

ARTICLE 5. IMPROVEMENT REVENUE BONDS (ALBUQUERQUE ACADEMY PROJECT)

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§ 15.5.1 RATIFICATION

All action heretofore taken (not inconsistent with the express provisions of the Bond Ordinance) by the Board and the officers of the Village directed toward the Refunding, the Series 2010 Project, and the authorization and approval of the sale and issuance of the Series 2010 Bonds to the Purchaser be and the same hereby is, ratified, approved and confirmed.

§ 15.5.2 FINDINGS

(A) General. The Board hereby declares that it has considered all relevant information presented to it regarding the Series 2010 Bonds, the Refunding and the Series 2010 Project and hereby finds and determines that the issuance of the Series 2010 Bonds to provide funds for the Refunding and the Series 2010 Project is necessary and advisable and in the interest of, and will promote the public health, safety, morals, convenience, education, economy and welfare of the Village and the residents of the Village. The Board hereby further declares that independent educational institutions provide a valuable service for Village residents by allowing educational choice and that broadening educational choice and making maximum possible use of existing educational resources and facilities, such as the Academy, will benefit the residents of the Village.

(B) Public Hearing. The Board, after having conducted a public hearing, after reasonable notice in accordance with Section 147(f) of the Code, finds that:

(1) The Series 2010 Bonds will be issued in the maximum Principal amount of thirty-six million dollars (\$36,000,000) for the purpose of financing the Refunding and the Series 2010 Project.

(2) The maximum aggregate face amount of obligations to be issued for the purpose of the Refunding and related costs is currently anticipated to be thirty-two million dollars (\$32,000,000); the maximum aggregate face amount of obligations currently expected to be issued to finance the Series 2010 Project and related costs is four million dollars (\$4,000,000). The allocation of such amounts between the Refunding and the Series 2010 Project may change, but the maximum aggregate face



amount of the Series 2010 Bonds will not exceed thirty-six million dollars (\$36,000,000).

(3) The initial developer and operator of the Series 2010 Project is the Academy.

(4) The location of the Academy is 6400 Wyoming Boulevard, N.E., Albuquerque, New Mexico.

(C) Sale Price. The sale price of the Series 2010 Bonds to the Purchaser will be set forth in the Sale Resolution.

(D) Issuance. The Series 2010 Bonds are being issued pursuant to the Act.

§ 15.5.3 AUTHORIZATION AND APPROVAL OF THE REFUNDING AND THE SERIES 2010 PROJECT

(A) It is currently anticipated that up to thirty-two million dollars (\$32,000,000) of the proceeds of the Series 2010 Bonds will be used to provide for the current refunding of the Series 1999 Bonds and the Series 2002 Bonds by redeeming the outstanding Series 1999 Bonds and Series 2002 Bonds and to pay certain costs related thereto, including the cost associated with termination of a related swap agreement. The Refunding is hereby authorized and approved, and the final details of the Refunding will be set forth in the Sale Resolution to be adopted by the Board of Trustees. The costs contemplated by this paragraph include costs and expenses relating to the issuance of the Series 2010 Bonds. The Academy may use other available money to accomplish the purposes set forth in this paragraph. The Village shall, on behalf of the Academy, refund the Series 1999 Bonds and the Series 2002 Bonds by making the deposits required by the 1995 Indenture.

(B) It is currently anticipated that up to four million dollars (\$4,000,000) of the proceeds of the Series 2010 Bonds will be used to pay, or to reimburse the Academy for the payment of, the costs of the Series 2010 Project and to pay certain costs related thereto. The Series 2010 Project is hereby authorized and approved. The Academy may use other available money to accomplish the purpose set forth in this paragraph.

§ 15.5.4 SERIES 2010 BONDS - AUTHORIZATION OF BONDS; FORM AND TERMS

(A) Approval and Sale. The issuance, sale and delivery of the Series 2010 Bonds in an aggregate principal amount not to exceed thirty-six million dollars (\$36,000,000), and the use of the proceeds of the Series 2010 Bonds for the Refunding, to finance the Series 2010 Project and to pay expenses relating thereto are hereby authorized. The Series 2010 Bonds shall be sold to the Purchaser pursuant to the Bond Purchase Agreement on the terms set forth in the Sale Resolution.

(B) Form and Terms. Subject to the limitations set forth in the Bond Ordinance and the Sale Resolution, the Series 2010 Bonds shall be (i) in the form and denominations and shall be numbered and dated as set forth in the Indenture; (ii) payable as to principal and interest and subject to optional and extraordinary optional redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) issued in the principal amount, at the rate and with the maturities as set forth in the Sale Resolution.



(C) Execution. The Series 2010 Bonds shall be signed, attested and authenticated as set forth in the Indenture and shall bear the seal or a facsimile of the seal of the Village.

§ 15.5.5 AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS

The forms, terms and provisions of the Bond Documents, in the form on deposit in the office of the Village Clerk, are in all respects approved, authorized and confirmed, subject to any modifications to the Bond Documents approved in the Sale Resolution. Changes which are not inconsistent with the terms of the Bond Ordinance and Sale Resolution may be made in the Bond Documents with the approval of the Mayor of the Village.

The Mayor of the Village is authorized to execute and deliver in the name and on behalf of the Village, and the Village Clerk is hereby authorized to attest, as necessary, the Bond Documents and the Series 2010 Bonds, with such changes therein as are not inconsistent with the Bond Ordinance or the Sale Resolution. Changes inconsistent with the terms of the Bond Ordinance or Sale Resolution may be approved by other resolution or ordinance of the Village.

The Mayor, Treasurer, Village Clerk and other authorized officers of the Village are authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements and to do such other acts and things, either prior to or after the date of delivery of the Series 2010 Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents and the Bond Ordinance.

The use and distribution of the Preliminary Official Statement and the Official Statement relating to the Series 2010 Bonds by the Academy and the Purchaser in such form as they deem appropriate and adequate for the sale of the Series 2010 Bonds are hereby authorized and approved, and the Mayor is authorized to deem the Preliminary Official Statement to be final pursuant to Securities Exchange Commission Rule 15c2-12, and to execute a certificate to that effect, at the appropriate time.

§ 15.5.6 DELIVERY OF SERIES 2010 BONDS

Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Series 2010 Bonds, the Series 2010 Bonds shall be executed, authenticated and delivered to or for the benefit of the Purchaser. No Series 2010 Bond shall be valid for any purpose until such Series 2010 Bond has been properly authenticated, as set forth in the Indenture.

§ 15.5.7 DEPOSIT AND INVESTMENT OF MONEY

The Trustee is authorized and directed to deposit, invest and otherwise administer the proceeds of the Series 2010 Bonds, as set forth in the Indenture and the escrow agreement, if any. The proceeds of the Series 2010 Bonds shall not be invested in a manner which would cause interest on the Series 2010 Bonds to be included in gross income for federal income tax purposes.

There are established in the Indenture, and on and after the date on which the Series 2010 Bonds are issued, there shall be maintained, the funds and accounts in trust as set forth in the Indenture and any escrow agreement. Other funds and accounts may be established as are necessary to administer the trusts created by the Indenture.



§ 15.5.8 FINDINGS REGARDING PAYMENT OF INTEREST AND PRINCIPAL AND OTHER MATTERS

The following determinations are made:

(A) The maximum amount necessary in each year to pay the principal of and interest on the Series 2010 Bonds shall be set forth in the Sale Resolution to be adopted by the Board of Trustees prior to issuance of the Bonds.

(B) It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund.

(C) The Installment Sale Agreement requires that the Academy maintain the Series 2010 Project in good repair and condition (excepting reasonable wear and tear) and carry proper insurance with respect to the Series 2010 Project and indemnifies the Village against any claims related to the Refunding and the Series 2010 Project.

(D) The Installment Sale Agreement requires the Academy to make payments sufficient to pay the principal of, premium, if any, and interest on the Series 2010 Bonds as principal and interest become due and to make all payments of or relating to the Refunding as they become due.

§ 15.5.9 LIMITED OBLIGATIONS

The Series 2010 Bonds shall be special limited obligations of the Village, payable solely from the revenues derived from the trust estate and the other revenues payable by the Academy as described in the Installment Sale Agreement and the Indenture and shall never constitute a debt or indebtedness of the Village or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the Village or a charge against its general credit or taxing power. Nothing contained in the Bond Ordinance, the Bond Documents, or any other instrument shall be construed as obligating the Village (except with respect to the Refunding and the Series 2010 Project and the application of the proceeds of the Series 2010 Bonds and the proceeds received under the Installment Sale Agreement, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the Village or against its taxing power; nor shall the breach of any agreement contained in the Bond Ordinance, the Bond Documents, the Series 2010 Bonds or any other instrument be construed as obligating the Village (except with respect to the Refunding and the Series 2010 Project and the application of the proceeds of the Series 2010 Bonds and the proceeds received under the Installment Sale Agreement, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the Village or against its taxing power, the Village having no power to pay out of its general funds, or otherwise contribute any part of the costs of the Refunding, nor power to operate the Series 2010 Project as a business or in any manner except as seller of the Series 2010 Project.

§ 15.5.10 APPROVAL OF INDEMNIFICATION

The Board specifically approves the provisions of the Installment Sale Agreement relating to indemnification which provide that the Academy shall indemnify and hold harmless the Village and its Trustees, officials, employees and agents against liability to the Academy or to any third parties that may be asserted against the Village or its Trustees, officials, employees or



agents with respect to the Village's ownership of the Series 2010 Project or the issuance of the Series 2010 Bonds or arising from the condition of the Series 2010 Project or the Refunding.

§ 15.5.11 AMENDMENT OF BOND ORDINANCE

(A) Limitations upon Amendments. The Bond Ordinance may be amended or supplemented by ordinance or resolution of the Board without the consent of the owners of the Series 2010 Bonds:

- (1) To cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained in the Bond Ordinance;
- (2) To grant to the owners of the Series 2010 Bonds any additional rights, remedies, powers or authority that may lawfully be granted to them;
- (3) To obtain or maintain a rating on the Series 2010 Bonds from any rating agency which amendment, in the judgment of nationally recognized bond counsel, does not materially adversely affect the owners of the Series 2010 Bonds;
- (4) To achieve compliance with federal securities or tax laws;
- (5) To make any other change in the Bond Ordinance which, in the opinion of nationally recognized bond counsel, is not materially adverse to the owners.

(B) Additional Amendments. Except as provided above, the Bond Ordinance may be amended or supplemented only by ordinance adopted by the Board in accordance with the laws of the State, without receipt by the Village of any additional consideration, but with the written consent of the owners of a majority of the principal amount of the outstanding Series 2010 Bonds which are affected by the amendment or supplement (not including Series 2010 Bonds which are then owned by or for the account of the Village); provided, however, that no such ordinance shall have the effect of permitting:

- (1) An extension of the maturity date of any Series 2010 Bond;
- (2) A reduction in the principal amount of, premium, if any, or interest rate on any Series 2010 Bond;
- (3) The creation of a lien on or a pledge of revenues ranking prior to the lien or pledge of the Series 2010 Bonds on the revenues pledged under the Installment Sale Agreement and the Indenture; or
- (4) A reduction in the principal amount of Series 2010 Bonds required for consent to such amendment or supplement.

Notwithstanding the foregoing, prior to the issuance of the Series 2010 Bonds, the Bond Ordinance may be amended or supplemented by resolution of the Board.

(C) Proof of Instruments. The fact and date of the execution of any instrument under the provisions of this Section may be proven by the certificate of any officer in any jurisdiction who by the laws of that jurisdiction is authorized to take acknowledgments of deeds within that jurisdiction that the person signing the instrument acknowledged before him the execution of that instrument, or may be proved by an affidavit of a witness to the execution sworn to before such officer.

(D) Proof of Series 2010 Bonds. The principal amount and numbers of Series 2010 Bonds owned by any person executing such instrument and the date of holding that instrument may be proven by a certificate executed by a bank or trust company showing that on



the date mentioned that person had on deposit with the bank or trust company the Series 2010 Bonds described in the certificate.

§ 15.5.12 BOND ORDINANCE IRREPEALABLE

After any of the Series 2010 Bonds are issued, the Bond Ordinance and the Sale Resolution shall be and remain irrevocable until the Series 2010 Bonds, including interest, are fully paid, cancelled and discharged or there has been defeasance of the Series 2010 Bonds in accordance with the Indenture.

§ 15.5.13 REPEALER

All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with the Bond Ordinance and the Sale Resolution are repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

§ 15.5.14 SEVERABILITY

If any section, paragraph, clause or provision of the Bond Ordinance or the Sale Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Bond Ordinance or Sale Resolution.

§ 15.5.14 EFFECTIVE DATE

Upon adoption of this Article, it shall be recorded and preserved by the Village Clerk, authenticated by the signature of the Mayor and Village Clerk, and the seal of the Village impressed hereon, and the title and general summary of the subject matter contained in the Bond Ordinance shall be published once in full in a newspaper which is of general circulation in the Village, and the Bond Ordinance shall be in full force and effect upon such publication.

§ 15.5.16 PUBLICATION OF ORDINANCE

The following notice shall be published one time in the *Albuquerque Journal*, a legal newspaper of general circulation in the Village, as soon as is practicable following the adoption hereof:

[Form of Notice of Adoption]

VILLAGE OF LOS RANCHOS DE ALBUQUERQUE, NEW MEXICO

NOTICE OF ADOPTION OF ORDINANCE NO. 227

Notice is given of the adoption by the Board of Trustees of the Village of Los Ranchos de Albuquerque, New Mexico of its Ordinance No. 227 on July 14, 2010, relating to the Village of Los Ranchos de Albuquerque, New Mexico Educational Facilities Refunding and Improvement Revenue Bonds (Albuquerque Academy Project), Series 2010. The title of the Ordinance is:

ORDINANCE



AUTHORIZING THE ISSUANCE OF THE VILLAGE OF LOS RANCHOS DE ALBUQUERQUE, NEW MEXICO EDUCATIONAL FACILITIES REFUNDING AND IMPROVEMENT REVENUE BONDS (ALBUQUERQUE ACADEMY PROJECT), SERIES 2010, IN THE MAXIMUM PRINCIPAL AMOUNT OF \$36,000,000 TO PROVIDE FUNDS (1) FOR THE CURRENT REFUNDING OF THE CITY OF ALBUQUERQUE, NEW MEXICO EDUCATIONAL FACILITIES REFUNDING REVENUE BONDS (ALBUQUERQUE ACADEMY PROJECT), SERIES 1999 AND THE CITY OF ALBUQUERQUE, NEW MEXICO EDUCATIONAL FACILITIES REVENUE BONDS (ALBUQUERQUE ACADEMY PROJECT), SERIES 2002 AND RELATED COSTS AND (2) TO FINANCE INTERNAL INFRASTRUCTURE IMPROVEMENTS AND RENOVATIONS IN CERTAIN BUILDINGS AND OTHER FACILITIES OF ALBUQUERQUE ACADEMY AND RELATED COSTS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT SALE AGREEMENT, A TRUST INDENTURE, A BOND PURCHASE AGREEMENT, AND OTHER DOCUMENTS RELATED TO THE ISSUANCE OF THE SERIES 2010 BONDS; PROVIDING THAT CERTAIN TERMS OF THE BONDS, WILL BE PROVIDED IN A SUBSEQUENT RESOLUTION; PROVIDING FOR THE PAYMENT OF, AND THE SECURITY FOR, THE SERIES 2010 BONDS SOLELY FROM CERTAIN REVENUES OF ALBUQUERQUE ACADEMY AND PRESCRIBING OTHER DETAILS CONCERNING THE BONDS; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; AND REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE.

The title sets forth a general summary of the subject matter contained in the Ordinance.

Complete copies of the Ordinance are on file with the office of the Village Clerk at the Village Hall, 6718 Rio Grande Blvd. NW, Los Ranchos de Albuquerque, New Mexico and are available for inspection and/or purchase during regular office hours. This notice constitutes compliance with Sections 6-14-4 through 6-14-7 NMSA 1978.

[End of form of Notice of Adoption]

Ordinances and State Law Reference Regarding Chapter 15, Article 5:

Ordinance #227, July 14, 2010

