facilities district special tax revenues to pay a portion of the Lease Payments. The District currently uses these revenues to pay debt service on its 2002 Certificates as well as other ongoing capital expenditures.

#### Certificate Reserve Fund

The Trust Agreement provides that a Certificate Reserve Fund be funded in an amount equal to the least of (i) maximum annual Lease Payments, (ii) 125% of average annual Lease Payments or (iii) 10% of the principal amount of the Certificates (the "Reserve Requirement") from proceeds of the sale of the Certificates or cash deposited by the District. *In lieu* of a cash funded reserve, the District can purchase a debt service reserve insurance policy in the amount required thereunder in favor of the Trustee. In the event of insufficient funds in the Lease Payment Fund from which to make principal and/or interest payments to the Owners of the Certificates as due on an Interest Payment Date, the Trustee will draw first on the debt service reserve insurance policy or Certificate Reserve Fund, to the extent available therefrom, to obtain sufficient funds to pay principal and/or interest as due to the Owners of the Certificates.

The Certificate Reserve Fund will be funded with a debt service reserve insurance policy issued by \_\_\_\_\_ (the "Reserve Policy") upon the closing of the Certificates. See "APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—TRUST AGREEMENT—Establishment of Funds and Accounts—Funding and Application of Certificate Reserve Fund" herein.

## BOND INSURANCE

#### Bond Insurance Policy

[to come]

## THE FACILITIES

### The Facilities Subject to Site Lease and Lease Agreement

The Facilities to be leased to the Corporation from the District by way of the Site Lease and leased back to the District from the Corporation by way of the Lease Agreement consist of the real property (the legal description of which is included in the Lease Agreement) and the improvements located thereon at Capistrano Valley High School, located at 26301 Via Escolar, Mission Viejo, California 92692. The District is the owner in fee of the real property on which the Facilities are located. During the period the Certificates are outstanding, the District will retain title to the Facilities and all structural additions thereto and the Corporation will have a leasehold estate in the Facilities.

Capistrano Valley High School provides public education to students in grades nine through twelve and serves the South Orange County cities of Mission Viejo and San Juan Capistrano. Capistrano Valley High School has 112 classrooms, including 2 general purpose computer labs, a multipurpose open mall area, a library, two gymnasiums, an Aquatics Center featuring a fifty-meter pool, a food court, and an administration building. The main campus was built in 1977. Additional school wings were added in 1983. Currently, the school has plans to begin construction on a new performing arts building, which is expected to be completed in fiscal year 2012-13.

The Facilities have an insured value, exclusive of the value of the land, of \$\_\_\_\_\_ in fiscal year \_\_\_\_.

## PLAN OF REFUNDING

A portion of the proceeds from the sale of the Certificates, together with funds available from the 2002 Certificates including cash held in a debt service reserve fund and certain funds on hand of the District that is available to pay debt service on the 2002 Certificates, will be deposited in the Escrow Fund to be created and maintained by U.S. Bank National Association as Escrow Agent. Moneys in the Escrow Fund will be held as cash, uninvested.

Moneys deposited in the Escrow Fund, will be sufficient to i) pay on December 1, 2012 the interest and principal due on the 2002 Certificates, and ii) prepay on December 1, 2012, the principal amount of the 2002 Certificates maturing on or after December 1, 2013. Any moneys remaining in the Escrow Fund after prepayment of the 2002 Certificates shall be deposited by the Trustee in the Lease Payment Fund.

## SPECIAL RISK FACTORS

*The following factors, which represent major risk factors that have been identified at this time, should be considered along with all other information in this Official Statement by potential investors in evaluating the credit quality of the Certificates. There can be no assurance that other major risk factors do not exist or will not become evident at any future time regarding the credit quality of the Certificates. Furthermore, no representations are made as to the future financial condition of the District. Payment of the Lease Payments is a General Fund obligation of the District and the ability of the District to make Lease Payments may be adversely affected by its financial condition as of any particular time.*

### Payments Not District Debt

The full faith and credit of the District, the State and other political subdivisions thereof have not been pledged to the payment of the Lease Payments or any other payments due under the Lease Agreement. The District is not obligated to levy any form of taxation to pay Lease Payments. Neither Lease Payments nor the Certificates constitute a debt of the District, the State of California, or any other political subdivision thereof.

The District is obligated under the Lease Agreement to pay Lease Payments from any source of legally available funds (subject to the exceptions under which the Lease Payments may be abated; see “SPECIAL RISK FACTORS—Abatement”) from within the unrestricted moneys of the General Fund of the District. The General Fund finances the legally authorized activities of the District not provided for by other funds of the District that are restricted to the specific purposes for which those moneys were received. The District has covenanted in the Lease Agreement that, for as long as the Facilities are available for its use, it will make the necessary annual appropriations within its budget for all Lease Payments.

A significant source of unrestricted revenue for the District consists of revenues it receives from the State. This State revenue is utilized by the District in its normal course of operation, including the discharging of obligations, such as will be the case for the payment of Lease Payments. As a result of the District’s dependence upon the State for the majority of its funding, District revenues in any and all future years during which the Certificates will be outstanding may be adversely affected by the financial condition of the State. For a discussion of the State’s financial condition and the funding of education in California see “STATE FUNDING OF PUBLIC EDUCATION” herein.

#### Abatement

If damage or destruction or eminent domain proceedings or material title defect with respect to the Facilities results in abatement or adjustment of Lease Payments and the resulting Lease Payments, together with moneys in the Certificate Reserve Fund (and in the event of damage or destruction to the Facilities, together with rental interruption or title insurance proceeds, see “APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—FACILITIES LEASE—Insurance” herein), are insufficient to make all payments of principal and interest due with respect to the Certificates during the period that the Facilities are being replaced, repaired or reconstructed, then such payments of principal and interest due with respect to the Certificates may not be made and no remedy is available to the Trustee or the Owners under the Lease Agreement or Trust Agreement for nonpayment under such circumstances.

The District will have in place at the time of closing of the sale of the Certificates a policy of rental abatement insurance that will cover up to two years of Lease Payments. If reconstruction or replacement of the Facilities takes longer than two years and the Certificate Reserve Fund is depleted, then the Certificate Owners would not receive payments on their Certificates as scheduled. However, if rental is abated, the term of the Lease Agreement will be extended for a period equal to the period of the abatement, or until all payments on the Certificates are made.

#### No Earthquake Insurance Coverage

The District is not obligated under the Lease Agreement to procure and maintain, or cause to be procured and maintained, earthquake insurance on the Facilities for the duration of the Lease Agreement term. Should an earthquake cause damage to the Facilities such that there results substantial interference with the use and occupancy of the Facilities, Lease Payments would be abated but the policy of rental interruption insurance would not cover the abatement. See “APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—FACILITIES LEASE” herein and “SPECIAL RISK FACTORS” above for a discussion of the abatement provisions. The District would, however, promptly apply for Federal disaster aid or State of California disaster aid in the event that the Facilities are damaged or destroyed as a result of an earthquake. Any money received as a result of such disaster aid will be used to repair, reconstruct, restore or replace the damaged or destroyed portions of the Facilities or, at the option of the District, to prepay all Outstanding Certificates if such use of such disaster aid is permitted. See “THE CERTIFICATES—Prepayment Provisions” herein.

#### No Acceleration Upon Default

In the event of a Default, as defined in the Lease Agreement (see “APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—FACILITIES LEASE” herein), there is no available remedy of acceleration of the total Lease Payments due over the term of the Lease Agreement. The District will only be liable for Lease Payments on an annual basis, and the Trustee would be required to seek a separate judgment each year for that year’s Lease Payments. Any such suit for money damages would be subject to limitations on legal remedies against school districts in California, including a limitation on enforcement of judgments against funds needed to serve the public welfare and interest.

### Enforcement of Remedies

The enforcement of any remedies provided in the Lease Agreement (see “APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—FACILITIES LEASE” herein) and the Trust Agreement (see “APPENDIX A—SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—TRUST AGREEMENT” herein) could prove both expensive and time consuming. In addition to the limitation on remedies contained in the Lease Agreement and the Trust Agreement, the rights and remedies provided in the Lease Agreement and the Trust Agreement may be limited by and are subject to provisions of federal bankruptcy laws, as now or hereafter enacted, and to other laws or equitable principles that may affect the enforcement of creditors’ rights. The legal opinion to be delivered concurrently with the delivery of the Certificates will be qualified, as to the enforceability of the Trust Agreement, the Lease Agreement and other related documents, by bankruptcy, reorganization, moratorium, insolvency or other similar laws affecting the enforcement of creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitation on legal remedies against public agencies in the State of California.

The District is a unit of State government and therefore is not subject to the involuntary procedures of the United States Bankruptcy Code (the “Bankruptcy Code”). However, pursuant to Chapter 9 of the Bankruptcy Code, the District may seek voluntary protection from its creditors for purposes of adjusting its debts.

In the event the District were to become a debtor under the Bankruptcy Code, the District would be entitled to all of the protective provisions of the Bankruptcy Code as applicable in a Chapter 9 proceeding and an Owner would be treated as a creditor in a municipal bankruptcy. Among the adverse effects of such a bankruptcy would be: (i) the application of the automatic stay provisions of the Bankruptcy Code, which, until relief is granted, would prevent collection of payments from the District or the commencement of any judicial or other action for the purpose of recovering or collecting a claim against the District; (ii) the avoidance of preferential transfers occurring during the relevant period prior to the filing of a bankruptcy petition; (iii) the incurrence of unsecured or court-approved secured debt which may have a priority of payment superior to that of secured debt which may have a priority of payment superior to that of Owners; and (iv) the possibility of the adoption of a plan for the adjustment of the District's debt (a “Plan”) without the consent of all of the Owners, which Plan may restructure, delay, compromise or reduce the amount of the claim of the Owners if the Bankruptcy Court finds that the Plan is fair and equitable. In addition, the Bankruptcy Code would invalidate any provision of the Certificates which makes the bankruptcy or insolvency of the District an Event of Default. With the exception of the provisions contained in the Plan, a Bankruptcy Court could not impose restrictions on the District's power or its property without the consent of the District.

### Loss of Tax Exemption

The District has covenanted to comply with restrictions under the Internal Revenue Code of 1986, as amended, (the “Code”) (relating to use of Certificate proceeds, Certificate Reserve Fund funding requirements, investment yield limitations, rebate requirements, federal guarantee prohibitions and registration requirements) so that interest paid with respect to the Certificates is excludable from gross income for federal income tax purposes. However, in the event the District fails to comply with any of these covenants, interest paid with respect to the Certificates would be includable in gross income for federal income tax purposes, possibly retroactive to the date of Certificate delivery.

## THE DISTRICT

### General Information

Founded in 1965, the District encompasses 195 square miles in seven cities and a portion of the unincorporated area of the County. The District includes all or part of the cities of San Clemente, Dana Point, San Juan Capistrano, Laguna Niguel, Aliso Viejo, Mission Viejo and Rancho Santa Margarita, and the communities of Las Flores, Coto de Caza, Dove Canyon, Ladera Ranch, and Wagon Wheel.

The District provides public education within the boundaries of its jurisdiction for kindergarten through 12<sup>th</sup> grade in 55 campuses. Additionally, there are five charter schools operating within the District. See “THE DISTRICT – Charter Schools.”



The Board of Trustees and Key Administrative Personnel

The Board governs all activities related to public education within the jurisdiction of the District. The Board consists of seven members who are publicly elected from within the boundaries of the District according to specific area. Each Board member is elected by the public for a four-year term of office and elections for the Board are staggered every two years. The Board has the decision-making authority and is accountable for all fiscal matters relating to the District.

The current members of the Board are set forth in the following table.

**Board of Trustees  
Capistrano Unified School District**

---

<u>Name</u>	<u>Title</u>	<u>Term Expires</u>
Dr. Gary Pritchard	President	_____ 2012
John M. Alpay	Vice President	_____ 2012
Lynn Hatton	Clerk	_____ 2014
Ellen M. Addonizio	Member	_____ 2014
Jack T. Brick	Member	_____ 2012
Anna Bryson	Member	_____ 2014
Sue Palazzo	Member	_____ 2012

---

The Superintendent of the District is appointed by the Board and reports to the Board. The Superintendent is responsible for managing the District's day-to-day operations and supervising the work of other key District administrators. Key members of the District's staff are set forth on page 'iii' of this Official Statement.

Average Daily Attendance

Student enrollment of a public school district in California determines to a large extent what the school district will receive in terms of funding for program, facilities and staff needs. Average daily attendance ("ADA") is a measurement of the number of students attending class within the District. The purpose of attendance accounting from a fiscal standpoint is to provide the basis on which apportionments of State funds are made to school districts. See "STATE FUNDING OF PUBLIC EDUCATION" herein.

Student enrollment determines to a large extent what a California public school district receives in funding for program, facilities and staff needs. Average daily attendance ("ADA") is calculated based on the percentage of time a student attends school between the start of school and the second period attendance reporting date, or "P-2". The P-2 date is the last day of the last full attendance month concluding prior to April 15. The purpose of attendance accounting from a fiscal standpoint is to provide the basis on which apportionments of state funds are made to school districts. See "STATE FUNDING OF PUBLIC EDUCATION" herein.

Enrollment can fluctuate due to factors such as population growth, competition from private, parochial, and public charter schools, inter-district transfers in or out, and other causes. Losses in enrollment will cause a school district to lose operating revenues, without necessarily permitting the District to make adjustments in fixed operating costs.

{The remainder of this page intentionally left blank}

Set forth below is the P-2 ADA for the District for previous four fiscal years, and budgeted P-2 ADA for the current fiscal year, excluding adult education and charter school ADA.

**Average Daily Attendance  
Capistrano Unified School District**

	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13*</u>
Period 2 ADA	49,733	49,828	49,375	49,267	49,272

\*Budgeted.

Charter Schools

There are five charter schools operating within the District; their financial activities are not presented in the District's financial statements. Set forth in the following table are the grade levels and ADA information for each charter school.

**Charter Schools  
Capistrano Unified School District**

<u>School</u>	<u>Grades</u>	<u>Total ADA</u>	<u>ADA from District*</u>
Capistrano Connections Academy Charter	K-12	_____	_____
Community Roots Academy	K-5	_____	_____
Journey Charter School	K-8	_____	_____
Opportunities for Learning Charter	7-12	_____	_____
Oxford Preparatory Academy Charter School	K-8	_____	_____

\*The approximate ADA of students residing within the District.

To the extent charter schools draw students from District schools and reduce District enrollment, charter schools can adversely affect District revenues. However, certain per-pupil expenditures of the District also decrease based upon the number of students enrolled in charter schools. Pursuant to Proposition 39, school districts are required to provide facilities comparable to those provided to regular District students for charter schools having a projected average daily attendance of at least 80 or more students from that district.

Employee Relations

California law provides that employees of public school districts of the State are to be divided into appropriate bargaining units which then are to be represented by an exclusive bargaining agent. The District has three recognized bargaining units that represent its non-management employees: Capistrano Unified Education Association represents the members of the District's certificated teaching staff, California School Employees Association Chapter 224 is the exclusive bargaining agent for classified non-management employees and Teamsters Local 952.

[The remainder of this page intentionally left blank.]

Set forth in the following table are the District's bargaining units, number of budgeted employees by full-time equivalents ("FTEs"), and contract status in fiscal year 2012-13.

**Bargaining Units, Number of Employees and Contract Status  
Capistrano Unified School District**

<u>CERTIFICATED</u>	<u># OF FTEs</u>	<u>STATUS</u>
Capistrano Unified Education Association	—	_____ for fiscal year 2012-13.
<u>CLASSIFIED</u>	<u># OF FTEs</u>	<u>STATUS</u>
California School Employees Association Chapter 224	—	_____ for fiscal year 2012-13.
Teamsters Local 952	—	_____ for fiscal year 2012-13.

The District also has \_\_\_ FTEs managerial, supervisory and other confidential employees who are not part of a bargaining unit.

Pension Plans

All full-time employees of the District are eligible to participate under defined benefit retirement plans maintained by agencies of the State. Certificated employees are eligible to participate in the cost-sharing multiple-employer State Teachers' Retirement System ("STRS"). Classified employees are eligible to participate in the agent multiple-employer Public Employees' Retirement Fund of the Public Employees' Retirement System ("PERS"), which acts as a common investment and administrative agent for participating public entities within the State.

STRS operates under the State of California Education Code sections commonly known as the State Teachers' Retirement Law. Membership is mandatory for all certificated employees of California public schools meeting the eligibility requirements. STRS provides retirement, disability and death benefits based on an employee's years of service, age and final compensation. Employees vest after five years of service and may receive retirement benefits at age fifty-five. Active plan members are required to contribute 8.0% of their salary and the District is required to contribute an actuarially determined rate (8.25% in 2010-11). The District's contribution to STRS was \$15,953,953 for fiscal year 2010-11, was \$16,198,426 (unaudited) for fiscal year 2011-12, and is budgeted to be \$13,688,786 for fiscal year 2012-13.

All full-time classified employees of the District participate in PERS, which provides retirement, disability and death benefits based on an employee's years of service, age and final compensation. Employees vest after five years of service and may receive retirement benefits at age fifty. These benefit provisions and all other requirements are established by State statute and District resolution. Active plan members are required to contribute 7.0% of their salary and the District is required to contribute an actuarially determined rate (10.707% in fiscal year 2010-11). The District's contribution to PERS was \$5,441,835 for fiscal year 2010-11, was \$5,594,649 (unaudited) for fiscal year 2011-12, and is budgeted to be \$5,435,985 for fiscal year 2012-13.

For a more complete description of the District's pension plan and annual contribution requirements, see "APPENDIX B" attached hereto.

Other Post-Employment Benefits

In June 2004, the Governmental Accounting Standards Board ("GASB") pronounced Statement No. 45, Accounting and Financial Reporting by Employers for Post Employment Benefits Other Than Pensions. The pronouncement will require public agency employers providing other post-employment benefits ("OPEB") to retirees to recognize and account for the costs for providing these benefits on an accrual basis and provide footnote disclosure on the progress toward funding the benefits. Employees who are eligible to receive OPEB while in retirement must meet specific criteria, i.e., age and years with the District.

The Postemployment Benefit Plan (the Plan) is a single-employer defined benefit healthcare plan administered by the District. The Plan provides medical and dental insurance benefits to eligible retirees and their spouses. Eligible retirees are those individuals who retired on or after attaining the age of 53 for classified retirees or 55 for certificated retirees and have at least 10 years of service with the District. Benefits will continue for these retirees until they reach the age of 65. In fiscal year 2010-11,

membership of the Plan consisted of 300 retirees and beneficiaries currently receiving benefits, 39 terminated Plan members entitled to but not yet receiving benefits, and 3,511 active Plan members.

The contribution requirements of plan members and the District are established and may be amended by the District and the Capistrano Unified Education Association, the California Service Employees Association and unrepresented groups. The required contribution is based on projected pay-as-you-go financing requirements, with an additional amount to prefund benefits as determined annually through the agreements between the District, the employee group. For fiscal year 2010-2011, the District contributed \$2,193,306 to the Plan, all of which was used for current premiums (approximately 71% of total premiums). Plan members receiving benefits contributed \$882,448, or approximately 29% of the total premiums.

The District completed an actuarial study identifying the District's OPEB liability, as of July 1, 2011. The study determined the District's OPEB actuarial accrued liability to be \$49,680,287, all of which was unfunded, and the annual required contribution ("ARC") to be \$6,130,097. The District has not established an irrevocable trust to fund its UAAL. The District's pay-as-you-go contribution in fiscal year 2011-12 was \$2,018,166.

## DISTRICT FINANCIAL INFORMATION

### Accounting Practices

The District accounts for its financial transactions in accordance with the policies and procedures of the California Department of Education's *California School Accounting Manual*. The accounting policies of the District conform to accounting principles generally accepted in the United States of America as prescribed by the Governmental Accounting Standards Board and the American Institute of Certified Public Accountants.

The District's financial statements consist of government-wide statements and fund-based financial statements. Government-wide statements, consisting of a statement of net assets and a statement of activities, report all the assets, liabilities, revenue and expenses of the District and are accounted for using the economic resources measurement focus and accrual basis of accounting. The fund-based financial statements consist of a series of statements that provide information about the District's major and non-major funds. Governmental funds, including the District's General Fund, special revenues funds, capital project funds and debt service funds, are accounted for using the modified accrual basis of accounting. Under the modified accrual basis of accounting, revenues are recognized in the accounting period in which they become measurable and available, while expenditures are recognized in the period in which the liability is incurred, if measurable. Proprietary funds and fiduciary funds are accounted for using the economic resources measurement focus and accrual basis of accounting. See "NOTE 1" in "APPENDIX A" herein for a further discussion of applicable accounting policies.

The District's independent auditor for the year ended June 30, 2011 is Vavrinek, Trine, Day & Co., LLP, Rancho Cucamonga, California. The financial statements of the District as of and for the year ended June 30, 2011, are set forth in "APPENDIX A" attached hereto. The auditor has not performed any subsequent events review or other procedures relative to these audited financial statements since the date of its letter.

### Budget and Financial Reporting Process

The District's General Fund finances the legally authorized activities of the District for which restricted funds are not provided. General Fund revenues are derived from such sources as federal and State school apportionments, taxes, use of money and property, and aid from other governmental agencies.

The District is required by provisions of the State Education Code to maintain a balanced budget each year, where the sum of expenditures plus the ending fund balance cannot exceed revenues plus the carry-over fund balance from the previous year. The State Department of Education imposes a uniform budgeting format for school districts.

The fiscal year for all school districts is July 1 to June 30. The same calendar applies to the budgets of county offices of education, except that their budgets and reports go to the Superintendent of Public Instruction for review. The State budget, too, is extremely important since school districts depend on it for a substantial portion of their revenue. There is a very close timing in the summer between final approval of the State budget, school finance legislation, and the adoption of local district budgets. In

some years, the State budget is not approved by the deadline, which forces school districts to begin the new fiscal year with only estimates of the amount of money they will actually receive.

The school district budgeting process involves continuous planning and evaluation. Within the deadlines, school districts work out their own schedules for considering whether or not to hire or replace staff, negotiating contracts with all employees, reviewing programs, and assessing the need to repair existing or acquire new facilities. Decisions depend on the critical estimates of enrollment, fixed costs, commitments in contracts with employees as well as best guesses about how much money will be available for elementary and secondary education.

The timing of some decisions is forced by legal deadlines. For example, preliminary layoff notices to teachers must be delivered in March, with final notices in May. This necessitates projecting enrollments and determining staffing needs long before a school district will know either its final financial positions for the current year or its income for the next year.

The governing board must submit a budget to the County Superintendent of Schools by July 1, and a publicized opportunity for public participation in the budget process is required by law. There are two options for budget adoption. School districts may adopt their budgets by July 1 and then revise and readopt them by September 8 after a public hearing. Alternatively, school districts may decide, by the previous October 31, to hold public hearings before adopting their budgets by July 1. School districts choosing this option revise their revenues and expenditures after the State budget act is adopted, without a second public hearing. All school districts must perform a criteria and standards review before budget adoption. In addition, those school districts on the alternative schedule for adoption must repeat the review before their revision only if the July 1 budget was disapproved. Legislation requires criteria and standards for stringent review of school districts' finances, focusing primarily on predictions of actual daily attendance, operating deficit, and reserves. The legislation also dictates when and how outside committees, or an appointed trustee in emergency situations, must work with school districts. This oversight is part of an effort to reduce the number of districts in financial trouble and to increase the responsible use of tax dollars.

The county superintendents monitor all school districts' budgets, ongoing financial obligations and multi-year contracts. They have specific powers for recommending actions to revise budgets. They are not, however, authorized to abrogate existing collective bargaining agreements. School districts must review their financial position for the periods ending October 31 and January 31 in order to certify their ability to meet commitments through the rest of the school year.

Each school district is required by the State Education Code to file these two interim reports each year by not later than December 15 and March 15. Each interim report shows fiscal year to date financial operations and the current budget, with any budget amendments made in light of operations and conditions to that point. The county offices of education must then, within 30 days, evaluate the interim reports and forward their comments to the State Department of Education and the State Controller's Office. Included in the report is a certification by the president of the governing board of each school district that classifies the school district according to its ability to meet its financial obligations. The certifications are grouped into three categories: positive certification, which designates that the school district will be able to meet its financial obligations for the remainder of the fiscal year and the following two years; qualified certification, which means that the school district may not be able to meet its financial obligations for the remainder of the fiscal year and following two years if certain events occur; and negative certification, which signifies that the school district will not be able to meet its financial obligations for the remainder of the fiscal year or of the following year. A certification by the governing board may be overridden by the county superintendent. If either the first or second interim report is not positive, the county superintendent may require the district to provide a third interim report by June 1 covering the period ending April 30. If not required, a third interim report is generally not prepared (though may be at the election of the district). The same calendar applies to the budgets of county offices of education, except that their budgets and reports go to the State Superintendent of Public Instruction for review.

The county superintendent must annually present a report to the governing board of the school district and the State Superintendent of Public Instruction regarding the fiscal solvency of any school district with a disapproved budget, qualified interim certification, or negative interim certification, or that is determined at any time to be in a position of fiscal uncertainty, pursuant to Education Code Section 42127.6. Any school district with a qualified or negative certification must allow the county office of education at least ten working days to review and comment on any proposed agreement made between its bargaining units and the school district before it is ratified by the board (or the state administrator). The county superintendent will notify the school district, the county board of education, the governing board and the district superintendent (or the state administrator), and each parent and teacher organization of the school district within those 10 days if, in his or her opinion, the agreement would endanger the fiscal well-being of the school district. Also, pursuant to Education Code Section 42133, a school district that has a qualified or negative certification in any fiscal year may not issue, in that fiscal year or the next succeeding fiscal year, non-voter approved debt unless the county superintendent of schools determines that the repayment of that debt by the school district is probable.

The filing status of the District's interim reports for the past five years appears below.

**Certifications of Interim Financial Reports  
Capistrano Unified School District**

---

<u>Fiscal Year</u>	<u>First Interim</u>	<u>Second Interim</u>
2007-08	Positive	Positive
2008-09	Positive	Positive
2009-10	Qualified	Qualified
2010-11	Positive	Qualified
2011-12	Qualified	Qualified

---

Impact of Reductions in Education Spending by the State

The past few years have seen large funding reductions to school districts across the State due to the State's fiscal crisis and the economic downturn. The District has used its reserves to offset more severe reductions that would have been made during the past few years. The Board has approved various reductions, layoffs and bargaining unit concessions, the effects of which are offset by increasing expenditures such as step and column advancements, utilities, and professional services.

[to come]

Financial Statements

The audited financial statements of the District for the fiscal year ending June 30, 2011, have been included in this Official Statement. See "APPENDIX A" herein. Audited financial statements for all prior fiscal years are on file with the District and available for public inspection during normal business hours; they are also available to prospective investors and or their representatives upon request by contacting the District at the address and telephone number set forth on page "iii" of this Official Statement, or by contacting the District's financial advisor, Government Financial Strategies inc., 1228 N Street, Suite 13, Sacramento, California, 95814-5609, Tel. (916) 444-5100.

The following table summarizes, in thousands of dollars the District's general fund revenue, expenditures and fund balances from fiscal years 2008-09 through 2010-11 (audited actual), 2011-12 (unaudited actual) and 2012-13 (budgeted).

**Historical and Budgeted General Fund Activity  
(In Thousands)  
Capistrano Unified School District**

	2008-09 <u>Audited</u>	2009-10 <u>Audited</u>	2010-11 <u>Audited</u>	2011-12 <u>Unaudited</u>	2012-13 <u>Budget</u>
BEGINNING BALANCE	\$21,844	\$29,118	\$26,561	\$28,833	\$19,349
Adjustments <sup>1</sup>			<u>2,524</u>	<u>(1,386)</u>	
RESTATED BEGINNING BALANCE			\$29,084	\$27,448	
<b>REVENUES</b>					
Revenue Limit Sources	\$282,608	\$249,192	\$262,949	\$257,897	\$235,346
Federal Revenue	38,584	25,323	25,532	30,065	18,269
Other State Revenues	77,945	80,527	82,535	69,567	66,344
Other Local Revenues	<u>9,916</u>	<u>8,485</u>	<u>10,958</u>	<u>8,880</u>	<u>4,246</u>
TOTAL REVENUES	\$409,053	\$363,527	\$381,973	\$366,410	\$324,205
<b>EXPENDITURES</b>					
Certificated Salaries	\$208,877	\$191,132	\$191,238	\$192,444	\$161,145
Classified Salaries	58,276	56,844	55,900	57,023	47,733
Employee Benefits	82,917	82,707	83,526	79,137	75,132
Books and Supplies	11,776	9,299	10,113	8,950	15,039
Services and Other Operating Exp.	27,895	26,570	31,298	28,157	29,831
Capital Outlay	960	20	3,467	460	558
Debt Services	0	805	1,375	0	0
Other Outgo	<u>10,918</u>	<u>8,347</u>	<u>8,811</u>	<u>10,859</u>	<u>9,438</u>
TOTAL EXPENDITURES	\$401,619	\$375,723	\$385,729	\$377,029	\$338,875
FINANCING SOURCES (USES)	(\$160)	\$9,639	\$3,504	\$2,521	\$2,761
NET INCREASE (DECREASE)	\$7,274	(\$2,557)	(\$251)	(\$8,099)	(\$11,909)
ENDING BALANCE	\$29,118	\$26,561	\$28,833	\$19,349	\$7,440

<sup>1</sup> The District implemented *Government Accounting Standard Board Statement No. 54, Fund Balance Reporting and Government Type Definitions* ("GASB 54") during the fiscal year ending June 30, 2011, the effect of which was to reclassify and restate the District's Fund 11 – Adult Education Fund, Fund 14 – Deferred Maintenance Fund, and Fund 20 – Special Reserve Fund for Postemployment Benefits. However, the District's General Fund estimated actuals for fiscal year 2011-12 and budget for the fiscal year 2012-13 do not reflect the implementation of GASB 54.

**Revenues**

The District categorizes its General Fund revenues into four primary sources: revenue limit sources, federal revenues, other state revenues and other local revenues.

*Revenue Limit Sources.* Since fiscal year 1973-74, California school districts have operated under general purpose revenue limits established by the State Legislature. In general, the state revenue limit for a school district is calculated by multiplying a “base revenue limit” per student by the school district’s student enrollment measured in units of ADA. The revenue limit calculations are calculated from the district’s prior-year funding level, as adjusted for a number of factors, such as inflation, special or increased instructional needs and costs, employee retirement costs, especially low enrollment, and increased pupil transportation costs, all designated primarily to provide cost of living increases and to equalize revenues among all California school districts of the same type. Generally, the amount of State funding allocated to each school district is the amount needed to reach that district’s base revenue limit after taking into account certain other revenues, in particular, locally generated property taxes. This is referred to as State “equalization aid.” To the extent local tax revenues increase due to growth in local property assessed valuation, the additional revenue is offset by a decline in the State’s contribution.

The State Education Code itemizes the local revenues that are counted towards the base revenue limit before calculating how much the State must provide in above-described equalization aid. The more local property taxes a district receives, the less State equalization aid it is entitled to; ultimately, a school district whose local property tax revenues exceed its base revenue limit is entitled to receive no State equalization aid, and receives only its special categorical aid. Such districts are known colloquially as “basic aid districts.” Districts that receive some equalization aid may commonly be referred to as “revenue limit districts.” The District is a revenue limit district.

The District’s base revenue limit per unit of ADA was \$6,492.18 in fiscal year 2011-12 (before a deficit factor of 0.79398) and is budgeted to be \$6,704.18 in fiscal year 2012-13 (before a deficit factor of 0.71186).

Revenue limit sources accounted for approximately 68.8% of total General Fund revenues in fiscal year 2010-11, are estimated to be 70.4% of General Fund revenues in fiscal year 2011-12, and are budgeted to be 72.6% of General Fund revenues in fiscal year 2012-13. Funding of the District’s revenue limit is accomplished by a mix of a) local taxes (composed predominantly of property taxes, and including miscellaneous taxes and community redevelopment funds, if any) and b) State apportionments of basic and equalization aid. The majority of the District’s revenue limit funding comes from property taxes; Property taxes are budgeted to be approximately 95.0% of revenue limit sources in fiscal year 2012-13.

*Federal Revenues.* The federal government provides funding for several District programs. These federal revenues, most of which historically have been restricted, were approximately 6.7% of General Fund revenues in fiscal year 2010-11, are estimated to be 8.2% of General Fund revenues in fiscal year 2011-12, and are budgeted to be 5.6% of General Fund revenues in fiscal year 2012-13.

*Other State Revenues.* In addition to apportionment revenues, the State provides funding for several District programs. While the majority of these other State revenues have historically been restricted, the State budget for fiscal year 2011-12 extended spending flexibility through 2014-15 for a variety of categorical programs. These other State revenues were 21.6% of total General Fund revenues in fiscal year 2010-11, are estimated to be 19.0% of General Fund revenues in fiscal year 2011-12, and are budgeted to be 20.5% of General Fund revenues in fiscal year 2012-13. Included in other State revenues are proceeds received from the State from the State Lottery.

*Other Local Revenues.* Revenues from other local sources were approximately 2.9% of total General Fund revenues in fiscal year 2010-11, are estimated to be 2.4% of General Fund revenues in fiscal year 2011-12, and are budgeted to be 1.3% of General Fund revenues in fiscal year 2012-13.

### Expenditures

The largest components of a school district’s general fund expenditures are certificated and classified salaries and employee benefits, as described above. Changes in salary and benefit expenditures from year to year are generally based on changes in staffing levels, negotiated salary increases, and the overall cost of employee benefits. Even with no negotiated salary increases or changes in staffing levels, normal “step and column” advancements on the salary scale result in increased salary expenditures. The District has not budgeted any salary increase for fiscal year 2012-13.

Employee salaries and benefits were 85.7% of general fund revenues in fiscal year 2010-11, are estimated to be 87.2% of general fund expenditures in fiscal year 2011-12 and are budgeted to be 83.8% of general fund expenditures in fiscal year 2012-13.



Short Term Borrowings

The District has in the past issued short-term tax and revenue anticipation notes. Proceeds from the issuance of notes by the District during previous fiscal years have been used to reduce interfund dependency and to provide the District with greater overall efficiency in the management of its funds. In February 2012, the District issue \$12.5 million in tax and revenue anticipation notes, maturing in December 2012, at 2.0% interest rate. The District has never defaulted on any of its short term borrowings.

Long Term Borrowings

The District has made use of various capital and bonded lease arrangements in the past under agreements which provide for title of items and equipment being leased to pass to the District upon expiration of the lease period. The District has promised to annually appropriate the amounts necessary to make all future lease payments from available revenues.

After the issuance of the Certificates, the District will have no other certificates of participation outstanding. Please refer to "APPENDIX B" attached hereto for more details.

The District's current outstanding general obligation bonds are set forth below, all of which are general obligations of the School Facilities District No. 1 ("SFID 1").

**Outstanding General Obligation Bonds  
Capistrano Unified School District**

<u>Authorization</u>	<u>Issue</u>	<u>Final Maturity</u>	<u>Amount Issued</u>	<u>Outstanding as of June 30, 2012</u>	<u>Debt Service in Fiscal Year 2012-13</u>
Election of 1999	SFID 1, Series A	August 2024	\$17,400,000	\$14,090,000	\$1,409,144
Election of 1999	SFID 1, Series B	August 2025	29,999,930	*	2,238,375
Election of 1999	SFID 1, Series C	August 2026	17,600,000	14,990,000	1,251,985

\*Includes accreted interest on the capital appreciation bonds.

Non-Obligatory Debt

Non-obligatory debt relates to debt issuances by the Community Facilities Districts as authorized by the Mello- Roos Community Facilities Act of 1982 as amended, and the Mark-Roos Local Bond Pooling Act of 1985, and are payable from special taxes levied on property within the Community Facilities Districts according to a methodology approved by the voters within the District. Neither the faith and credit nor taxing power of the District is pledged to the payment of the bonds. Reserves have been established from the bond proceeds to meet delinquencies should they occur. If delinquencies occur beyond the amounts held in those reserves, the District has no duty to pay the delinquency out of any available funds of the District. The District acts solely as an agent for those paying taxes levied and the bondholders, and may initiate foreclosure proceedings. Special assessment debt of \$289,262,793 as of June 30, 2011, does not represent debt of the District and, as such, does not appear in the accompanying basic financial statements.

The District has never defaulted on any of its long-term bonded indebtedness.

## TAXATION AND APPROPRIATIONS

### Ad Valorem Property Taxation

Property tax revenues result from the application of the appropriate tax rate to the total assessed value of taxable property in the District. School districts levy property taxes for payment of voter-approved bonds and receive property taxes for general operating purposes as well.

Local property taxation is the responsibility of various county officers. For each school district located in a county, the County Assessor computes the value of locally assessed taxable property. Based on the assessed value of property and the scheduled debt service on outstanding bonds in each year, the County Auditor-Controller computes the rate of tax necessary to pay such debt service, and presents the tax rolls (including rates of tax for all taxing jurisdictions in the county) to the County Board for approval. The County Treasurer-Tax Collector prepares and mails tax bills to taxpayers and collects the taxes. In addition, the County Treasurer-Tax Collector, as ex officio treasurer of each school district located in the County, holds and invests school district funds, including taxes collected for payment of school bonds, and is charged with payment of principal and interest on such bonds when due. Taxes on property in a school district whose boundaries extend into more than one county are administered separately by the county in which the property is located (the District is located solely in Orange County). The State Board of Equalization also assesses certain special classes of property, as described later in this section.

### Assessed Valuation of Property Within the District

All property (real, personal and intangible) is taxable unless an exemption is granted by the State Constitution or United States law. Under the State Constitution, exempt classes of property include household and personal effects, intangible personal property (such as bank accounts, stocks and bonds), business inventories, and property used for religious, hospital, scientific and charitable purposes. The State Legislature may create additional exemptions for personal property, but not for real property. Although most taxable property is assessed by the assessor of the county in which the property is located, some special classes of property are assessed by the State Board of Equalization, as described below under the heading, "State-Assessed Property."

Taxes are levied for each fiscal year on taxable real and personal property assessed as of the preceding January 1, at which time the lien attaches. Under Proposition 13, an amendment to the State Constitution adopted in 1978, the county assessor's valuation of real property is established as shown on the fiscal year 1975 76 tax bill, or, thereafter, as the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred. Assessed value of property may be increased annually to reflect inflation at a rate not to exceed 2% per year, or reduced to reflect a reduction in the consumer price index or comparable data for the area under taxing jurisdiction or in the event of declining property value caused by substantial damage, destruction, market forces or other factors. As a result of these rules, real property that has been owned by the same taxpayer for many years can have an assessed value that is much lower than the market value of the property and of similar properties more recently sold. Likewise, changes in ownership of property and reassessment of such property to market value commonly lead to increases in aggregate assessed value even when the rate of inflation or consumer price index would not permit the full 2% increase on any property that has not changed ownership. See "CONSTITUTIONAL & STATUTORY PROVISIONS AFFECTING DISTRICT REVENUES & EXPENDITURES."

*Appeals of Assessed Valuation.* State law affords an appeal procedure to taxpayers who disagree with the assessed value of their taxable property. Taxpayers may request a reduction in assessment directly from the county assessor, who may grant or refuse the request, and may appeal an assessment directly to the county board of equalization, which rules on appealed assessments whether or not settled by the county assessor. The county assessor is also authorized to reduce the assessed value of any taxable property upon a determination that the market value has declined below the then-current assessment, whether or not appealed by the taxpayer.

The District can make no predictions as to the changes in assessed values that might result from pending or future appeals by taxpayers. Any reduction in aggregate District assessed valuation due to appeals, as with any reduction in assessed valuation due to other causes, will cause the tax rate levied to repay the Bonds to increase accordingly, so that the fixed debt service on the Bonds (and other outstanding bonds) may be paid. Any refund of paid taxes triggered by a successful assessment appeal will be debited by the county treasurer/tax collector against all taxing agencies who received tax revenues, including the District.

*State-Assessed Property.* Under the Constitution, the State Board of Equalization assesses property of State-regulated transportation and communications utilities, including railways, telephone and telegraph companies, and companies transmitting

or selling gas or electricity. The Board of Equalization also is required to assess pipelines, flumes, canals and aqueducts lying within two or more counties. The value of property assessed by the Board of Equalization is allocated by a formula to local jurisdictions in the county, including school districts. Taxation by the local county tax officials is in the same manner as for locally assessed property. Taxes on privately owned railway cars, however, are levied and collected directly by the Board of Equalization. Property used in the generation of electricity by a company that does not also transmit or sell that electricity is taxed locally instead of by the Board of Equalization. Thus, the reorganization of regulated utilities and the transfer of electricity-generating property to non-utility companies, as often occurred under electric power deregulation in California, affects how those assets are assessed, and which local agencies benefit from the property taxes derived. In general, the transfer of State-assessed property located in the District to non-utility companies will increase the assessed value of property in the District, since the property's value will no longer be divided among taxing jurisdictions in the County. The transfer of property located and taxed in the District to a State-assessed utility will have the opposite effect: generally reducing the assessed value in the District, as the value is shared among the other jurisdictions in the County.

Because the District is not a basic aid district, any taxes lost due to a reduction in, or transfer to another jurisdiction of, utility property assessed valuation will be compensated by the State under the State's school financing formula. See "STATE FUNDING OF PUBLIC EDUCATION—Revenue for Public Education" herein.

The District is unable to predict future transfers of State-assessed property in the District and the County, the impact of such transfers on its utility property tax revenues, or whether future legislation or litigation may affect ownership of utility assets, the State's methods of assessing utility property, or the method by which tax revenues of utility property is allocated to local taxing agencies, including the District.

Locally taxed property is classified either as "secured" or "unsecured," and is listed accordingly on separate parts of the assessment roll. The "secured roll" is that part of the assessment roll containing State-assessed property and property (real or personal) for which there is a lien on real property sufficient, in the opinion of the county assessor, to secure payment of the taxes. All other property is "unsecured," and is assessed on the "unsecured roll." Property assessed by the State Board of Equalization is commonly identified for taxation purposes as "utility" property.

Historical Assessed Valuation

Set forth in the table below is the total secured and unsecured historical assessed valuation for the District. Total Secured Assessed Value for the District includes net local secured, secured homeowner exemption and utility values. Total Unsecured Assessed Values for the District includes net local unsecured and unsecured homeowner exemption values.

**Historical Assessed Valuation  
Capistrano Unified School District**

<u>Fiscal Year</u>	<u>Total Secured Assessed Value</u>	<u>Total Unsecured Assessed Value</u>	<u>Total Assessed Value</u>	<u>Percentage Change</u>
2003 - 04	\$43,315,703,288	\$1,296,799,278	\$44,612,502,566	9.7%
2004 - 05	47,853,319,592	1,265,418,113	49,118,737,705	10.1
2005 - 06	53,676,605,472	1,365,703,922	55,042,309,394	12.1
2006 - 07	59,692,696,393	1,522,006,698	61,214,703,091	11.2
2007 - 08	64,775,025,984	1,728,914,249	66,503,940,233	8.6
2008 - 09	66,175,013,529	1,641,233,363	67,816,246,892	2.0
2009 - 10	64,424,729,358	1,619,119,220	66,043,848,578	-2.6
2010 - 11	63,978,946,800	1,576,544,439	65,555,491,239	-0.7
2011 - 12	64,001,022,586	1,530,195,552	65,531,218,138	0.0
2012 - 13	64,706,881,274	1,354,016,730	66,060,898,004	0.8

Source: County of Orange, Office of the Auditor-Controller.

Decline in the housing market in the County in recent years has led to a reduction in home sales prices. As a result, the County Assessor has lowered the assessed value of a number of parcels throughout the District. The County Assessor may further reduce assessed value in future fiscal years.

Alternative Method of Distribution of Tax Levies

As an alternative method of property tax allocation for the County, the County Board approved on September 28, 1993, implementation of the Alternative Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the "Teeter Plan") pursuant to sections 4701 through 4717 of the State's Revenue & Taxation Code. The Teeter Plan guarantees distribution of 100% of the ad valorem taxes and assessments levied to the taxing entities within the County, with the County retaining all penalties and interest affixed upon delinquent properties and redemptions of subsequent collections.

The Treasurer's cash position is protected by a special fund, known as the "Tax Loss Reserve Fund," which accumulates moneys from tax and penalty collections. Amounts exceeding the amount required to be maintained in the tax loss reserve fund may be credited to the County's general fund. Amounts required to be maintained in the tax loss reserve fund may be drawn on to the extent of the amount of uncollected taxes credited to each agency in advance of receipt.

The Teeter Plan is to remain in effect unless the County Board of Supervisors orders its discontinuance or unless, prior to the commencement of any fiscal year of the County (which commences on July 1), the Board of Supervisors receives a petition for its discontinuance from two-thirds of the participating revenue districts in the County. The Board of Supervisors may also, after holding a public hearing on the matter, discontinue the procedures with respect to any tax levying agency or assessment levying agency in the County if the rate of secured tax delinquency in that agency in any year exceeds 3% of the total of all taxes and assessments levied on the secured rolls in that agency.

If the Teeter Plan were discontinued, only those secured property taxes actually collected would be allocated to political subdivisions, including the District. Further, the District's tax revenues would be subject to taxpayer delinquencies, and the District would realize the benefit of interest and penalties collected from delinquent taxpayers, pursuant to law.

Tax Collections and Delinquencies

A school district's share of the 1% countywide tax is based on the actual allocation of property tax revenues to each taxing jurisdiction in the county in fiscal year 1978-79, as adjusted according to a complex web of statutory modifications enacted since that time. Revenues derived from special *ad valorem* taxes for voter-approved indebtedness, including the Bonds, are reserved to the taxing jurisdiction that approved and issued the debt, and may only be used to repay that debt.

The county treasurer-tax collector prepares the property tax bills. Property taxes on the secured roll are due in two installments, on November 1 and February 1 of each fiscal year. If unpaid, such taxes become delinquent on December 10 and April 10, respectively, and a 10% penalty attaches to any delinquent payment. Property on the secured roll with respect to which taxes are delinquent becomes tax defaulted on or about June 30 of the fiscal year. Such property may thereafter be redeemed by payment of a penalty of 1.5% per month to the time of redemption, plus costs and a redemption fee. If taxes are unpaid for a period of five years or more, the property is subject to sale by the Treasurer. Property taxes on the unsecured roll are due as of the January 1 lien date and become delinquent, if unpaid, on August 31. A 10% penalty attaches to delinquent unsecured taxes. If unsecured taxes are unpaid at 5:00 p. m. on October 31, an additional penalty of 1.5% attaches to them on the first day of each month until paid.

The following table shows a recent history of real property tax collections and delinquencies in the District.

**Secured Tax Charges and Delinquencies  
Capistrano Unified School District**

---

<u>Fiscal Year</u>	<u>Secured Tax Charge</u>	<u>Amount Delinquent as of June 30</u>	<u>Percent Delinquent as of June 30</u>
2002-03	2,918,995.22	45,527.05	1.56%
2003-04	3,815,320.67	43,272.44	1.13
2004-05	3,815,328.53	49,808.86	1.31
2005-06	3,823,726.57	56,930.85	1.49
2006-07	3,684,665.42	92,745.17	2.52
2007-08	4,276,669.57	157,716.95	3.69
2008-09	4,175,769.89	175,885.72	4.21
2009-10	4,551,255.75	118,541.01	2.60
2010-11	4,639,836.09	86,829.66	1.87
2011-12	4,643,323.50	75,396.81	1.62

---

Since the County utilizes the Teeter Plan, the District receives 100% of the general taxes and certain special assessments levied.

## Major Taxpayers

The 20 largest taxpayers in the District own property that comprises 4.1% of the total assessed valuation of secured property in the District. These taxpayers, ranked by aggregate assessed value of taxable property, as shown on the 2012-13 secured tax roll, and the amount of each owner's assessed valuation for all taxing jurisdictions within the District, are shown below.

### Major Taxpayers Capistrano Unified School District

<u>Property Owner</u>	<u>2012-13 Primary Land Use</u>	<u>% of Assessed Valuation</u>	<u>Total</u> <sup>1</sup>
1 MMB Management LLC	Single-Family Residential	0.51%	\$325,479,321
2 SHC Laguna Niguel LLC	Commercial	0.33	214,512,977
3 WH MBR LLC	Commercial	0.30	194,045,975
4 OC/SD Holdings LLC	Multi-Family Residential	0.28	177,486,481
5 Regency Laguna LP	Commercial	0.27	170,717,967
6 Mission Viejo Associates	Commercial	0.24	153,201,075
7 Suncal Marblehead LLC	Single-Family Residential	0.20	128,995,507
8 Mission Hospital	Commercial	0.20	128,504,735
9 BRE-FMCA LLC	Multi-Family Residential	0.18	116,976,489
10 Nichols Institute	Commercial	0.18	114,770,341
11 City Lights - Aliso Viejo	Multi-Family Residential	0.17	108,162,157
12 Moritz Associates LLC	Multi-Family Residential	0.17	107,358,306
13 WNG San Clemente 368 LLC	Multi-Family Residential	0.15	95,203,350
14 Mission Viejo Medical LLC	Commercial	0.15	94,538,062
15 Barcelona, LLC	Multi-Family Residential	0.14	92,547,416
16 RREEF America REIT II	Commercial	0.14	92,442,600
17 LV Pacific Point LLC	Single-Family Residential	0.14	87,464,593
18 Monarch Coast I LLC	Single-Family Residential	0.13	84,322,543
19 Sequoia Equities - Alize	Multi-Family Residential	0.11	73,634,882
20 RMV San Juan Watershed	Rural	0.10	66,692,228

Source: California Municipal Statistics, Inc.

<sup>1</sup>2012-13 Local Secured Assessed Valuation: \$64,228,057,003

## Direct and Overlapping Bonded Debt

*The District's statement of direct and overlapping bonded debt, which is set forth below, was prepared by California Municipal Statistics, Inc. It has been included for general information purposes only. The District has not reviewed the statement for completeness or accuracy and makes no representations in connection with the statement.*

Contained within the District's boundaries are numerous overlapping local entities providing public services. These local entities may have outstanding bonds issued in the form of general obligation, lease revenue and special assessment bonds. The first column in the table below names the public agencies, which have outstanding debt as of the date of the report and whose boundaries overlap the District. The second column in the table shows the assessed value of the area of overlap as a percentage of the total assessed value of the overlapping entity identified in the first column. The third column shows the corresponding portion of each overlapping entity's existing debt allocable to property within the District. The total amount of debt for each overlapping entity is not shown in the table.

In addition, property owners within the District may be subject to other special taxes and assessments levied by other taxing authorities which provide services within the District. Such special taxes and assessments are not represented in the statement of direct and overlapping bonded debt.

## Statement of Direct and Overlapping Bonded Debt (As of October 1, 2012) Capistrano Unified School District

2012-13 Assessed Valuation: \$66,060,898.004

<u>DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	<u>% Applicable</u>	<u>Debt 10/1/12</u>
Metropolitan Water District	3.147%	\$ 6,185,271
<b>Capistrano Unified School District School Facilities Improvement District</b>	<b>100.000</b>	<b>42,334,930</b>
Santa Margarita Water District Improvement Districts	14.006-100.000	103,182,805
Moulton-Niguel Water District Improvement Districts	92.394-100.000	26,358,763
South Coast County Water District	62.574	1,533,063
City of San Juan Capistrano	100.000	30,910,000
Orange County Community Facilities Districts	72.862-100.000	329,281,303
Capistrano Unified School District Community Facilities Districts	100.000	264,404,491
Cities and Special District Community Facilities Districts	47.154-100.000	143,838,407
City of San Clemente 1915 Act Bonds	100.000	<u>12,475,000</u>
<b>TOTAL GROSS DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT</b>		<b>\$960,504,033</b>
<u>DIRECT AND OVERLAPPING GENERAL FUND DEBT:</u>		
Orange County General Fund Obligations	15.469%	\$33,215,965
Orange County Pension Obligations	15.469	31,526,943
Orange County Board of Education Certificates of Participation	15.469	2,475,040
Municipal Water District of Orange County Water Facilities Corporation	18.567	1,863,198
<b>Capistrano Unified School District General Fund Obligations</b>	<b>100.000</b>	<b>22,005,000 (1)</b>
City of Mission Viejo Certificates of Participation	58.137	22,536,232
Other City General Fund Obligations	Various	15,042,329
Moulton-Niguel Water District Certificates of Participation	73.512	<u>61,408,249</u>
<b>TOTAL GROSS DIRECT AND OVERLAPPING GENERAL FUND DEBT</b>		<b>\$190,072,956</b>
Less: MWDOC Water Facilities Corporation (100% supported by sublease payments)		1,863,198
City of Mission Viejo supported obligations		<u>13,083,156</u>
<b>TOTAL NET DIRECT AND OVERLAPPING GENERAL FUND DEBT</b>		<b>\$175,126,602</b>
<u>OVERLAPPING TAX INCREMENT DEBT:</u>		
Mission Viejo Community Redevelopment Agency	93.209	\$ 7,217,466
San Juan Capistrano Redevelopment Agency	100.000	<u>21,070,000</u>
<b>TOTAL GROSS OVERLAPPING TAX INCREMENT DEBT</b>		<b>\$28,287,466</b>
Less: Mission Viejo Community Redevelopment Agency supported obligations		<u>7,217,466</u>
<b>TOTAL NET OVERLAPPING TAX INCREMENT DEBT</b>		<b>\$21,070,000</b>
<b>GROSS COMBINED TOTAL DEBT</b>		<b>\$1,178,864,455 (2)</b>
<b>NET COMBINED TOTAL DEBT</b>		<b>\$1,156,700,635</b>

(1) Excludes refunding certificates of participation to be sold.

(2) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and non-bonded capital lease obligations.

Ratios to 2012-13 Assessed Valuation:

<b>Combined Direct Debt (\$42,334,930)</b> .....	<b>0.06%</b>
Total Direct and Overlapping Tax and Assessment Debt.....	1.45%
<b>Combined Direct Debt (\$64,339,930)</b> .....	<b>0.10%</b>
Gross Combined Total Debt .....	1.78%
Net Combined Total Debt.....	1.75%

Ratios to Redevelopment Incremental Valuation (\$1,631,695,471):

Gross Tax Increment Debt.....	1.73%
Net Tax Increment Debt.....	1.29%

---

Source: California Municipal Statistics, Inc.

<sup>1</sup>Excludes certificates of participation to be sold.

<sup>2</sup>Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and tax allocation bonds and non-bonded capital lease obligations.

## COUNTY ECONOMIC PROFILE

*The information in this section concerning the County's economy is provided as supplementary information only. The District encompasses only a portion of the County.*

### General Information

The County is one of 58 counties in the State and is located in the southwestern corner of the State.

Based on data compiled by DataQuick Information Systems, the median sale price of a single-family home in the County was \$449,000 in August 2012, an increase of approximately 6.9% from \$420,000 in August 2011. The median sale price of a single-family home in the City of San Juan Capistrano was \$467,500 in August 2012, an increase of approximately 15.2% from \$406,000 in August 2011.

### Population

The following table displays estimated population data as of January 1<sup>st</sup> for the past two years for the County and the City of San Juan Capistrano.

### Historical Population City of San Juan Capistrano & Orange County

---

	<u>2011</u>	<u>2012</u>
San Juan Capistrano	34,732	35,022
Orange County	3,028,846	3,055,792

---

Source: State Department of Finance



Unemployment

The following table contains a summary of the City of San Juan Capistrano's unemployment data seasonally unadjusted.

**Historical Unemployment  
City of San Juan Capistrano**

---

	<u>Annual 2008</u>	<u>Annual 2009</u>	<u>Annual 2010</u>	<u>Annual 2011</u>	<u>May 2012<sup>1</sup></u>
Total Labor Force	17,900	17,500	17,500	17,700	17,800
# Employed	17,100	16,100	16,000	16,300	16,600
# Unemployed	800	1,400	1,500	1,400	1,200
Unemployment Rate	4.00%	7.80%	8.40%	7.70%	6.80%

---

<sup>1</sup>Preliminary

Source: State Employment Development Department

The following table contains a summary of the County's unemployment data seasonally unadjusted.

**Historical Unemployment  
Orange County**

---

	<u>Annual 2008</u>	<u>Annual 2009</u>	<u>Annual 2010</u>	<u>Annual 2011</u>	<u>May 2012<sup>1</sup></u>
Total Labor Force	1,618,100	1,588,800	1,591,000	1,603,700	1,613,700
# Employed	1,532,800	1,448,200	1,440,400	1,464,400	1,490,000
# Unemployed	85,300	140,600	150,700	139,300	123,700
Unemployment Rate	5.3%	8.8%	9.5%	8.7%	7.70%

---

<sup>1</sup>Preliminary

Source: State Employment Development Department

Major Employers

The following table provides a listing of 25 major employers in the County, listed by number of employees.

**Major Employers  
Orange County**

---

<u>Rank</u>	<u>Company</u>	<u>Employees in County</u>	<u>Operations in the County</u>
1	Walt Disney Co.	22,000	Disneyland Park, Disney California Adventure Park
2	University of California, Irvine	21,291	University California, Irvine, UCI Medical Center
3	St. Joseph Health System	12,048	St. Joseph Health System Headquarters, St. Joseph Hospital
4	Boeing Co.	7,700	Boeing Defense, Space and Security
5	Bank of America Corp.	6,300	Bank of America credit card servicing center, bank branches
5	Yum Brands Inc.	6,300	Taco Bell headquarters; Taco Bell, KFC, Pizza Hut
7	Kaiser Permanente	5,968	Kaiser Permanente hospitals, medical offices, regional offices
8	Target Corp.	5,527	Target stores, distribution center
9	Cedar Fair LP	5,200	Knott's Berry Farm, Knott's Soak City Water Park
10	California State University, Fullerton	5,173	California State University, Fullerton
11	MemorialCare Health System	5,096	MemorialCare Health System headquarters
12	Supervalu Inc.	5,008	Albertsons, Sav-on Pharmacy, distribution centers
13	Hoag Memorial Hospital Presbyterian	4,923	Hoag Memorial Hospital Presbyterian, Hoag Hospital Irvine
14	Wells Fargo & Co.	4,414	Wells Fargo banks, regional offices
15	Kroger Co.	4,200	Ralphs, Food 4 Less
16	Wal-Mart Stores Inc.	4,000	Wal-Mart, Sam's Club stores
17	UnitedHealth Group Inc.	3,800	PacifiCare, UnitedHealthcare
18	Marriot International Inc.	3,720	Marriott Hotels & Resorts, Ritz-Carlton
19	Allergan Inc.	3,700	Corporate headquarters, R&D
19	Edison International	3,700	Southern California Edison, Edison Mission Energy
21	Tenet Healthcare Corp.	3,650	Fountain Valley Regional Hospital, Garden Grove Hospital
22	Costco Wholesale Corp.	3,637	Costco stores
23	CVS Caremark Corp.	3,600	CVS Pharmacy stores
24	AT&T Inc.	3,500	AT&T, AT&T Wireless
24	Home Depot Inc.	3,500	Home Depot stores, regional offices

---

Source: 2012 Orange County Business Journal.

Taxable Sales

Total taxable sales reported during calendar year 2010 in the City of San Juan Capistrano were approximately \$506,064,000, a 3.2% decrease from the total taxable sales of approximately \$522,716,000 reported during calendar year 2009. Data for calendar year 2011 is not yet available.

The number of establishments selling merchandise subject to sales tax and the valuation of taxable transactions in the City of San Juan Capistrano is presented in the following table, rounded to the nearest thousand.

**Taxable Retail Sales  
City of San Juan Capistrano**

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Sales Tax Permits	1,278	1,255	1,262	1,245	1,270
Taxable Sales (000's)	\$750,455	\$712,987	\$607,306	\$522,716	\$506,064

Source: State Board of Equalization

Total taxable sales reported during the calendar year 2010 in the County were approximately \$47,667,179,000, a 4.3% increase from the total taxable sales of approximately \$45,712,784,000 reported during calendar year 2009. Data for calendar year 2011 is not yet available.

The number of establishments selling merchandise subject to sales tax and the valuation of taxable transactions in the County is presented in the following table, rounded to the nearest thousand.

**Taxable Retail Sales  
Orange County**

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Sales Tax Permits	102,539	99,088	97,612	90,231	92,047
Taxable Sales (000's)	\$57,202,747	\$57,293,471	\$53,606,829	\$45,712,784	\$47,667,179

Source: State Board of Equalization

**STATE FUNDING OF PUBLIC EDUCATION**

*The information in this section concerning State funding of public education is provided as supplementary information only, and it should not be inferred from the inclusion of this information in this Official Statement that the principal of or interest on the Bonds is payable from State revenues. The Bonds are payable from the proceeds of an ad valorem tax approved by the voters of the District pursuant to applicable laws and Constitutional requirements and required to be levied by the County in an amount sufficient for the timely payment of principal and interest on the Bonds.*

**Revenue for Public Education**

*Sources of Revenue.* The State's K-12 education system is supported primarily from State revenues, mostly sales and income taxes. The availability of State funds for public education is a function of constitutional provisions affecting school district revenues and expenditures (see "CONSTITUTIONAL & STATUTORY PROVISIONS AFFECTING SCHOOL DISTRICT REVENUES & EXPENDITURES). As a result, changes in State revenues may affect appropriations made by the State to school districts. State revenue sources for school districts are supplemented with local property taxes, federal aid, local miscellaneous funds, and the California State Lottery.

In recent years, approximately 58% of all funds for California K-12 public education came from the State budget, which is required to be proposed by the Governor by January 10 and adopted by June 15 of each year (although the State often is late adopting the budget). Approximately 21% of funding for K-12 education comes from local property taxes. The State Constitution limits property taxes to one percent of the value of property; property taxes may only exceed this limit to repay voter approved debt.

Statewide, approximately 13% of school districts' revenues come from the federal government, and about 6% come from local miscellaneous sources. The latter category includes items such as food sales, money for debt repayment, interest on reserves and, in some cases, more significant sources such as developer fees and parcel taxes. Developer fees are fees that school districts can levy on new residential or commercial development within their boundaries to finance the construction or renovation of school facilities. Many school districts also seek grants or contributions, sometimes channeled through private foundations established to solicit donations from local families and businesses. School districts that still have unused school buildings or sites can lease or sell them for miscellaneous income as well. A significant number of school districts have secured the required two-thirds approval from local voters to levy special taxes on parcels or residences and/or have won voter approval, with either a two-thirds vote or a 55% majority, to sell general obligation bonds or to establish special taxing districts for the construction of schools. Use of such taxes is restricted by law.

The final revenue source for school districts is the California State Lottery. Approved by voters in late 1984, the lottery generates about 1% of total school revenues. Every three months the Lottery Commission calculates 34% of lottery proceeds for all public education institutions, the minimum according to the lottery law. Every K-14 school district receives the same amount of lottery funds per pupil from the State, which may be spent for any instructional purpose, excluding capital projects.

No other source of general purpose revenue is currently permitted for schools. Proposition 13 eliminated the possibility of raising additional *ad valorem* property taxes for general school support, and the courts have declared that fees may not be charged for school-related activities other than for busing services.

*The State Revenue Limit.* The State Revenue Limit was first instituted in 1973-74 to provide a mechanism to calculate the amount of general purpose revenue a school district, community college district or county board of education is entitled to receive from State and local sources. Each school district has its own target amount of funding from State funds and local property taxes per average daily attendance. ADA is the average number of pupils attending school over the year. This target is known as revenue limit, and the funding from this calculation forms the bulk of all school districts' income. The State Legislature usually grants annual cost-of-living adjustments (COLAs) to revenue limits. The exact amount depends on whether the school district is an elementary, high school or a unified school district.

Apportionments for revenue limits are calculated three times a year for each school district, community college district and county board of education. The first calculation is performed for the February 20th First Principal Apportionment (based on Period 1 ADA determined in December), the second calculation for the June 25th Second Principal Apportionment (based on Period 2 ADA determined in April), and the final calculation for the end of the year Annual Apportionment (also based on Period 2 ADA). Calculations are reviewed by the county and submitted to the State Department of Education with respect to school districts and to the Chancellor of the California Community Colleges with respect to community college districts, which, respectively, reviews the calculations for accuracy, calculates the amount of state aid owed to such school district or community college district, as the case may be, and notifies the State Controller of the amount, who then distributes the state aid.

School districts that receive their revenue limit income entirely from property taxes are called "basic aid" school districts. These school districts are permitted to keep all their property tax money (even if it exceeds their revenue limit). As guaranteed in the State Constitution, the State must apportion \$120 per pupil to all school districts. However, the categorical aid (see below) that basic aid school districts receive counts toward this requirement. The District is not a basic aid district.

#### Distribution of Revenue for School Districts

*General Purpose.* The largest part of each school district's revenue funds general operating expenses associated with providing education, including salaries, benefits, supplies, textbooks and regular maintenance. As previously mentioned, the Revenue Limit governs the amount each school district receives. Each school district also receives some State and federal money for special programs, special costs, or categories of children with particular educational needs, called "categorical aid."

*Categorical Aid.* This special support goes into a school district's General Fund, but its expenditure is restricted to the purpose for which it is granted. About seventy-five percent (75%) of the total money generated for education is for general purposes, and about twenty-five percent (25%) is for categorical aid. The complex allocation system is adjusted somewhat by the State Legislature almost every year, with unpredictable effects on individual school districts.

There are a number of major federal and State categorical aid programs. Some allocations come automatically to school districts, while others require an application. Some programs are based on the characteristics of the children or families in a particular school district, such as gifted and talented, non-English speaking, migrant, low income or handicapped students. Other programs

are for specific activities or expenses, such as transportation, textbooks or childcare. Each year a large amount of aid is allocated directly to the State Teachers' Retirement System (STRS) fund. For the past several years, supplemental grants have been directed to equalizing school districts' income from revenue limits plus specific categoricals. Most of the federal funds flow through the California Department of Education, which retains a certain percentage for administration.

In terms of dollars and the number of children served, the largest categorical aid program is special education under the Individuals with Disabilities Education Act. According to court decisions and federal and California law, school districts are responsible for the appropriate education of each handicapped child from age 3 to 21 who lives within their boundaries. The allocations do not cover the cost of educating them. School districts are required to contribute a certain amount of general purpose funds for Special Education, and many spend much more. This is known as "encroachment."

*School Facilities.* Growing enrollments and/or aging facilities require school districts to build or make major renovations to school buildings. The income from developer fees on residential or commercial property is insufficient to fund all facilities costs. General obligation bond moneys issued by a two-thirds voter approval may only be used for purchase or improvement of real property; general obligation bond moneys issued by 55% voter approval (pursuant to Proposition 39) can be used only for construction, rehabilitation, equipping of school facilities, or the acquisition or lease of real property for school facilities. See "CONSTITUTIONAL & STATUTORY PROVISIONS AFFECTING REVENUES & EXPENDITURES" herein. Mello-Roos taxes can be used for this as well as for ongoing maintenance or purchase of needed equipment. A majority of voters has regularly approved state bond measures for the construction or reconstruction of schools.

#### State IOUs and Deferrals

In recent years, fiscal stress and difficulties in achieving a balanced State budget have resulted in actions that include the State issuing IOUs (defined below) to its creditors, and the deferral of school funding.

On July 2, 2009, as a result of declines in State revenues commencing in fiscal year 2008-09, the State Controller began to issue registered warrants (or "IOUs") for certain lower priority State obligations in lieu of warrants (checks) which could be immediately cashed. The registered warrants, the issuance of which did not require the consent of recipients, bore interest. With enactment of an amended budget in late July, 2009, the State was able to call all its outstanding registered warrants for redemption on September 4, 2009. The issuance of state registered warrants in 2009 was only the second time the State has issued state registered warrants to such types of state creditors since the 1930s.

Furthermore, commencing in fiscal year 2008-09, to better manage its cash flow in light of declining revenues, the State has enacted several statutes deferring amounts owed to public schools, until a later date in the fiscal year, or even into the following fiscal year, in order to more closely align the State's revenues with its expenditures. This technique has been used several times through the enactment of budget bills in fiscal years 2008-2009 through 2012-13. Some of these statutory deferrals were made permanent, and others were implemented only for one fiscal year. For fiscal year 2012-13, enacted K-12 inter-year deferrals total \$7.4 billion; however, should a proposed tax initiative to be considered by voters at a November 2012 election fail, inter-year deferrals would increase to \$9.5 billion.

Fiscal stress and cash pressures currently facing the State may continue or become more difficult, and continuing declines in State tax receipts or other results of the current economic recession may materially adversely affect the financial condition of the State.

#### The 2011-12 State Budget

*The information in this section has been compiled from publicly available information through the State Department of Finance and the State Legislative Analyst's Office. Neither the District nor the Underwriter assume any responsibility for the accuracy of such information as set forth or incorporated by reference herein, although they believe that the information provided by the above-listed sources is reliable.*

*Adopted Budget.* On June 30, 2011, the Governor signed into law the 2011-12 State budget (the "2011-12 State Budget"). The 2011-12 State Budget, including previously enacted legislation, closed a projected \$26.6 billion budget gap through \$15.0 billion in expenditure reductions, \$0.9 billion in revenue increases and \$2.9 billion in other solutions, which, combined with an increased State revenue forecast of \$8.3 billion, resulted in a budgeted State general fund reserve of \$543 million at the end of fiscal year 2011-12.

*Funding for K-12 Education.* The 2011-12 State Budget included total funding of \$64.1 billion for all K-12 education programs (\$34.7 billion from the State's general fund and \$29.4 billion from other funds). The 2011-12 State Budget funded the Proposition 98 minimum funding requirement at \$48.7 billion, of which \$32.9 billion was budgeted from the State general fund.

The 2011-12 State Budget included a series of trigger reductions in the event the State's revenues were less than forecast. As part of the second series of such trigger reductions, had State revenues fallen short of projections by more than \$2 billion in fiscal year 2011-12, up to \$1.5 billion in reductions to school district revenue limit funding would have been implemented, with a corresponding reduction to the minimum school year length by seven days. In December 2012, the State announced, based on revised revenue estimates, trigger cuts for K-12 education totaling \$79.6 million.

### The 2012-13 State Budget

*The information in this section has been compiled from publicly available information through the State Department of Finance and the State Legislative Analyst's Office. Neither the District nor the Underwriter assume any responsibility for the accuracy of such information as set forth or incorporated by reference herein, although they believe that the information provided by the above-listed sources is reliable.*

*Adopted Budget.* On June 27, 2012, the Governor signed the fiscal year 2012-13 State budget (the "2012-13 Budget"). The 2012-13 Budget closes a \$15.7 billion budget gap and builds a reserve of nearly \$1 billion with (i) \$8.1 billion in expenditure reductions, (ii) \$6 billion in increased revenues (which assumes the approval by the voters of the Governor's tax initiative, "The Schools and Local Public Safety Protection Act", at a November 2012 election) and (iii) \$2.5 billion from certain loan and transfer measures.

The Schools and Local Public Safety Protection Act proposes to temporarily increase the personal income tax on the State's wealthiest taxpayers for seven years and increase the sales tax by 0.25% for four years. The measure would generate an estimated \$8.5 billion in revenues through fiscal year 2012-13.

The 2012-13 Budget contains the following spending reduction measures:

- Reformation of existing K-14 education mandates claim process by providing a block grant as an alternative. For non-school mandates, provides a multiyear suspension of most mandates to provide greater flexibility to local governments. (\$720 million savings)
- Creation of framework to transfer cash assets previously held by redevelopment agencies to cities, counties, and special districts to fund core public services. Assets transferred to schools will offset State general fund costs. (\$1.5 billion savings)
- Other adjustments including using a fiscal year 2011-12 over-appropriation of the minimum guarantee to prepay Proposition 98 funding required by a court settlement. (\$1.9 million savings)

State general fund revenues (including transfers) are budgeted to be approximately \$95.9 billion in fiscal year 2012-13, an increase of 10.4% from a revised fiscal year 2011-12 State general fund revenues and transfers of \$86.8 billion. State general fund expenditures are budgeted to be \$91.4 billion in fiscal year 2012-13, an increase of 5.0% from a revised \$87.0 billion figure for fiscal year 2011-12.

The following table identifies historical and budgeted State general fund revenues and expenditures.

### State General Fund under the 2012-13 Budget

	2011-12 <u>Revised</u> (Millions)	2012-13 <u>Budgeted</u> (Millions)
Prior-year Fund Balance	(\$2,685)	(\$2,882)
Revenues and Transfers	<u>86,830</u>	<u>95,887</u>
Total Resources Available	84,145	93,005
Expenditures	<u>87,027</u>	<u>91,338</u>
Ending Fund Balances	(\$2,882)	\$1,667
Encumbrances	719	719
Reserve	(3,601)	948

Source: The California Department of Finance

*K-12 Education.* The 2012-13 Budget includes Proposition 98 funding of \$53.6 billion, of which \$36.8 billion is from the State general fund. This funding level assumes passage of The Schools and Local Public Safety Protection Act, which increases Proposition 98 funding by \$2.9 billion in fiscal year 2012-13.

Other significant K-12 funding adjustments include:

- *Redevelopment Agency Asset Liquidation* – An increase of \$1.3 billion in local property taxes for fiscal year 2012-13 to reflect the distribution of cash assets previously held by redevelopment agencies. The increase in local revenue reduces Proposition 98 State general fund contribution by an identical amount.
- *Proposition 98 Adjustments* – A decrease of approximately \$630 million due to (i) eliminating the hold-harmless adjustment provided to schools from the elimination of the sales tax gasoline in 2010-11, and (ii) using a consistent current value methodology to rebench the guarantee for the exclusion of child care programs, the inclusion of special education mental health services, as well as new and existing property tax shifts. Additionally, the 2012-13 Budget reduces current year appropriations for a number of different programs by \$220.1 million, backfilling them with one-time Proposition 98 general fund, which achieves State general fund savings by an identical amount.
- *Quality Education Investment Act* – A decrease of \$450 million State general fund for fiscal year 2012-13. The over-appropriation in fiscal year 2011-12 will be used to repay the \$450 million required to be provided on top of the minimum guarantee in fiscal year 2012-13 pursuant to the *California Teachers Association v. Schwarzenegger* settlement agreement.
- *Deferrals* – An increase of \$2.1 billion Proposition 98 State general fund to reduce K-12 inter-year deferrals to \$7.4 billion.
- *Charter Schools* – An increase of \$53.7 billion Proposition 98 State general fund for charter schools categorical programs to fund growth in enrollment. Additionally, legislation expands the ability of school districts to convey surplus property to charter schools, while also increasing financial assistance by allowing county treasurers to provide them with short-term cash loans, and by authorizing charter schools to utilize temporary revenue anticipation note borrowings.
- *Mandate Block Grant* – An increase of \$86.2 million over the fiscal year 2011-12 funding level to provide a total of \$166.6 million for K-12 mandates through a new voluntary block grant.
- *Child Care Costs* – Savings of \$294.3 million in non-Proposition 98 State general fund through various cost-reduction measures, including reduction of provider contracts across the board and suspension of statutory COLA.

If The Schools and Local Public Safety Protection Act is not approved by voters in November 2012, automatic trigger cuts of approximately \$5.4 billion for K-14 schools would be implemented effective January 1, 2013. Such trigger cuts equate to a reduction in funding of approximately \$457 per ADA. To accommodate this mid-year reduction, school districts are authorized (subject to collective bargaining) to reduce the school year to 160 days for fiscal years 2012-13 and 2013-14, 15 days shorter than the 175 instructional days currently required.

### Litigation Challenging State Funding of Education

On September 28, 2011, the California School Boards Association, the Association of California School Administrators, the Los Angeles Unified School District, the San Francisco Unified School District and the Turlock Unified School District filed a petition for a writ of mandate in the Superior Court of the State of California in and for the City and County of San Francisco (the "CSBA Petition"). The petitioners allege that the 2011-12 Budget improperly diverted sales tax revenues away from the State general fund, resulting in a reduction to the minimum funding guarantee of approximately \$2.1 billion. The CSBA Petition seeks an order from the Court compelling the State Treasurer, Superintendent of Public Instruction and the State Controller to recalculate the minimum funding guarantee in accordance with the provisions of the California Constitution.

The District is not a party to the CSBA Petition. The District cannot predict whether any of the plaintiffs listed in the CSBA Petition will be successful, what the potential remedies would be or the State's response to any such remedies. The District makes no representation with regards to how any final court decision with respect to the CSBA Petition would affect the financial status of the District or the State.

### Future Budgets

The District cannot predict what actions will be taken in the future by the State Legislature and the Governor to address changing State revenues and expenditures or the impact such actions will have on State revenues available in the current or future years for education. The State budget will be affected by national and State economic conditions and other factors over which the District will have no control. Certain actions could result in a significant shortfall of revenue and cash, and could impair the State's ability to fund schools as budgeted. Continued State budget shortfalls in future fiscal years could have an adverse financial impact on the District.

For more information on the State Budget, please refer to the State Department of Finance's website at [www.dof.ca.gov](http://www.dof.ca.gov) and to the Legislative Analyst's Office's website at [www.lao.ca.gov](http://www.lao.ca.gov).

## CONSTITUTIONAL & STATUTORY PROVISIONS AFFECTING DISTRICT REVENUES & EXPENDITURES

### Limitations on Revenues

Article XIII A of the California Constitution. Article XIII A of the State Constitution, adopted and known as Proposition 13, was approved by the voters in June 1978. Section 1(a) of Article XIII A limits the maximum ad valorem tax on real property to one percent of "full cash value," and provides that such tax shall be collected by the counties and apportioned according to State law. Section 1(b) of Article XIII A provides that the one-percent limitation does not apply to ad valorem taxes levied to pay interest and redemption charges on: (i) indebtedness approved by the voters prior to July 1, 1978, or (ii) bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast on the proposition, or (iii) bonded indebtedness incurred by a school district or community college district for the construction, reconstruction, rehabilitation or replacement of school facilities or the acquisition or lease of real property for school facilities, approved by 55% of the voters of the district, but only if certain accountability measures are included in the bond proposition.

Section 2 of Article XIII A defines "full cash value" to mean the county assessor's valuation of real property as shown on the fiscal year 1975-76 tax bill, or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred. The full cash value may be adjusted annually to reflect inflation at a rate not to exceed 2% per year, or to reflect a reduction in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced in the event of declining property value caused by substantial damage, destruction or other factors. The Revenue and Taxation Code permits county assessors who have reduced the assessed valuation of a property as a result of natural disasters, economic downturns or other factors, to subsequently "recapture" such value (up to the pre-decline value of the property) at an annual rate higher than 2%, depending on the assessor's measure of the restored value of the damaged property. The California courts have upheld the constitutionality of this procedure, as described below. Legislation enacted by the State Legislature to implement Article XIII A provides that, notwithstanding any other law, local agencies may not levy any *ad valorem* property tax except the 1% base tax levied by each County and taxes to pay debt service on indebtedness approved by the voters as described above.

Since its adoption, Article XIII A has been amended a number of times. These amendments have created a number of exceptions to the requirement that property be reassessed when purchased, newly constructed or a change in ownership has occurred. These



exceptions include certain transfers of real property between family members, certain purchases of replacement dwellings for persons over age 55 and by property owners whose original property has been destroyed in a declared disaster, and certain improvements to accommodate disabled persons and for seismic upgrades to property. These amendments have resulted in marginal reductions in the property tax revenues of the District.

Both the California State Supreme Court and the United States Supreme Court have upheld the validity of Article XIII A.

Section 51 of the Revenue and Taxation Code permits county assessors who have reduced the assessed valuation of a property as a result of natural disasters, economic downturns or other factors, to subsequently “recapture” such value (up to the pre-decline value of the property) at an annual rate higher than 2%, depending on the assessor’s measure of the restoration of value of the damaged property. The constitutionality of this procedure was challenged in a lawsuit brought in 2001 in the Orange County Superior Court and in similar lawsuits brought in other counties, on the basis that the decrease in assessed value creates a new “base year value” for purposes of Proposition 13 and that subsequent increases in the assessed value of a property by more than 2% in a single year violate Article XIII A. On appeal, the California Court of Appeal upheld the recapture practice in 2004, and the State Supreme Court declined to review the ruling, leaving the recapture law in place. A drop in assessed valuation would not result in any long-term loss of taxes levied to pay the District’s bonds, but would instead cause the County to raise the rate of *ad valorem* taxes to generate revenues sufficient for the payment of principal of and interest on such bonds.

*Article XIIC and Article XIID of the California Constitution.* On November 5, 1996, the voters of the State approved Proposition 218, the so-called “Right to Vote on Taxes Act.” Proposition 218 added Articles XIIC and XIID to the State Constitution, which contain a number of provisions affecting the ability of local agencies, including school districts, to levy and collect both existing and future taxes, assessments, fees and charges. Among other things, Article XIIC establishes that every tax is either a “general tax” (imposed for general governmental purposes) or a “special tax” (imposed for specific purposes); prohibits special purpose government agencies such as school districts from levying general taxes; and prohibits any local agency from imposing, extending or increasing any special tax beyond its maximum authorized rate without a two-thirds vote. Article XIIC also provides that no tax may be assessed on property other than *ad valorem* property taxes imposed in accordance with Articles XIII and XIII A of the California Constitution and special taxes approved by a two-thirds vote under Article XIII A, Section 4.

Article XIIC also provides that the initiative power shall not be limited in matters of reducing or repealing local taxes, assessments, fees and charges. The State Constitution and the laws of the State impose a duty on the county treasurer-tax collector to levy a property tax sufficient to pay debt service on school bonds coming due in each year. The initiative power cannot be used to reduce or repeal the authority and obligation to levy such taxes which are pledged as security for payment of the Bonds or to otherwise interfere with performance of the duty of the District and the County with respect to such taxes. Legislation adopted in 1997 provides that Article XIIC shall not be construed to mean that any owner or beneficial owner of a municipal security assumes the risk of or consents to any initiative measure which would constitute an impairment of contractual rights under the contracts clause of the U.S. Constitution.

Article XIID deals with assessments and property-related fees and charges. Article XIID explicitly provides that nothing in Article XIIC or XIID shall be construed to affect existing laws relating to the imposition of fees or charges as a condition of property development; however it is not clear whether the initiative power is therefore unavailable to repeal or reduce developer and mitigation fees imposed by the District. Developer fees imposed by the District are restricted as to use and are neither pledged nor available to pay the Bonds.

The interpretation and application of Proposition 218 will ultimately be determined by the courts with respect to a number of the matters discussed above, and it is not possible at this time to predict with certainty the outcome of such determination.

#### Expenditures and Appropriations

*Article XIIB of the California Constitution.* In addition to the limits Article XIII A imposes on property taxes that may be collected by local governments, certain other revenues of the State and local governments are subject to an annual “appropriations limit” or “Gann Limit” imposed by Article XIIB of the State Constitution, which effectively limits the amount of such revenues that government entities are permitted to spend. Article XIIB, approved by the voters in June 1979, was modified substantially by Proposition 111 in 1990. The appropriations limit of each government entity applies to “proceeds of taxes,” which consist of tax revenues, state subventions and certain other funds, including proceeds from regulatory licenses, user charges or other fees to the extent that such proceeds exceed “the cost reasonably borne by such entity in providing the regulation, product or service.” “Proceeds of taxes” excludes tax refunds and some benefit payments such as unemployment insurance. No limit is imposed on the appropriation of funds which are not “proceeds of taxes,” such as reasonable user charges or fees, and certain other non-tax funds.

Article XIII B also does not limit appropriation of local revenues to pay debt service on bonds existing or authorized by January 1, 1979, or subsequently authorized by the voters, appropriations required to comply with mandates of courts or the federal government, appropriations for qualified capital outlay projects, and appropriation by the State of revenues derived from any increase in gasoline taxes and motor vehicle weight fees above January 1, 1990, levels. The appropriations limit may also be exceeded in cases of emergency; however, the appropriations limit for the three years following such emergency appropriation must be reduced to the extent by which it was exceeded, unless the emergency arises from civil disturbance or natural disaster declared by the Governor, and the expenditure is approved by two-thirds of the legislative body of the local government.

The State, and each local government entity, has its own appropriations limit. Each year, the limit is adjusted to allow for changes, if any, in the cost of living, the population of the jurisdiction, and any transfer to or from another government entity of financial responsibility for providing services. Each school district is required to establish an appropriations limit each year. In the event that a school district's revenues exceed its spending limit, the district may increase its appropriations limit to equal its spending by taking appropriations limit from the State.

Proposition 111 requires that each agency's actual appropriations be tested against its limit every two years. If the aggregate "proceeds of taxes" for the preceding two-year period exceeds the aggregate limit, the excess must be returned to the agency's taxpayers through tax rate or fee reductions over the following two years. If the State's aggregate "proceeds of taxes" for the preceding two-year period exceeds the aggregate limit, 50% of the excess is transferred to fund the State's contribution to school and college districts.

*Future Initiatives.* Articles XIII A, XIII B, XIII C, and XIII D, and Propositions 98 and 111 were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time, other initiative measures could be adopted, further affecting District revenues or the District's ability to expend revenues.

## LEGAL MATTERS

### No Litigation

There is no action, suit or proceeding known to be pending or threatened that seeks to restrain or enjoin the execution or delivery of the Certificates, the Lease Agreement or the Trust Agreement or in any way contesting or affecting the validity of the foregoing or any proceeding of the District taken with respect to the foregoing. There are no lawsuits or claims pending against the District that would impair the ability of the District to make Lease Payments or otherwise meet its outstanding lease or debt obligations.

### Legal Opinion

Dannis Woliver Kelley, San Diego, California, Special Counsel, will render its opinion with respect to the validity and enforceability of the Lease Agreement, Trust Agreement, and Site Lease. Copies of such approving opinion will be available at the time of delivery of the Certificates. The form of the legal opinion to be delivered by Special Counsel is included as "APPENDIX D—FORM OF OPINION OF SPECIAL COUNSEL" to this Official Statement. The opinion is based on existing laws, regulations, rulings and court decisions. Dannis Woliver Kelley has not undertaken a review of this Official Statement on behalf of Certificate owners and makes no representation as to the accuracy or completeness hereof.

### Tax Matters

In the opinion of Dannis Woliver Kelley, San Diego, California, Special Counsel, subject, however, to the qualifications set forth below, under existing law, the interest evidenced and represented by the Certificates is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. The opinions set forth in the preceding sentence are subject to the condition that the District comply with all requirements of the Code that must be satisfied subsequent to the execution and delivery of the Certificates in order that such interest be, or continue to be, excluded from gross income for federal income tax purposes. The District has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of execution and delivery of the Certificates.

If the initial offering price to the public (excluding bond houses and brokers) at which a Certificate is sold is less than the amount payable at maturity thereof, then such difference constitutes "original issue discount" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public (excluding bond houses and brokers) at which each Certificate is sold is greater than the amount payable at maturity thereof, then such difference constitutes "original issue premium" for purposes of federal income taxes and State of California personal income taxes. De minimis original issue discount and original issue premium is disregarded. Owners of Certificates with original issue discount or original issue premium, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to federal income tax and State of California personal income tax consequences of owning such Certificates.

In the further opinion of Special Counsel, the interest evidenced and represented by the Certificates is exempt from California personal income taxes.

Owners of the Certificates should also be aware that the ownership or disposition of, or the accrual or receipt of interest represented by the Certificates may have federal or state tax consequences other than as described above. Special Counsel expresses no opinion regarding any federal or state tax consequences arising with respect to the Certificates other than as expressly described above.

Special Counsel expects to deliver an opinion at the time of execution and delivery of the Certificates in substantially the same form set forth in "APPENDIX D - FORM OF OPINION OF SPECIAL COUNSEL" hereto.

#### Legality for Investment

Under provisions of the California Financial Code, the Certificates are legal investments for commercial banks in California to the extent that the Certificates, in the informed opinion of the investing bank, are prudent for the investment of funds of depositors. Under provisions of the California Government Code, the Certificates are eligible security deposits of public moneys in California.

#### RATINGS

Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. ("Standard & Poor's"), is expected to assign its municipal bond rating of "\_\_\_" (stable outlook) to the Certificates with the understanding that upon delivery of the Certificates, a municipal bond insurance policy insuring the payment when due of the principal and interest with respect to the Certificates will be issued by \_\_\_. The Certificates have been assigned an underlying rating of "\_\_\_." Such ratings reflects only the views of Standard & Poor's, and an explanation of the significance of such rating may be obtained from Standard & Poor's at the following address: Standard & Poor's Financial Services LLC, 55 Water Street, New York, New York 10041. There is no assurance that any such rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by the rating agency, if in the judgment of the rating agency, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Certificates.

#### FINANCIAL ADVISOR

Government Financial Strategies inc. has been employed by the District to perform financial advisory services in relation to the sale and delivery of the Certificates. Government Financial Strategies inc., in its capacity as Financial Advisor, has read and participated in drafting certain portions of this Official Statement. Government Financial Strategies inc. has not, however, independently verified nor confirmed all of the information contained within this Official Statement. Government Financial Strategies inc. will not participate in the underwriting of the Certificates. Fees charged by Government Financial Strategies inc. are not contingent upon the sale of the Certificates.

## INDEPENDENT AUDITORS

The financial statements of the District as of June 30, 2011 and for the fiscal year then ending, have been audited by Vavrinek, Trine, Day & Co. LLP, Rancho Cucamonga, California (the "Auditor") and are set forth in "APPENDIX A—THE FINANCIAL STATEMENTS OF THE DISTRICT AS OF AND FOR THE YEAR ENDING JUNE 30, 2011" attached hereto. Complete copies of all past and current financial statements may be obtained from the District. The Auditor has not been requested to consent to the inclusion of its report in this Official Statement. The Auditor has not undertaken to update the audited financial statements for fiscal year 2010-11 or its report, and no opinion is expressed by the Auditor with respect to any event subsequent to its report dated December 14, 2011.

## UNDERWRITING AND INITIAL OFFERING PRICES

The Certificates were sold to \_\_\_\_\_ (the "Underwriter"), pursuant to a certificate purchase agreement, for an amount equal to the principal amount of the Certificates of \_\_\_\_\_, plus an original issue premium to the District of \$\_\_\_\_\_, less an underwriter's discount of \$\_\_\_\_\_, for a total purchase price of \$\_\_\_\_\_, at a true interest cost (TIC) to the District of \_\_\_\_\_%.

The Underwriter has certified to the District and to Special Counsel that the initial reoffering prices of the Certificates to the general public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers). The initial offering prices or yields stated on the cover page to this Official Statement may be changed from time to time by the Underwriter. The Underwriter may offer and sell the Certificates to certain dealers (including dealers depositing Certificates into investment trusts), dealer banks, banks acting as agents and others at prices lower or yields higher than said public offering prices or yields.

## CONTINUING DISCLOSURE

The District has covenanted for the benefit of the holders and Beneficial Owners of the Bonds to provide certain financial information and operating data relating to the District (the "Annual Report"), by not later than March 31 of each year, commencing with the report for the 2011-12 fiscal year (which is due no later than March 31, 2013), and to provide notices of the occurrence of certain enumerated events. The Annual Report and any notices of events will be filed by the District with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access system. The specific nature of the information to be contained in the Annual Report or the notices of significant events is summarized in "APPENDIX B—FORM OF CONTINUING DISCLOSURE CERTIFICATE." These covenants have been made in order to assist the Underwriter in complying with S.E.C. Rule 15c2-12(b)(5) (the "Rule").

In connection with prior undertakings under the Rule, the District has \_\_\_\_\_ [to come].

As of the date of this Official Statement, all required filings have been made in connection with prior undertakings.

## ADDITIONAL INFORMATION

Additional information concerning the District, the Certificates or any other matters concerning the sale and delivery of the Certificates may be obtained from the District by contacting the District or by contacting the District's Financial Advisor, Government Financial Strategies inc., at the address and telephone number set forth on page "iii" of this Official Statement.

All of the preceding summaries of the Legal Documents and other documents are made subject to the provisions of such documents respectively, and do not purport to be complete statements of any or all of such provisions. Reference is hereby made to such documents on file with the District for further information in connection therewith. Further, this Official Statement does not constitute a contract with the purchasers of the Certificates, and any statements made in this Official Statement involving

matters of opinion or of estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized.

The execution and delivery of this Official Statement by the District has been duly authorized by its Board.

CAPISTRANO UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_  
Dr. Joseph M. Farley  
Superintendent

[THIS PAGE INTENTIONALLY LEFT BLANK]

APPENDIX A  
SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

[TO COME]



**APPENDIX B**

**THE FINANCIAL STATEMENTS OF THE DISTRICT  
AS OF AND FOR THE YEAR ENDING JUNE 30, 2011**

[TO COME]

APPENDIX C  
FORM OF CONTINUING DISCLOSURE CERTIFICATE

[TO COME]

APPENDIX D  
FORM OF OPINION OF SPECIAL COUNSEL

[TO COME]

APPENDIX E  
SPECIMEN MUNICIPAL BOND INSURANCE POLICY

[TO COME]



1228 N Street, Suite 13  
Sacramento, CA 95814  
(916) 444-5100

