



103 COLLEGE ROAD EAST • PRINCETON, NEW JERSEY 08540  
PHONE 609-987-0880 • FAX 609-987-0850 • www.njefa.com

**MINUTES OF THE SPECIAL MEETING OF THE  
NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
HELD AT 103 COLLEGE ROAD EAST, PRINCETON, NEW JERSEY  
ON FRIDAY, JULY 30, 2010**

The meeting was called to order at 9:37 a.m. by Chair Jacobs. The New Jersey Educational Facilities Authority gave notice of the time, place and date of this meeting via e-mail and fax on July 27, 2010, to The Star Ledger, The Times and the Secretary of State and by posting the notice at the offices of the Authority in Princeton, New Jersey. Pursuant to the New Jersey Open Public Meetings Act, a resolution must be passed by the New Jersey Educational Facilities Authority in order to hold a session from which the public is excluded.

**AUTHORITY MEMBERS PRESENT:**

Roger B. Jacobs, Esq., Chair  
Ridgeley Hutchinson, Vice Chair  
Joshua Hodes, Treasurer  
Steven D. Weinstein, Chair, Commission on Higher Education (represented by Glenn Lang)  
Andrew P. Sidamon-Eristoff, State Treasurer (represented by Steven Petrecca)

**AUTHORITY MEMBERS ABSENT:**

None

**STAFF PRESENT:**

Mary Jane Darby, Director of Project Management  
Marie Mueller, Controller  
Sheryl Stitt, Director of Communications  
Jennifer Soyka, Project Manager  
Debra Paterson, Sr. Risk Manager  
Jennifer LaMarsh, Project/Communications Assistant  
Nichole Doxey, Communications Specialist  
Jamie O'Donnell, Accountant  
Linda Hazley, Office Manager  
Sheila Toles, Exec. Assistant/Human Resources Specialist

**ALSO PRESENT:**

Clifford Rones, Esq., Deputy Attorney General  
David Reiner, Esq., Governor's Authorities Unit

**ITEMS OF DISCUSSION**

**1. Approval of Resolution Designating an Acting Executive Director and Acting Secretary of the New Jersey Educational Facilities Authority**

Mr. Jacobs reported that following the resignation of Executive Director Roger Anderson on July 23, 2010, the Members determined that it was necessary to provide for an interim Executive Director and Secretary to carry on the day-to-day functions of the Authority. Mr. Jacobs advised that Mary Jane Darby has the qualifications to serve in that capacity and accordingly, he requested the Members' approval of the resolution designating Ms. Darby Acting Executive Director and Acting Secretary of the Authority until a formal appointment is made.

Mr. Hutchinson moved the adoption of the following entitled resolution:

RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
DESIGNATING AN ACTING EXECUTIVE DIRECTOR AND ACTING  
SECRETARY OF THE AUTHORITY

The motion was seconded by Mr. Hodes and passed unanimously.

The adopted resolution is appended as Exhibit I.

**2. Approval of Resolution Authorizing the Financing of the Acquisition and Installation of Equipment for Thomas Edison State College Through the New Jersey Educational Facilities Authority Lease Financing Program**

Ms. Darby reported that as mentioned in her last pending projects report, the Authority had received a request from Thomas Edison State College to finance a project consisting of the acquisition and installation of certain capital improvements to its Academic Center located at 167 West Hanover Street in Trenton. The improvements will include the replacement of workstations and replacing and updating its information technology systems.

Ms. Darby explained that the resolution authorizes financing of the project and approves the form of documents. The resolution also permits certain authorized officers of the Authority to distribute the RFP to the Authority's pre-qualified pool of lessors and to determine the winning lessor in conformance with E.O. No. 26 and E.O. No. 37. She explained that the resolution would also limit the amount of the financing to not to exceed \$700,000, with a term not to exceed 15 years and an interest rate not to exceed 7%.

Mr. Petrecca moved the adoption of the following entitled resolution:

RESOLUTION AUTHORIZING THE FINANCING OF THE ACQUISITION AND  
INSTALLATION OF EQUIPMENT FOR THOMAS EDISON STATE COLLEGE  
THROUGH THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
LEASE FINANCING PROGRAM

The motion was seconded by Mr. Hodes and passed unanimously.

The adopted resolution and form of documents are appended as Exhibit II.

**3. Next Meeting Date**

Prior to requesting a motion to adjourn, Mr. Jacobs thanked former Executive Director Roger Anderson and Barbara Cannon, Deputy Executive Director and added that they both have been tremendously helpful in getting the Authority to this point. Mr. Jacobs noted that he is confident that Ms. Darby will continue to keep the Authority running smoothly on an acting basis as long as necessary and that Authority staff has been terrific and that he is sure they will continue to be.

Chair Jacobs reminded everyone that the next meeting will be held on Tuesday, August 24, 2010 at 9:00 a.m. at the Authority's offices. Mr. Jacobs then requested a motion to adjourn.

Mr. Hodes moved that the meeting be adjourned at 9:44 a.m.; the motion was seconded by Mr. Petrecca and passed unanimously.

Respectfully submitted,



Mary Jane Darby  
Assistant Secretary

**RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
DESIGNATING AN ACTING EXECUTIVE DIRECTOR AND ACTING SECRETARY OF THE  
AUTHORITY**

**WHEREAS:** The New Jersey Educational Facilities Authority (the "Authority") was created pursuant to the New Jersey Educational Facilities Authority Law, P.L. 1967, c. 271, N.J.S.A. 18A:72A-1 et seq., as amended and supplemented (the "Act") and authorized to issue its obligations to provide a means for New Jersey public and private colleges and universities to obtain financing to construct educational facilities as defined in the Act; and

**WHEREAS:** The Executive Director and Secretary of the Authority, Roger L. Anderson, resigned those positions effective July 23, 2010; and

**WHEREAS:** The Members of the Authority have not made a formal appointment of an Executive Director and Secretary; and

**WHEREAS:** The Members have determined that it necessary to provide for an interim Executive Director and Secretary to carry on the day-to-day activities of the Authority; and

**WHEREAS:** The Members have determined that Mary Jane Darby has the qualifications to serve as Acting Executive Director and Acting Secretary.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY AS FOLLOWS:

**SECTION 1.** The Members hereby appoint Mary Jane Darby Acting Executive Director and Acting Secretary effective immediately to perform the functions of those offices with all duties, responsibilities and authority granted to those offices pursuant to the Act, the By-Laws, resolutions of the Members and other applicable law and regulations.

**SECTION 2.** This Resolution shall take effect in accordance with the Act and shall remain in effect until the earlier of the formal appointment of an Executive Director and Secretary or formal action of the Members to amend, modify or revoke this resolution.

\_\_\_\_ Mr. Hutchinson \_\_\_\_ moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by \_\_\_\_ Mr. Hodes \_\_\_\_ and upon roll call the following members voted:

**AYE:** Roger B. Jacobs  
Ridgeley Hutchinson  
Joshua Hodes  
Steven D. Weinstein (represented by Glenn Lang)  
Andrew Sidamon-Eristoff (represented by Steven Petrecca)

**NAY:** None

**ABSTAIN:** None

**ABSENT:** None

The Chair thereupon declared said motion carried and said resolution adopted.

---

---

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY

RESOLUTION AUTHORIZING THE FINANCING OF THE ACQUISITION AND  
INSTALLATION OF EQUIPMENT FOR THOMAS EDISON STATE COLLEGE THROUGH  
THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY LEASE FINANCING  
PROGRAM

Adopted: July 30, 2010

---

---

**RESOLUTION AUTHORIZING THE FINANCING OF THE  
ACQUISITION AND INSTALLATION OF EQUIPMENT  
FOR THOMAS EDISON STATE COLLEGE THROUGH  
THE NEW JERSEY EDUCATIONAL FACILITIES  
AUTHORITY LEASE FINANCING PROGRAM**

**WHEREAS**, the New Jersey Educational Facilities Authority (the "Authority") was created as a public body corporate and politic of the State of New Jersey (the "State") pursuant to the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes, as amended and supplemented), N.J.S.A. 18A:72A-1 et seq. (the "Act"); and

**WHEREAS**, by resolutions of the Authority adopted on January 25, 2006 and March 22, 2006, the Authority established a pool of qualified lessors (the "Lessor Pool") from which to seek proposals to provide financing pursuant to the Authority's Lease Financing Program (the "Program"); and

**WHEREAS**, the Board of Trustees of Thomas Edison State College (the "College") has determined that it is necessary and advisable to undertake a project consisting of the acquisition and installation of certain capital improvements to its Academic Center located at 167 West Hanover Street, Trenton, New Jersey, consisting of the replacement of workstations, and replacing and updating its information technology systems (the "Project"); and

**WHEREAS**, the College has requested the Authority to finance the Project and related financing costs through the Program; and

**WHEREAS**, in order to finance the Project and related financing costs through the Program it is necessary to distribute a Request for Proposals ( the "RFP") to the firms in the Lessor Pool and to enter into a Master Equipment Lease and Sublease Agreement (the "Master Lease Agreement") by and among a lessor selected from among the firms which respond to the RFP, lessor (the "Lessor"); the Authority, as lessee (the "Lessee"); and the College, as sublessee (the "Sub-Lessee"); and

**WHEREAS**, it will also be necessary to enter into an Acquisition Fund and Account Control Agreement (the "Acquisition Fund Agreement") by and among the Lessor, the Lessee, the Sub-Lessee and a custodian to be provided by the Lessor (the "Custodian"); and

**WHEREAS**, on the basis of a competitive process the Authority previously appointed the law firm, Gibbons P.C., as Special Counsel to the Authority as Lessor in connection with the Program; and

**WHEREAS**, the Authority desires to authorize the distribution of the RFP to be used in connection with the selection of the Lessor; and

**WHEREAS**, the Authority deems it necessary and in keeping with its purposes to authorize entry into the Master Lease Agreement and the Acquisition Fund Agreement and to authorize the issuance of the Authority's lease payment obligations pursuant to the Master Lease

Agreement for the purpose of financing the Project and related costs of financing entirely as tax-exempt obligations, and to authorize certain actions and the execution and delivery of certain documents in connection therewith; and

**WHEREAS**, the College has advised that it may pay for certain costs of the Project (the "Project Costs") prior to the issuance of the Authority's obligations pursuant to the Master Lease Agreement with funds of the College which are not proceeds of tax-exempt lease obligations;

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY, AS FOLLOWS:**



## ARTICLE 1

### AUTHORIZATION OF LEASE FINANCING; APPROVAL OF DOCUMENTS

#### 1.1 Purpose of Lease Financing.

The Authority hereby declares the Project to be an authorized undertaking of the Authority and authorizes and directs the Chair, Vice-Chair, Executive Director, Deputy Executive Director, Treasurer, Director of Project Management, Secretary or any Assistant Secretary of the Authority, and/or any other person authorized by resolution of the Authority, and any of such officers designated as "acting" or "interim" (each an "Authorized Officer"), to execute and deliver all documents necessary to enable the Authority, as permitted by the Act, to finance, on behalf of the College, all or part of the costs of the Project and related costs of financing.

#### 1.2 Authorization of the Authority Obligations.

(a) The Authority hereby authorizes the issuance of the Authority's lease payment obligations (the "Authority's Obligations") pursuant to the Master Lease Agreement, in the aggregate principal amount of not to exceed \$700,000, in order to finance, on behalf of the College, all or part of the costs of the Project and related costs of financing.

(b) The Authorized Officers are hereby authorized and directed to distribute to the firms in the Lessor Pool, the Request for Proposals in substantially the form attached hereto as Exhibit A (the "RFP") with such changes as the Authorized Officer with the consent of the College determines to be appropriate and advisable, distribution of the RFP to be conclusive evidence of the approval of the Authorized Officer distributing the same. The Authorized Officers are hereby authorized and directed to form an Evaluation Committee to select the Lessor, in consultation with the College, on the basis of factors outlined in Executive Order No. 26 (Whitman) ("EO 26") which took effect on January 1, 1995 and Executive Order No. 37 (Corzine) ("EO 37") which took effect on November 25, 2006.

(c) Any Authorized Officer is hereby authorized to execute and deliver on behalf of the Authority the Master Lease Agreement and the Acquisition Control Agreement substantially in the respective forms attached hereto as Exhibit B and Exhibit C with such changes as shall be approved by any Authorized Officer, with the advice of Special Counsel and the Attorney General of the State (such approval to be evidenced conclusively by such Authorized Officer's execution thereof), for the issuance of the Authority Obligations pursuant to the Master Lease Agreement at the price or prices, payment terms, maturity and redemption provisions agreed upon; provided, however, that the interest rate on the Authority Obligations shall not exceed 7.00%, the term shall not exceed 15 years and no redemption premium shall exceed 5%. A copy of the Master Lease Agreement and the Acquisition Control Agreement as executed shall be filed with the records of the Authority.

## ARTICLE 2

### MISCELLANEOUS

#### 2.1 Reimbursement.

(a) The Authority reasonably expects the College to reimburse its expenditure of Project Costs paid prior to the issuance of the Authority Obligations with proceeds of the Authority Obligations.

(b) This Resolution is intended to be and hereby is a declaration of official intent to reimburse the expenditures for Project Costs paid prior to the issuance of the Authority Obligations with the proceeds of the Authority Obligations in accordance with Treasury Regulations Section 1.150-2.

(c) The maximum principal amount of Authority Obligations expected to be issued to finance the Project is \$700,000 (including financing costs), which Authority Obligations may be issued in one or more transactions over the next three years.

(d) The Project Costs to be reimbursed with the proceeds of the Authority Obligations will be "capital expenditures" in accordance with the meaning of Section 150 of the Internal Revenue Code of 1986, as amended (the "Code").

(e) No reimbursement allocation will employ an "abusive arbitrage device" under Treasury Regulations Section 1.148-10 to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147 of the Code. The proceeds of the Authority Obligations used to reimburse Project Costs, or funds corresponding to such amounts, will not be used in a manner that results in the creation of "replacement proceeds", including "sinking funds", "pledged funds" or funds subject to a "negative pledge" (as such terms are defined in Treasury Regulations Section 1.148-1) of the Authority Obligations or another issue of debt obligations of the Authority, other than amounts deposited into a "bona fide debt service fund" (as defined in Treasury Regulations Section 1.148-1).

(f) All reimbursement allocations will occur not later than 18 months after the later of (i) the date of expenditure from a source other than the Authority Obligations is paid or (ii) the date the Project is "placed in service" (within the meaning of Treasury Regulations Section 1.150-2) or abandoned, but in no event more than 3 years after the expenditure is paid.

#### 2.2 Incidental Action.

The Authorized Officers are hereby authorized and directed to execute and deliver such other documents, certificates, agreements, directions and notices, and to take such other action as may be necessary or appropriate in order: (i) to effectuate the execution and delivery of the Master Lease Agreement, the Acquisition Fund Agreement and the issuance of the Authority Obligations, and (ii) to maintain the tax-exempt status of the interest on the Authority Obligations.

**2.3 Prior Resolutions.**

All other prior resolutions of the Authority or portions thereof inconsistent herewith are hereby repealed.

**2.4 Effective Date.**

This Resolution shall take effect in accordance with the Act.

\_\_\_\_\_ Mr. Petrecca \_\_\_\_\_ moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by \_\_\_\_\_ Mr. Hodes \_\_\_\_\_ and upon roll call the following members voted:

**AYE:** Roger B. Jacobs  
Ridgeley Hutchinson  
Joshua Hodes  
Steven D. Weinstein (represented by Glenn Lang)  
Andrew Sidamon-Eristoff (represented by Steven Petrecca)

**NAY:** None

**ABSTAIN:** None

**ABSENT:** None

The Chair thereupon declared said motion carried and said resolution adopted.

**NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY**  
**REQUEST FOR PROPOSALS FOR SERVICES AS LESSOR**

**August, 2010**

**Introduction**

The New Jersey Educational Facilities Authority (the "Authority" or "Lessee") was created pursuant to Chapter 271 of the Public Laws of 1967, *N.J.S.A. 18A:72A-1 et seq.*, as amended and supplemented (the "Act"), to provide a means for New Jersey public and private colleges and universities to construct facilities through the financial resources of a public authority empowered to sell taxable and tax-exempt bonds, notes and other obligations. The Authority has established a tax-exempt equipment leasing program for New Jersey public and private colleges and universities (the "Equipment Leasing Program"). In connection with the Equipment Leasing Program, the Authority has, pursuant to a Request for Qualifications, established a pool of potential Lessors (the "Equipment Leasing Pool").

Pursuant to this Request for Proposals for Services as Lessor (the "RFP"), your firm, as a member of the Equipment Leasing Pool, is invited to submit a proposal to provide services as Lessor pursuant to the Equipment Leasing Program to provide equipment (the "Equipment") for Thomas Edison State College, Trenton, New Jersey (the "Public College" or "Sub-Lessee").

The Public College desires to finance the acquisition and installation of certain capital improvements to its academic center consisting of replacement of workstations and replacing and upgrading its information technology system (the "Equipment"). The Equipment is listed on Exhibit A. The maximum expected cost of the Equipment and costs of financing is expected to be \$700,000. The Authority and the Public College are seeking proposals for tax-exempt obligations which will be "bank qualified" and have a term of 5 years.

**Basic Terms and Requirements**

- |                   |   |
|-------------------|---|
| Equipment:        | The Equipment to be acquired and installed is listed on <b>Exhibit A</b> .                                |
| Principal Amount: | The maximum Principal Amount to be borrowed for the Equipment is \$700,000 (including costs of issuance). |
| Lease Term:       | Five (5) years.   |

New Jersey Educational Facilities Authority  
Request for Proposals For Services As Lessor  
August, 2010

- Repayment Schedule: Level principal amortization over the Lease Term.
- Prepayment: Prepayment permitted at any time without penalty
- Duration of Proposal: The rates and other terms proposed must be firm for a period of 60 days from the date of acceptance of the Proposal.
- Documentation: (a) Master Equipment Lease and Sub-Lease Agreement (the "Master Lease Agreement") between the Lessor, the Authority, as Lessee and the Public College, as Sub-Lessee; (b) each Schedule to the Master Lease Agreement (the "Schedule" and each Schedule together with the Master Lease Agreement, is referred to herein as a "Lease"); and (c) Acquisition Fund and Account Control Agreement between the Lessor, the Lessee, the Sub-Lessee and a Custodian to be identified (the "Acquisition Fund Agreement"), each in the forms attached hereto as **Exhibit B**.
- Conditions: (a) Reimbursement to Sub-Lessee for payments for equipment and costs of issuance must be permitted at closing;  
(b) Costs of issuance must be permitted to be included in the principal amount;  
(c) Lessor must complete any UCC filings; and  
(d) Lessor must provide to the Authority at closing a Certificate, satisfactory to Special Counsel, the Public College, the Authority and the Authority's Counsel relating to issue price and other customary matters ("Lessor's Certificate"). A form of Lessor's Certificate will be provided upon request.  
(e) The legal opinions described below must be delivered.
- Special Counsel to the Authority: Gibbons P.C.
- Opinions: (a) Special Counsel will deliver an opinion that the interest component of lease rental payments payable pursuant to the Lease is excludable from gross income for federal income tax purposes and that the obligations are "bank qualified" and that the Lease is enforceable in accordance with its terms;  
(b) Neither Lessee nor Sub-Lessee will provide any additional opinions to Lessor;  
(c) Lessor to provide an opinion of Lessor's counsel, re: enforceability of the Lease and Acquisition Fund Agreement; and  
(e) Any other opinions required by terms of the Master Lease Agreement, Schedule(s) or Acquisition Fund Agreement must be provided.
- Governing Law: New Jersey
- P.L. 2005, c. 51  
Representations;  
Certificate of No  
Change To be  
Provided if Awarded  
Bid: The submission of a response shall be deemed a representation by the Lessor that all information, certifications and disclosure statements previously provided to the Authority pursuant to P.L. 2005, c. 51 (which codified Executive Order No. 134 (McGreevey 2004)), as amended by Executive Order No. 117 (Corzine 2008), remain true and correct as of the date hereof and that all such statements have been made with full knowledge that the Authority and the State shall rely upon the truth of the statements contained therein and herein in engaging the Lessor in connection with each Lease. The Lessor shall be required to provide a "P.L. 2005, c. 51/Executive Order No. 117 Certification of No Change" in the form attached hereto as **Exhibit C-1** on or before the closing date. If the Lessor has not previously submitted the certifications and disclosure statements required pursuant

New Jersey Educational Facilities Authority  
Request for Proposals For Services As Lessor  
August, 2010

to P.L. 2005, c. 51/Executive Order No. 117, you must submit the forms included as **Exhibit C-2.**”

Additionally, by submission of a response, the Lessor represents that the Lessor shall maintain its compliance with P.L. 2005, c. 51/Executive Order No. 117/Executive Order No. 7/Executive Order No. 117 and submit all required certifications and disclosure statements during the term of a Lease.

The Office of Purchase and Property of the New Jersey Treasury Department has released a form entitled: “Two Year Chapter 51/Executive Order 117 Vendor Contribution and Disclosure of Political Contributions” and Instructions for completing the updated form which are attached hereto as “**Exhibit C-2**”. If you have previously provided the required information and cannot submit the Certification of No Change, you should complete and submit this form. **PLEASE NOTE:** this form has not been updated to reflect the requirements of Executive Order No. 7. For information about submitting the Certification of No Change or the “Two Year Chapter 51/Executive Order 117 Vendor Contribution and Disclosure of Political Contributions” form which is attached as Exhibit C -2, please call Jennifer Zoccali, Project Administrator at 609-987-0880.

P.L. 2005, c. 271  
Certification:

The Lessor will be required to file a P.L. 2005, c. 271 disclosure statement on certain political contributions with the Authority at least ten (10) days prior to entering each Lease with the Authority, in accordance with P.L. 2005, c. 271, section 2(a). The P.L. 2005 c. 271 disclosure form is attached hereto as **Exhibit D**.

Please note: The Lessor will be responsible for filing an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (“ELEC”), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3) if the Lessor enters into contracts or agreements with a New Jersey public entity, such as the Authority and receives compensation or fees in excess of \$50,000 or more in the aggregate from New Jersey public entities, such as the Authority, in a calendar year. It is the Lessor’s responsibility to determine if filing is necessary. Failure to so file can result in the imposition of penalties by ELEC.. Information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

Representation Re:  
New Jersey Business  
Registration (*N.J.S.A.*  
52:32-44):

Submission of a response shall be deemed a representation by the Lessor that the Lessor has previously provided to the Authority a copy of Lessor’s business registration certificate to do business in New Jersey and that such business registration certificate is in full force and effect. If the Lessor has not previously provided the Authority a copy of its business registration certificate, a copy of said business registration certificate must be submitted along with the Lessor’s response to this RFP.

New Jersey Educational Facilities Authority  
Request for Proposals For Services As Lessor  
August, 2010

P.L. 2005, c. 92 Representation Regarding Performance of Services within the United States of America:	Submission of a response shall be deemed a representation by the Lessor that all services provided by the Lessor under the Lease and any amendment to the Lease will be performed within the United States of America.
Representation Regarding Affirmative Action Compliance:	Submission of a response shall also be deemed a representation by Lessor that it is in compliance with all laws and regulations of the United States and of the State of New Jersey regarding affirmative action. Lessor agrees to provide evidence of such compliance upon request.
Additional Lessor Representations:	<p>Lessors are hereby notified that the submission of a response constitutes a representation that the Lessor did not consult with any other potential Lessor about its response, that the response was determined without regard to any other formal or informal agreement that the Lessor has with the Authority or any other person (whether or not in connection with any Lease), and that the response is not being submitted solely as a courtesy to the Authority.</p> <p>In addition, the Lessor acknowledges the following: (a) the Lessor had sufficient time to formulate a response at its own cost and expense and received these specifications in a timely manner; (b) these specifications include all material terms; and (c) the Lessor did not have the opportunity to review other responses (i.e. a last look) before providing a response.</p> <p>Submission of a response shall also be deemed a representation by Lessor that it agrees and acknowledges that its submission is a public record which may be disclosed pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.</p>
Lessor Closing Certifications:	The Lessor must provide the Authority with the Lessor's Certificates identified above in a form satisfactory to Special Counsel.
Proposal Submission Deadline:	_____ on September , 2010
Anticipated Closing Date:	Pre-closing: September , 2010; Closing September , 2010
Approvals:	The transaction is subject to approval by the Authority, the Public College and the Lessor.
Special Provisions:	All obligations of the Authority pursuant to each Lease will be a special, limited obligation of the Authority payable solely from moneys provided by the Sub-Lessee pursuant to the Lease or performable solely by the Sub-Lessee. Obligations of the Sub-Lessee pursuant to each Lease will be a general obligation of the Sub-Lessee.

**Audited Financial Statements of the Sub-Lessee**

The Public College's audited financial statements for the years ended June 30, 2009 and 2008; June 30, 2008 and 2007; and June 30, 2007 and 2006 are attached hereto as **Exhibit E**.

**Responses to this RFP**

This RFP is being distributed to firms included in the Authority's Equipment Leasing Pool. **All firms in the Equipment Leasing Pool are responsible for immediately notifying the Authority of any changes in ownership, organization and key personnel as well as any actual or potential conflicts.**

**Responses to this RFP should be provided on the form attached hereto as Exhibit I (and completed in the most concise manner possible, while providing all of the information requested).**

1. Please provide on Exhibit I:
  - A. the lease rate if the fees identified pursuant to Item 3 below are paid separately; and
  - B. the lease rate if the fees identified pursuant to Item 3 below are included.
2. Please specify whether Lessor or another entity identified by Lessor will serve as Custodian or whether a Custodian must be identified by the Authority.
3. Please indicate the type and amount, if any, of Lessor counsel fees or other fees (including custodian fees) which the Lessor will expect the Sub-Lessee to pay.
4. Please indicate whether any additional conditions or terms will be required by the Lessor.
5. Please indicate any modification to any of the documents attached as **Exhibit B** hereto. The Authority is not obligated to accept any proposed modifications to the documents attached in **Exhibit B**. **Please note:** Failure to specify any changes will be deemed an acceptance by the Lessor of the documents exactly in the forms set forth in **Exhibit B**.
6. Please specify any changes or exceptions from any of the specifications set forth above. The Authority reserves the right to reject a proposal that deviates from the specifications set forth in this RFP and in any of the RFP documents.
7. Please include the names, addresses, telephone and facsimile numbers, and email addresses, for those individuals who will be directly responsible for representing Lessor in connection with this transaction.



New Jersey Educational Facilities Authority  
Request for Proposals For Services As Lessor  
August, 2010

**Proposal Submission**

A fax of your proposal must be received by the Authority prior to or no later than \_\_\_\_\_ on September \_\_\_\_\_, 2010 at the office of:

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
103 College Road East  
Princeton, New Jersey 08540-6612  
Attention: Roger L. Anderson, Executive Director  
Facsimile No.: 609-987-0850

Responses received after this time and date will not be considered.

Proposals will be awarded on or about September \_\_\_\_\_, 2010, with a Pre-Closing and Closing to occur on or about September \_\_\_\_\_, 2010 and September \_\_\_\_\_, 2010, respectively.

The Authority will not be responsible for any expenses in the preparation and/or presentation of the proposals, if any, or for the disclosure of any information or material received in connection with the solicitation, whether by negligence or otherwise. Upon receipt by the Authority of the responses to the RFP, all such responses shall be deemed the property of the Authority and as such the information contained therein may be subject to public disclosure. This RFP is not and shall not be construed as an offer of a contract by the Authority. Any contractual arrangement for Lessor services will be evidenced solely by the executed documentation for a completed transaction, as authorized by the Authority.

The Authority, in its sole discretion may accept a proposal in whole, or in part. The Authority reserves the right to reject any or all proposals with or without cause, and waive any irregularities or informalities in the proposals submitted. The Authority further reserves the right to make such investigations as it deems necessary as to the qualifications of any and all firms submitting proposals. In the event that all proposals are rejected, the Authority reserves the right to re-solicit proposals.

Any questions about this RFP must be submitted by email and will only be answered by email. Please direct your questions to \_\_\_\_\_ at [email address]

**EXHIBIT I**

**Proposal Form**

**PROPOSALS MUST BE SUBMITTED AT OR PRIOR TO THE SUBMISSION DATE AND TIME. PLEASE PROMPTLY FAX TO THE AUTHORITY AT (609) 987-0850. A FULLY EXECUTED SUBMISSION FORM MUST BE RECEIVED OR IT MAY BE REJECTED AS NONCONFORMING**

1. **Maximum Principal Amount:** \$700,000 (inclusive of costs of issuance)
  
2. **Lease Term** 5 years
  
3. **Lease Rate with the Fees Identified Below Paid Separately:** \_\_\_\_\_  
**Lease Rate With Fees Identified Below Included:** \_\_\_\_\_
  
4. **Custodian:** \_\_\_\_\_  
**Custodian's Contact Information:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
5. **Lessor Counsel and/or other fees (please specify by item):** \_\_\_\_\_  
\_\_\_\_\_
  
6. **Additional Terms or Conditions:** \_\_\_\_\_  
\_\_\_\_\_
  
7. **Proposed Document Modifications:** \_\_\_\_\_  
\_\_\_\_\_
  
8. **Specify Changes or Exceptions to any Specifications, If Any:** \_\_\_\_\_  
\_\_\_\_\_

**9. Lessor's Contact Information:**

---

---

---

---

---

---

---

By signing this document the Lessor acknowledges that completion of the transaction with the selected Lessor is subject to the successful negotiation and execution of the documentation. Neither the Authority, the Public College, Special Counsel to the Authority, the Authority's Counsel, nor any employee, officer, agent, nor consultant of the Authority shall be liable for any damages or harm suffered by the selected Lessor in the event the transaction does not close. The above named Lessor certifies that the response is an arms-length bid and is market based and affirms the Representations contained in the Request for Proposals For Services as Lessor.

**Representation:** No other related party of the undersigned has provided a response on the transaction for which proposals are requested pursuant to the Request for Proposals for Services as Lessor.

**Authorized Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Date:** \_\_\_\_\_

---

**EXHIBIT A**

**Thomas Edison State College**

**New Capital Lease Finance Project Description**

- Academic Center Work Station- Cost \$216,000

Thomas Edison State College (TESC) Academic Center is located at 167 West Hanover Street in Trenton, NJ. TESC took occupancy of this facility in 1992. The current workstations are original to the occupancy date, are in disarray and need repair. The manufacturer of the workstations has been out of business for some time and replacement parts can no longer be found. New workstations for the Academic Center are being ordered. The total cost for new workstations for the entire facility totals \$216,000. (This price includes new materials, removal of old workstations, delivery and installation. The estimated time of completion including deliver and installation will be within 6 months.

- Information Technology Project- Cost \$438,000

Acquisition of new SQL database license and installation.  
Replacements switches and router switches.  
Terminal servers, PC's/lap-tops and new SAN array.  
PowerEdge R900, Equal logic PS000XV, and other DP equipments.

The estimated time of purchase including delivery and installation will be within 6 months and have a usable life of at least five (5) year.

Total project Cost \$654,000

New Jersey Educational Facilities Authority  
Request for Proposals For Services As Lessor  
August, 2010

**Exhibit B**

**Forms of Master Equipment Lease and Sub-Lease Agreement and Acquisition Fund and  
Control Agreement**

New Jersey Educational Facilities Authority  
Request for Proposals For Services As Lessor  
August, 2010

**Exhibit C**

**P.L 2005 c. 51/Executive Order No. 117 Certificate of No Change**

New Jersey Educational Facilities Authority  
Request for Proposals For Services As Lessor  
August, 2010

**Exhibit D**

**P.L 2005 C. 271 Disclosure Form**

New Jersey Educational Facilities Authority  
Request for Proposals For Services As Lessor  
August, 2010

**Exhibit E**

**Audited Financial Statements of Thomas Edison State College for the Years ended June 30,  
2009 and 2008; June 30, 2008 and 2007; and June 30,2007 and 2006**



**MASTER EQUIPMENT LEASE AND SUBLEASE AGREEMENT**

THIS MASTER EQUIPMENT LEASE AND SUBLEASE AGREEMENT dated as of \_\_\_\_\_ (the "*Master Lease*"), and entered into by and among \_\_\_\_\_, a \_\_\_\_\_ [limited liability company] [corporation], as Lessor (the "*Lessor*"), the New Jersey Educational Facilities Authority, a body corporate and politic and public instrumentality duly organized and validly existing under the laws of the State of New Jersey, as Lessee (the "*Lessee*"), and \_\_\_\_\_, a public institution of higher education organized and existing under the laws of the State of New Jersey, as Sub-Lessee (the "*Sub-Lessee*");

**WITNESSETH:**

WHEREAS, the Lessee is authorized by the laws of the State of New Jersey including the New Jersey Educational Facilities Authority Law, constituting Chapter 72A of Title 18A, Education, of the New Jersey Statutes, as amended and supplemented (the "Act") to provide for the financing of educational facilities, as defined in the Act; and

WHEREAS, pursuant to N.J.S.A. 18A:64-6(q), the Sub-Lessee is authorized to purchase and hold real and personal property; and

WHEREAS, the parties hereto desire that the Lessee from time to time (a) lease from the Lessor certain Equipment (as hereinafter defined) to be specified by the Sub-Lessee and described in each Schedule and (b) sub-lease such Equipment to the Sub-Lessee on the terms and conditions set forth in each Lease (as hereinafter defined); and

WHEREAS, in connection with the execution of each Lease, the Lessor shall deposit into an Acquisition Fund with an Acquisition Fund Custodian to be held and administered under an Acquisition Fund and Account Control Agreement (as each such term is hereinafter defined) the amount specified in such Lease and represented by the Sub-Lessee to be sufficient to acquire the Equipment identified in such Lease; and

WHEREAS, the Sub-Lessee shall make Rental Payments (as hereinafter defined) and certain other payments directly to the Lessor on behalf of the Lessee for the possession, use and ownership of the Equipment; and

WHEREAS, no Lease shall be deemed to constitute a debt or liability or moral obligation of the State or any political subdivision thereof, or a pledge of the faith and credit or taxing power of the State of New Jersey (the "State") or any political subdivision thereof, but shall be a special, limited obligation of the Lessee payable solely from the Rental Payments payable under such Lease by the Sub-Lessee to the Lessor on behalf of the Lessee; and

WHEREAS, as security for the payment of all of the Sub-Lessee's obligations under each Lease, the Sub-Lessee grants to the Lessee and the Lessee assigns to the Lessor a first lien security interest in and to such Equipment and in and to moneys and investments held from time to time in the Acquisition Fund;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged and in consideration of the premises contained in each Lease, the Lessor, the Lessee and the Sub-Lessee agree as follows:

## ARTICLE I

*Section 1.01. Definitions.* The following terms shall have the meanings indicated below unless the context clearly requires otherwise:

*“Acquisition Amount”* means the amount specified in each Lease and represented by the Sub-Lessee to be sufficient to acquire the Equipment identified in such Lease.

*“Acquisition Fund”* means, with respect to any Lease, the fund established and held by the Acquisition Fund Custodian pursuant to the related Acquisition Fund and Account Control Agreement, if any.

*“Acquisition Fund and Account Control Agreement”* means, with respect to each Lease, an Acquisition Fund and Account Control Agreement, if any, substantially in the form of Exhibit A attached hereto, executed and delivered by the Lessor, the Lessee, the Sub-Lessee and the Acquisition Fund Custodian in connection with such Lease, pursuant to which the related Acquisition Fund is to be established and administered.

*“Acquisition Fund Custodian”* means, with respect to any Acquisition Fund and Account Control Agreement, the party identified as such in such Acquisition Fund and Account Control Agreement, and its successors and assigns.

*“Acquisition Period”* means, with respect to each Lease, that period stated in the Schedule to such Lease during which the Lease Proceeds attributable to such Lease may be expended on Equipment Costs.

*“Authority”* means the New Jersey Educational Facilities Authority.

*“Authorized Officer”* means: (a) in the case of the Lessor, its President, any Vice President, its Treasurer, its Secretary or any Assistant Treasurer; (b) in the case of the Lessee, the Chair, Vice Chair, Treasurer, Executive Director, Deputy Executive Director, Director of Project Management, Secretary or any Assistant Secretary of the Authority, including any person serving in an “interim” or an “acting” capacity for any one of the foregoing offices; and (c) in the case of the Sub-Lessee, the Chairman or other presiding officer of the Board of Trustees, the President, Executive Assistant to the Board of Trustees, Director or other chief executive or administrative officer, any Vice President, the Treasurer or other chief financial officer or any Assistant Treasurer.

*“Bond Counsel”* means nationally recognized counsel in the area of tax-exempt municipal obligations satisfactory to the Lessor and Lessee.

*“Certificate of Acceptance”* means a Certificate of Acceptance, in substantially the form set forth as Exhibit B hereto, whereby the Sub-Lessee acknowledges receipt in good condition of

particular items of Equipment identified therein, confirms the date of delivery thereof and certain other matters.

“Code” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

“Equipment” means the property listed in each of the Leases, to be used in connection with the Sub-Lessee’s educational purposes, which property shall be identified in a Schedule executed by or pursuant to the authority of the Lessee and the Sub-Lessee, accepted by the Lessor in writing and acknowledged by the Acquisition Fund Custodian in writing and identified as part of the related Lease, and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 9.05(b) or Article X. Whenever reference is made in this Master Lease to Equipment listed in a Lease, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment. For purposes of this Master Lease and each Lease hereunder, property may consist of real or other personal property.

“Equipment Costs” means the total cost of the Equipment listed in each Lease, including all delivery charges, installation charges, capitalizable consulting and training fees, legal fees, financing costs, recording and filing fees and other costs necessary to vest full, clear legal title in and to the Equipment in the Sub-Lessee, subject to the security interest granted to the Lessee and assigned to the Lessor as set forth in each Lease, and otherwise incurred in connection with the financing provided by the installment purchase of the Equipment as provided in each Lease; *provided* that in no event shall the delivery charges, installation charges, taxes or other non-capitalizable costs relating to the Equipment listed in any Lease which are to be financed by the Lessor hereunder exceed 5% of the total cost of such Equipment as determined by the Lessor; and *provided further* that in no event shall the capitalizable consulting and training fees and similar capitalizable “soft costs” relating to such Equipment be included without Lessor’s prior consent.

“Event of Default” means an Event of Default described in Section 14.01.

“Expense Account” means, with respect to any Lease, the account, if any, established and held by the Acquisition Fund Custodian within the Acquisition Fund pursuant to the related Acquisition Fund and Account Control Agreement for purposes of paying costs of issuance.

“Initial Administrative Fee” means, with respect to each Lease, the fee paid or payable to the Authority for its services in connection with entry into each Lease, calculated at the rate of 1/10 of 1% of the principal amount of each Lease.

“Lease” means a Schedule and the terms of this Master Lease which are incorporated by reference into such Schedule. Each Schedule together with the Master Lease shall constitute a separate and independent Lease.

“Lease Proceeds” means, with respect to each Lease, the total amount of money to be paid by the Lessor to the related Acquisition Fund Custodian for deposit and application in accordance with such Lease and the related Acquisition Fund and Account Control Agreement.

“*Lease Term*” means, with respect to each Lease, the term specified in such Lease in accordance with Article V hereof.

“*Lessee*” means the entity referred to as Lessee in the first paragraph of this Master Lease, acting as lessee and sub-lessor under this Master Lease.

“*Lessor*” means (a) the entity referred to as Lessor in the first paragraph of this Master Lease or (b) any assignee or transferee of any right, title or interest of the Lessor in and to the Equipment under a Lease or any Lease (including Rental Payments thereunder) pursuant to Section 13.01, but does not include any entity solely by reason of that entity retaining or assuming any obligation of the Lessor to perform under a Lease.

“*Master Lease*” means this Master Equipment Lease and Sublease Agreement, including the exhibits hereto, together with any amendments and modifications to the Master Lease pursuant to Section 15.04.

“*Purchase Price*” means, with respect to the Equipment listed on a Lease, the amount that the Sub-Lessee may or must from time to time pay or cause to be paid to the Lessor to purchase the Equipment as set forth in the related Rental Payment Schedule, plus all other amounts due under such Lease.

“*Rental Payments*” means the basic rental payments payable by the Sub-Lessee under each Lease pursuant to Section 6.01. As provided in Article VI hereof, Rental Payments shall be payable by the Sub-Lessee directly to the Lessor on behalf of the Lessee in the amounts and at the times during the Lease Term as set forth in the applicable Lease.

“*Schedule*” means each separately numbered Schedule of Property substantially in the form of Exhibit C hereto together with a Rental Payment Schedule attached thereto substantially in the form of Exhibit C-1 hereto.

“*Scheduled Expiration Date*” means, with respect to each Lease, the date specified in the applicable Schedule.

“*State*” means the State of New Jersey.

“*Sub-Lessee*” means the entity referred to as Sub-Lessee in the first paragraph of this Master Lease.

“*Tax Certificate*” means a tax-exemption agreement and certificate executed by the Lessee and the Sub-Lessee with respect to each Lease, in form and substance satisfactory to the Lessor and its special tax counsel.

“*Termination Date*” means, with respect to each Lease, the date upon which the applicable Lease Term ends, as provided in Section 5.02 hereof.

“*Vendor*” means the manufacturer or supplier of the Equipment or any other person as well as the agents or dealers of the manufacturer or supplier from whom the Lessor arranged the

Lessee's and the Sub-Lessee's acquisition and financing of the Equipment pursuant to the applicable Lease.

## ARTICLE II

*Section 2.01. Representations and Covenants of the Lessee.* The Lessee represents, covenants and warrants, for the benefit of the Lessor, on the date hereof and as of the date of execution and delivery of each Lease, as follows:

(a) The Lessee is a body corporate and politic and a public instrumentality duly created and validly existing under the Constitution and laws of the State.

(b) The Lessee is authorized under the Constitution and laws of the State to enter into this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and under each Lease and the Acquisition Fund and Account Control Agreement.

(c) The Lessee has duly authorized the execution and delivery of this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement against the Lessee.

(d) The Lessee has complied with such public bidding requirements as may be applicable to entry by the Lessee into this Master Lease and the Acquisition Fund and Account Control Agreement.

(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists as of the date this representation is made.

## ARTICLE III

*Section 3.01. Representations and Covenants of the Sub-Lessee.* The Sub-Lessee represents, covenants and warrants, for the benefit of the Lessor and the Lessee, on the date hereof and as of the date of execution and delivery of each Lease, as follows:

(a) The Sub-Lessee is, and throughout each Lease Term shall continue to be a public institution of higher education authorized and existing under and by virtue of the laws of the State (N.J.S.A. 18A:64-1 et seq.).

(b) The Sub-Lessee is authorized under the laws of the State to enter into this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement and the

transactions contemplated hereby and thereby and to perform all of its obligations hereunder and under each Lease and the Acquisition Fund and Account Control Agreement.

(c) The Sub-Lessee has been duly authorized to execute and deliver this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement under the terms and provisions of a resolution of its Board of Trustees, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement against the Sub-Lessee.

(d) The Sub-Lessee either has complied or will comply with such public bidding requirements as may be applicable to this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement and the acquisition by the Sub-Lessee of the Equipment as provided in each Lease.

(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists as of the date this representation is made.

(f) During each Lease Term, except as otherwise permitted by this Master Lease, the Equipment will be used by the Sub-Lessee, the Sub-Lessee agrees that the Equipment shall be used by the Sub-Lessee as educational facilities, as defined in the Act and which, in the opinion of the Sub-Lessee, are necessary, desirable and to the benefit and best interest of the Sub-Lessee.

(g) The Sub-Lessee further covenants and agrees, however, that at no time shall the Equipment, or any part thereof, be used or be allowed to be used for sectarian instruction or as a place for religious worship.

(h) The Sub-Lessee hereby agrees that the Lessee may use photographs or videos taken on the Sub-Lessee's campus (whether taken by the Authority or the Sub-Lessee) in Lessee's newsletters, reports or other publications or materials (including powerpoint presentations) in connection with the Authority's operations.

(i) During the period this Master Lease is in force, the Sub-Lessee shall furnish or cause to be furnished to the Lessor and the Lessee, at the Sub-Lessee's expense, as soon as available and in any event not later than 210 days after the end of each of its fiscal years, the audited financial statements of the Sub-Lessee as of the close of and for such fiscal year, all in reasonable detail, audited by and with the report of the Sub-Lessee's auditor, and such other financial information relating to the ability of the Sub-Lessee to continue performing under each Lease as may be reasonably requested by the Lessor or the Lessee.

(j) The Sub-Lessee has kept, and throughout each Lease Term shall keep, its books and records in accordance with generally accepted accounting principles.

(k) The weighted average maturity (determined in accordance with the Code) of any Lease will not exceed one hundred twenty percent (120%) of the weighted average reasonably expected economic life in the hands of the Sub-Lessee of the Equipment financed by Lease Proceeds derived from such Lease.

### ARTICLE IIIA

*Section 3.01A. Representations and Covenants of the Lessor.* The Lessor represents, covenants and warrants, for the benefit of the Lessee and the Sub-Lessee, on the date hereof and as of the date of execution and delivery of each Lease, as follows:

(a) The Lessor is a [corporation, limited liability, partnership] duly incorporated [created] and validly existing and in good standing under the laws of \_\_\_\_\_ and of the State. The Lessor has all necessary licenses and permits, if any, required to carry on its business and to operate all of its properties.

(b) The Lessor is authorized under the laws of the \_\_\_\_\_ and the State and its organizational documents to enter into this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and under each Lease and the Acquisition Fund and Account Control Agreement.

(c) The Lessor has been duly authorized to execute and deliver this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement under the terms and provisions of a resolution of its [governing body], and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement against the Lessor.

(d) The execution and delivery by the Lessor of this Master Lease, each Lease and the Acquisition Fund and Account Control Agreement and the other documents contemplated herein and the compliance with the provision of any and all of the foregoing documents, and the application of the proceeds of each Lease, together with certain other moneys, for the purposes in this Master Lease, do not and will not constitute a default under any agreement or instrument to which the Lessor is a party or by which the Lessor or any of its properties is or may be bound, nor will such action result in any violation of the Articles of Incorporation or By-Laws of the Lessor [or other organization documents], any statute, order, rule or regulation applicable to the Lessor, or any order of any Federal, state or other regulation agency or other governmental body having jurisdiction over the Lessor, and all consents, approvals, authorizations and orders of any governmental or regulatory agency that are required for the consummation of the transactions contemplated hereby, insofar as they may relate to the Lessor, have been obtained and are or will be in full force and effect upon entry into this Master Lease, any Lease and the Acquisition Fund and Account Control Agreement.

(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists as of the date this representation is made. No default, event of default or event which, with notice or lapse of time, or both, would constitute a default or an event of default under any other material agreement or material instrument to which the Lessor is a party or by which the Lessor is or may be bound or to which any properties of the Lessor are or may be subject, has occurred and is continuing.

(f) This Master Lease, the Acquisition Fund and Account Control Agreement and the Lease entered simultaneously herewith are the legal, valid and binding general obligations of the Lessor and each other Lease entered into pursuant to the Master Lease will be legal, valid and binding general obligations of the Lessor and all of such Agreements are enforceable in accordance with their respective terms, except as the same may be limited by (a) applicable insolvency, reorganization, liquidation, moratorium, receivership, readjustment of debt, or other similar laws affecting the enforcement of creditor's rights generally, as such laws may be applied in the event of an insolvency, reorganization, liquidation, moratorium, receivership, readjustment of debt or other similar proceedings, and (b) equitable principles (whether in a proceeding in equity or at law).

(g) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any public board or body pending or, to the knowledge of the Lessor, threatened against or affecting the Lessor or any of its properties (or, to the best of the Lessor's knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would have a material adverse effect on (i) the title of the Lessor's officers to their respective offices, (ii) the existence or the organization of the Lessor or any power of the Lessor (iii) the validity of the proceedings, for the adoption, authorization, execution, with repayment of the Master Lease, the Leases and the Acquisition Fund and Account Control Agreement or its performance in connection with therewith, or (iv) the validity or the enforceability of this Master Lease, the Leases and the Acquisition Fund and Account Control Agreement or of any agreement or instrument to which the Lessor is a party and which is used or contemplated for use in consummation of the transactions contemplated by this Master Lease.

#### ARTICLE IV

*Section 4.01. Lease and Sub-Lease of Equipment.* Subject to the terms of this Master Lease, the Lessor agrees to provide the funds specified in each Lease to be provided by it to acquire the Equipment. Upon the execution of each Lease, the Lessor demises, leases, transfers and lets to the Lessee, and the Lessee acquires, rents, leases and hires from the Lessor, the Equipment set forth in such Lease, all in accordance with the provisions of such Lease. The Lessee agrees to lease from the Lessor and sub-lease to the Sub-Lessee, and the Sub-Lessee agrees to sub-lease from the Lessee, the Equipment set forth in such Lease, in accordance with the provisions of such Lease. The Sub-Lessee and the Lessee hereby acknowledge and agree that the Lessor shall retain a first lien on the Equipment (other than any portion of the Equipment which constitutes real property under State law ("Real Property")) in accordance with each Lease, as provided in Section 8.02 hereof. The Lessor acknowledges and agrees that Sub-Lessee has acquired certain Equipment prior to execution hereof and that such Equipment shall be deemed to be acquired pursuant hereto and that Sub-Lessee shall be entitled to be reimbursed for costs incurred to acquire such Equipment.

*Section 4.02. Conditions to Lessor's Performance Under Leases.*



(a) As a prerequisite to the performance by the Lessor of any of its obligations pursuant to a Lease, the conditions provided in subsection (b) of this Section 4.02 shall be satisfied and the Lessee shall deliver or cause to be delivered to the Lessor the following:

- (i) a fully completed Schedule, executed by the Lessee;
- (ii) an Acquisition Fund and Account Control Agreement, executed by the Lessee and the Acquisition Fund Custodian, unless the Lessor pays 100% of the Acquisition Amount directly to the Vendor upon execution of the Lease;
- (iii) a copy of the resolution of the governing body of the Lessee authorizing the execution of such Schedule, the Acquisition Fund and Account Control Agreement and related documents, certified by an Authorized Officer of the Lessee;
- (iv) an opinion of the Lessee's bond or special tax counsel as to the exclusion from gross income of the interest component of the Rental Payments payable pursuant to such Schedule and other related matters in the form set forth in Exhibit D hereto and an opinion of the Attorney General of the State of New Jersey addressed to the Lessee substantially in the form attached hereto as Exhibit E;
- (v) Tax Certificates, executed by an Authorized Officer of the Lessee;
- (vi) an IRS Form 8038-G with respect to the Lease, completed and executed by the Lessee;
- (vii) an incumbency certificate of the Lessee, as to the identity of those individuals authorized to execute and deliver the Lease and all related documents, including specimen signatures of such individuals;
- (viii) such other items, if any, as are set forth in such Lease or are reasonably required by the Lessor.

(b) As a prerequisite to the performance by the Lessor of any of its obligations pursuant to a Lease, the conditions provided in subsection (a) of this Section 4.02 shall be satisfied and the Sub-Lessee shall deliver or cause to be delivered to the Lessor the following:

- (i) a fully completed Schedule, executed by the Sub-Lessee;
- (ii) an Acquisition Fund and Account Control Agreement, executed by the Sub-Lessee, unless the Lessor pays 100% of the Acquisition Amount directly to the Vendor upon execution of the Lease;
- (iii) a copy of the resolution of the Board of Trustees of the Sub-Lessee authorizing the execution of such Schedule, the Acquisition Fund and Account Control Agreement and related documents, certified by an Authorized Officer of the Sub-Lessee;
- (iv) the Tax Certificate, executed by an Authorized Officer of the Sub-Lessee;

- (v) an incumbency certificate of the Sub-Lessee as to the identity of those individuals authorized to execute and deliver the Lease and all related documents, including specimen signatures of such individuals;
  - (vi) an opinion of the Attorney General of the State of New Jersey addressed to the Lessee and the Sub-Lessee substantially in the form set forth in Exhibit F.
  - (vi) certificates of insurance demonstrating compliance with the insurance provisions of Section 9.03 with respect to the Equipment financed by such Lease;
  - (vii) appropriate financing statements on Form UCC-1 required to perfect the security interest in the Equipment to be financed by such Lease, and notice of security interest and assignment to the Acquisition Fund Custodian with respect to the Acquisition Fund;
  - (viii) such other items, if any, as are set forth in such Lease or are reasonably required by the Lessor.
- (c) Notwithstanding anything in this Master Lease to the contrary, this Master Lease is not a commitment by the Lessor to enter into any Lease not currently in existence, and nothing in this Master Lease shall be construed to impose any obligation upon the Lessor to enter into any proposed Lease, it being understood that whether the Lessor enters into any proposed Lease shall be a decision solely within the Lessor's discretion.
- (d) The Lessee and the Sub-Lessee will each cooperate with the Lessor in the Lessor's review of any proposed Lease. Without limiting the foregoing, the Lessee and the Sub-Lessee will each provide the Lessor with any documentation or information the Lessor may request in connection with the Lessor's review of any proposed Lease. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of the Sub-Lessee and other matters related to the Lessee and the Sub-Lessee.
- (e) Lessor agrees, upon execution of this Master Lease and entry into any Lease hereunder to provide to Lessee and Sub-Lessee a copy of the resolution of Lessor's governing body authorizing entry by Lessor into such transaction, an opinion of Lessor's counsel as to the due authorization and enforceability of this Master Lease and each such Lease and such certifications or other documents as are required by Lessee's Counsel to provide the opinion required of Lessee's Counsel hereunder.

## ARTICLE V

*Section 5.01. Commencement of Lease Term.* The Lease Term applicable to each Lease shall commence and interest shall begin to accrue on the date specified in such Lease and shall continue until all Rental Payments and all other amounts due under such Lease have been paid in full, unless terminated earlier as provided in Section 5.02.

*Section 5.02. Termination of Lease Term.* The Lease Term applicable to each Lease shall terminate upon the earliest to occur of any of the following events:

(a) the exercise by the Sub-Lessee of the option granted under the provisions of Article X or XII hereof to purchase the Equipment identified in such Lease and the payment of all other amounts due from the Sub-Lessee with respect to such Lease; or

(b) the Lessor's election to terminate a Lease under Article XIV due to the Sub-Lessee's default under such Lease; or

(c) the date on which the Sub-Lessee has paid all amounts due from the Sub-Lessee under all Leases that have been entered into as provided in this Master Lease.

## ARTICLE VI

*Section 6.01. Payment of Rental Payments.* The Sub-Lessee shall promptly pay to the Lessor, on behalf of the Lessee, Rental Payments in lawful money of the United States of America, in the amounts and on the dates set forth in each Lease. All other amounts required to be paid by the Sub-Lessee under a Lease shall be paid in lawful money of the United States of America. Any and all payment obligations hereunder or on account of breach hereof or of any lease shall be the sole obligation of the Sub-Lessee and no provision, covenant or agreement contained in any Lease or any obligation imposed on the Lessee in a Lease, or the breach thereof, shall constitute or give rise to or impose upon the Lessee a pecuniary liability, a charge upon its general credit or taxing powers or a pledge of its general revenues. In making the agreements, provisions and covenants set forth in any Lease, the Lessee has no obligation other than a special, limited obligation to make payments solely from Rental Payments made by the Sub-Lessee. The Sub-Lessee shall pay directly to the Lessor for the benefit of the Lessee a charge on any Rental Payment not paid on the date such payment is due at the rate of 12% per annum from such date, computed daily on the basis of a 360-day year and actual days elapsed. The obligations of Sub-Lessee under each Lease shall be general obligations of the Sub-Lessee payable from any legally available funds of the Sub-Lessee.

*Section 6.02. Interest and Principal Components.* A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal. Each Lease shall set forth the principal and interest components of each Rental Payment payable thereunder during the Lease Term.

*Section 6.03. Rental Payments to Be Unconditional.* The obligations of the Sub-Lessee to make payment of the Rental Payments required under this Article VI and to make other payments under each Lease and to perform and observe the covenants and agreements contained in each Lease shall be absolute and unconditional in all events, without abatement, diminution, deduction, set-off or defense for any reason, including without limitation any failure of the Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation, destruction or unforeseen circumstances. Notwithstanding any dispute between the Sub-Lessee and any of the Lessee, the Lessor, any Vendor or any other person, the Sub-Lessee shall make all Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall the Sub-

Lessee assert any right of set-off or counterclaim against its obligation to make such payments required under any Lease. The Lessor shall promptly notify the Lessee of any interruption of payments due under any Lease.

*Section 6.04. Tax Covenant.*

(a) It is the intention of the parties hereto that the interest portion of the Rental Payments received by the Lessor under any Lease be and remain excludible from gross income for purposes of federal income taxation.

(b) The Lessee and the Sub-Lessee each covenant that it will take no action or permit any action which would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in timely manner, any action, which omission would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes.

(c) The Sub-Lessee covenants that it will pay any rebate due to the United States of America in connection with each Lease and that it will take any and all other action lawfully within its powers and applicable to the acts done or omitted by the Sub-Lessee so as to maintain such exclusion from gross income for federal income tax purposes of the interest component of the Rental Payments under each Lease, and that it will not perform an act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall have the effect of terminating such exclusion from gross income for federal income tax purposes of the interest component of the Rental Payments received by the Lessor, including, without limitation, leasing or transferring all or any portion of the Equipment or contracting with a third party for the use or operation of all or any portion of the Equipment if entering into such lease, transfer or contract would have such effect.

(d) It is the intention of the parties hereto that the Sub-Lessee shall be treated as the owner of the Equipment for federal income tax purposes. Neither the Lessor nor the Lessee shall take any action inconsistent with the Sub-Lessee's ownership of the Equipment for federal income tax purposes except pursuant to the exercise of remedies under Article XIV.

*Section 6.05. Initial Administrative Fees; Expenses of Rebate Calculations and Compliance.* The Sub-Lessee shall pay the Initial Administrative Fee to the Lessee on the date of original execution and delivery of each Lease. The Sub-Lessee agrees to pay all costs of complying with rebate requirements including without limitation fees of professionals retained by the Lessee for purposes of complying with rebate requirements.

## ARTICLE VII

*Section 7.01. Delivery, Installation and Acceptance of Equipment.* The Sub-Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in each Lease and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment listed in any Lease has been delivered and installed,

the Sub-Lessee shall immediately accept such Equipment and evidence said acceptance by executing and delivering to the Lessor and the Lessee a Certificate of Acceptance.

*Section 7.02. Enjoyment of Equipment.* The Lessor and the Lessee shall provide the Sub-Lessee with quiet use and enjoyment of the Equipment during the respective Lease Term, and the Sub-Lessee shall peaceably and quietly have, hold and enjoy the Equipment during each respective Lease Term, without suit, trouble or hindrance from the Lessor or the Lessee, except as expressly set forth in the related Lease. Neither the Lessor nor the Lessee shall interfere with such quiet use and enjoyment during such respective Lease Term so long as the Sub-Lessee is not in default under the related Lease.

*Section 7.03. Location; Inspection.* Once installed, no item of the Equipment will be moved from the location specified for it in the Lease on which such item is listed without the Lessor's consent, which consent shall not be unreasonably withheld. The Lessor and the Lessee shall have the right at all reasonable times during regular business hours, upon reasonable advance notice to the Sub-Lessee, to enter into and upon the property of the Sub-Lessee for the purpose of inspecting the Equipment.

## ARTICLE VIII

*Section 8.01. Title to the Equipment.* During each Lease Term, and so long as the Sub-Lessee is not in default under Article XIV hereof, all right, title and interest in and to each item of the Equipment shall be vested in the Sub-Lessee immediately upon its acceptance of each item of Equipment, subject to the terms and conditions of the applicable Lease. The Sub-Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment from and against all claims, liens and legal processes of creditors of the Sub-Lessee, and keep all Equipment free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default or upon termination of a Lease pursuant to Section 5.02(b) hereof, full and unencumbered legal title to the Equipment shall pass to the Lessor, and the Sub-Lessee shall have no further interest therein; provided that title to any Real Property shall remain in the Sub-Lessee. In addition, upon the occurrence of such an Event of Default or such termination, the Sub-Lessee shall execute and deliver to the Lessor such documents as the Lessor may request to evidence the passage of such legal title to the Lessor and the termination of the Sub-Lessee's interest therein, and upon request by the Lessor shall deliver possession of the Equipment to the Lessor in accordance with Section 14.02. Upon purchase of the Equipment under a Lease by the Sub-Lessee pursuant to Section 12.01 or 12.02, the Lessor's security interest or other interest in the Equipment shall terminate, and the Lessor shall execute and deliver to the Sub-Lessee such documents as the Sub-Lessee may request to evidence the termination of the Lessor's security interest in the Equipment subject to the related Lease.

*Section 8.02. Security Interest in Equipment and Acquisition Fund.* As security for the Sub-Lessee's payment to the Lessor on behalf of the Lessee of Rental Payments and all other amounts payable to the Lessor under each Lease and performance of all other obligations under each Lease, the Sub-Lessee hereby grants to the Lessee and the Lessee hereby assigns to the Lessor a security interest constituting a first lien on (a) the Equipment (other than any portion of the Equipment constituting Real Property) under such Lease, (b) moneys and investments held from time to time in the Acquisition Fund and (c) any proceeds of any of the foregoing. The

Lessee and the Sub-Lessee agree to execute such additional documents, including financing statements, chattel mortgages, affidavits, notices and similar instruments, in form satisfactory to the Lessor, which the Lessor deems necessary or appropriate to establish and maintain its security interest. The Lessor acknowledges and agrees that any representations and covenants in this agreement as to the priority of the security interests granted herein are representations and covenants solely of the Sub-Lessee and that the Lessee makes no such representations or covenants.

*Section 8.03. Change in Name or Corporate Structure of Sub-Lessee; Change in Location of Sub-Lessee's Principal Place of Business.* The Sub-Lessee shall provide written notice to the Lessor and the Lessee of any change in its name, corporate structure or principal place of business. Such notice shall be provided thirty (30) days in advance of the date that such change is planned to take effect. This Section shall also apply to any of the Sub-Lessee's assignees or subassignees. The Sub-Lessee may not change its corporate structure unless the Lessor and the Lessor are provided with an opinion of Bond Counsel, that such change does not adversely affect the exclusion from gross income of the interest component of Rental Payments or adversely affect the security interests granted to the Lessor herein.

*Section 8.04. Liens and Encumbrances to Title.* The Sub-Lessee shall keep the Equipment free of all levies, liens and encumbrances except those created by each Lease. The Sub-Lessee shall promptly discharge any mechanics' or materialmen's liens placed on the Equipment under each Lease.

*Section 8.05. Personal Property.* The Equipment (other than any portion of the Equipment which constitutes Real Property) is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that such Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of the Lessor, the Sub-Lessee shall, at the Sub-Lessee's expense, furnish to the Lessor and the Lessee a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

## ARTICLE IX

*Section 9.01. Maintenance of Equipment by Sub-Lessee.* At all times during each Lease Term, the Sub-Lessee shall, at its own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Neither the Lessor nor the Lessee shall have any responsibility in any of these matters or for the making of improvements or additions to the Equipment. The Sub-Lessee shall perform or have performed at its own expense any maintenance or repair necessary to keep the Equipment in working order.

*Section 9.02. Taxes, Other Governmental Charges and Utilities Charges.* The parties to this Master Lease contemplate that the Equipment will be used for the tax-exempt purposes of the Sub-Lessee and, therefore, that the Equipment will be exempt from all property taxes. In the event that the use, possession or acquisition of the Equipment is nevertheless determined to be subject to taxation in any form (except for income taxes of the Lessor), the Sub-Lessee shall pay

during each Lease Term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to such Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment; *provided* that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, the Sub-Lessee shall be obligated to pay only such installments as accrue during each Lease Term.

*Section 9.03. Provisions Regarding Insurance.* The Sub-Lessee shall, at its own expense, cause casualty, public liability and property damage insurance to be carried and maintained, or demonstrate to the satisfaction of the Lessor and the Lessee that adequate self-insurance is provided, with respect to the Equipment sufficient to protect the full replacement value of the Equipment and to protect the Lessor, the Lessee and the Sub-Lessee from liability in all events. All insurance proceeds from casualty losses shall be payable to the Lessor and the Sub-Lessee as hereinafter provided. The Sub-Lessee shall furnish to the Lessor and the Lessee, upon request, certificates of insurance evidencing such coverage throughout each Lease Term. Alternatively, upon the written approval of the Lessor and the Lessee, the Sub-Lessee may insure the Equipment under a blanket insurance policy or policies that cover not only the Equipment but also other properties.

Any insurance policy pursuant to this Section shall be so written or endorsed as to make losses, if any, payable to the Lessor and the Sub-Lessee as their respective interests may appear and naming both the Lessor and the Lessee as additional insureds for liability. The Net Proceeds (as defined in Section 10.01) of the insurance required in this Section shall be applied as provided in Article X hereof. Each insurance policy provided for in this Section shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of the Lessor without first giving written notice thereof to the Lessor and the Lessee at least thirty (30) days in advance of such cancellation or modification; provided however that notice must be given no less than ten (10) days in advance of cancellation or modification for nonpayment if such ten (10) day cancellation period is customary in the insurance industry.

*Section 9.04. Advances.* In the event that the Sub-Lessee shall fail to maintain the full insurance coverage required by each Lease or shall fail to keep the Equipment in good repair and operating condition, the Lessor may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Lessor, together with interest thereon at the rate of twelve percent (12%) per annum, the Sub-Lessee shall pay to the Lessor on demand.

*Section 9.05. Modifications and Substitutions.*

(a) The Sub-Lessee shall not, without the prior written consent of the Lessor, make any material alterations, modifications or additions to the Equipment that cannot be removed without materially damaging the functional capabilities or economic value of the Equipment. Upon return of the Equipment to the Lessor in accordance with Section 14.02, and at the request of the Lessor, the Sub-Lessee, at its sole cost and expense, shall remove all alterations,

modifications and additions and repair the Equipment as necessary to return the Equipment to the condition in which it was furnished, ordinary wear and tear and permitted modifications excepted; provided however, that the provisions of this subsection shall not apply to any portion of the Equipment which constitutes real property (the "Real Property") and Lessor acknowledges and agrees that the Real Property is owned by the Sub-Lessee.

(b) Notwithstanding the provisions of subsection (a) of this Section, the Sub-Lessee may, with the prior written consent of the Lessor, substitute for parts, elements, portions or all of the Equipment, other parts, elements, portions, equipment or facilities; *provided, however*, that any substitutions made pursuant to the Sub-Lessee's obligations to make repairs referenced under Section 9.01 or 10.01 hereof shall not require such prior written consent. The Sub-Lessee shall provide such documents or assurances as the Lessor may reasonably request to maintain or confirm the Lessor's security interest in the Equipment as so modified or substituted.

## ARTICLE X

*Section 10.01. Damage, Destruction and Condemnation.* Unless the Sub-Lessee shall have exercised its option to purchase the Equipment by making payment of the Purchase Price as provided in the related Lease, if prior to the termination of the applicable Lease Term (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof or the estate of the Sub-Lessee in the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, then the Sub-Lessee, the Lessee and the Lessor will cause the Net Proceeds (as hereinafter defined) of any insurance claim to be applied to the prompt repair, restoration, replacement, modification or improvement of the Equipment and the Net Proceeds of any condemnation award or sale under threat of condemnation to be applied to the prompt repair, restoration, replacement, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after application in accordance with the preceding sentence shall be paid to the Sub-Lessee.

If the Sub-Lessee elects to replace any item of Equipment (the "*Replaced Equipment*") pursuant to this Section, the replacement equipment (the "*Replacement Equipment*") shall be of similar type, utility and condition to the Replaced Equipment and shall be of equal or greater value than the Replaced Equipment. The Sub-Lessee shall represent, warrant and covenant to Lessor that each item of Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only those liens created by or through the Lessor, and shall provide to the Lessor any and all documents as the Lessor may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessor evidencing Lessor's security interest in the Replacement Equipment. The Lessor, the Lessee and the Sub-Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Master Lease and the related Lease. Lessee shall complete the documentation of Replacement Equipment on or before the next Rent Payment date after the occurrence of a casualty event, or be required to exercise the Purchase Option with respect to the damaged equipment



For purposes of Section 9.03 and this Article X, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses (including attorneys’ fees) incurred in the collection thereof.

*Section 10.02. Insufficiency of Net Proceeds.* If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, replacement, modification or improvement referred to in Section 10.01 hereof, the Sub-Lessee shall either (a) complete such repair, restoration, replacement, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, in which event the Sub-Lessee agrees that if the Sub-Lessee shall make any payments pursuant to the provisions of this Section, the Sub-Lessee shall not be entitled to any reimbursement therefor from the Lessor or the Lessee nor shall the Lessee or the Sub-Lessee be entitled to any diminution of the amounts payable under Article VI hereof; or (b) pay or cause to be paid to the Lessor the amount of the then applicable Purchase Price for the Equipment, and, upon such payment, the applicable Lease Term shall terminate and the Lessor’s security interest in the Equipment shall terminate as provided in Article VIII hereof. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, shall be retained by the Sub-Lessee.

## ARTICLE XI

*Section 11.01. Disclaimer of Warranties.* THE LESSOR AND THE LESSEE MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT THERETO AND, AS TO THE LESSOR AND THE LESSEE, THE SUB-LESSEE’S ACQUISITION OF THE EQUIPMENT SHALL BE ON AN “AS IS” BASIS. In no event shall the Lessor or the Lessee be liable for any loss or damage in connection with or arising out of this Master Lease, any Lease, the Equipment or the existence, furnishing, functioning or the Sub-Lessee’s use of any item or products or services provided for in this Master Lease or any Lease.

*Section 11.02. Vendor’s Warranties.* The Lessor and the Lessee hereby irrevocably appoint the Sub-Lessee their agent and attorney-in-fact during each Lease Term, so long as the Sub-Lessee shall not be in default under a Lease, to assert from time to time whatever claims and rights including warranties of the Equipment which the Lessor or the Lessee may have against the Vendor. The Sub-Lessee’s sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against either or both of the Lessor and the Lessee, nor shall such matter have any effect whatsoever on the rights and obligations of the Lessor or the Lessee with respect to this Master Lease or any Lease, including the right to receive full and timely payments under any Lease. The Sub-Lessee expressly acknowledges that the Lessor and the Lessee make, and have made, no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

*Section 11.03. Use of the Equipment.* The Sub-Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by the related Lease. The Sub-Lessee shall obtain all permits and

licenses, if any, necessary for the installation and operation of the Equipment. The Sub-Lessee shall comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdictions in which its operations involving any component of Equipment may extend and of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment or its interest or rights under each Lease; *provided* that the Sub-Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of the Lessor (as to its interests) and the Lessee (as to its interests), adversely affect the respective interests of the Lessor and the Lessee, as applicable, in and to the Equipment or their respective interests or rights under the related Lease.

*Section 11.04. The Sub-Lessee's Indemnification.* The Sub-Lessee waives and releases any claim now or hereafter existing against the Lessor, the Lessee, any company controlled by, controlling, or under common control with the Lessor or the Lessee and all of their directors, officers, employees, agents, attorneys, successors and assigns (each, an "*Indemnified Person*") on account of, and shall, to the extent permitted by law, indemnify, reimburse and hold each Indemnified Person harmless from, any and all claims (including, but not limited to, claims based on or relating to copyright, trademark or patent infringement, environmental liability, negligence, strict liability in tort, statutory liability or violation of laws), losses, damages, obligations, penalties, liabilities, demands, suits, judgments or causes of action (collectively, "*Claims*"), and all legal proceedings, and any reasonable costs or expenses in connection therewith, in each case imposed on, incurred by or asserted against the Indemnified Person in any way relating solely to, connected solely with or arising solely in any manner out of: (i) the registration, purchase, or the ownership, delivery, condition, lease, assignment, storage, transportation, possession, use, operation, return, repossession, sale or other disposition of, any Equipment, before or during its Lease Term, (ii) any alleged or actual defect in any Equipment (whether arising from the material or any article used therein, the design, testing, use, maintenance, service, repair or overhaul thereof or otherwise) regardless of when such defect is discovered or alleged, provided that the Equipment is in Sub-Lessee's possession; (iii) any assertion or determination by the Internal Revenue Service that the interest component of Rental Payments is not excludable from gross income for federal income tax purposes or (iv) this Lease or any other related document, the enforcement hereof or thereof or the consummation of the transactions contemplated hereby or thereby, other than (x) any Claim against Lessor resulting solely from the negligence or willful misconduct of the Lessor (other than any negligence or willful misconduct of another party imputed to the Lessor), or (y) any Claim against Lessee resulting solely from the gross negligence or willful misconduct of the Lessee (other than gross negligence or willful misconduct of another party imputed to the Lessee), unless covered by the insurance the Sub-Lessee is required to maintain hereunder; further provided that the foregoing is subject to the limitations of the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:2-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

*Section 11.05. Taxes.*

(a) The Sub-Lessee shall pay or reimburse the Lessor and the Lessee for any and all fees (including, but not limited to, license, documentation, recording or registration fees) and all sales, use, gross receipts, property, occupational, value-added or other taxes, levies, imposts, duties, assessments, charges or withholdings of any nature whatsoever, together with any

penalties, fines or additions to tax, or interest thereon (each of the foregoing being hereafter referred to as an “*Imposition*”), arising at any time before or during the Lease Term, or upon any termination of this Lease or return of the Equipment to the Lessor, and levied or imposed on the Lessor, directly or otherwise, by any federal, state or local government or taxing authority in the United States or by any foreign country or foreign or international taxing authority on or with respect to (a) any of the Equipment, (b) the exportation, importation, registration, purchase, ownership, delivery, leasing, possession, use, operation, storage, maintenance, repair, transportation, return, sale, transfer of title or other disposition thereof, (c) the rents, receipts, or earnings arising from any of the Equipment or (d) the Lease or any payment made hereunder, excluding, however, taxes measured by the Lessor’s net income imposed or levied by the United States or any state thereof unless such taxes are in lieu of or in substitution for any Impositions the Sub-Lessee would otherwise have been obligated to pay or reimburse hereunder.

(b) The Sub-Lessee shall pay on or before the time or times prescribed by law each Imposition for which the Sub-Lessee is primarily responsible under applicable law and any other Imposition (except any Imposition excluded by Section 11.05(a) hereof), but the Sub-Lessee shall have no obligation to pay an Imposition that the Sub-Lessee is contesting in good faith and by appropriate legal proceedings and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property, use, disposition or other rights of the Lessor with respect to the Equipment. If any Imposition (except an Imposition excluded by Section 11.05(a) hereof) is charged or levied against the Lessor or the Lessee directly and paid by the Lessor or the Lessee, the Sub-Lessee shall reimburse the Lessor or the Lessee on presentation of an invoice therefor.

(c) If the Lessor or the Lessee is not entitled to a corresponding and equal deduction with respect to any Imposition the Sub-Lessee is required to pay or reimburse under Section 11.05(a) or Section 11.05(b) and the payment or reimbursement constitutes income to the Lessor or the Lessee, then the Sub-Lessee shall also pay to the Lessor or the Lessee the amount of any Imposition the Lessor or the Lessee is obligated to pay in respect of (i) such payment or reimbursement by the Sub-Lessee and (ii) any payment by the Sub-Lessee made pursuant to this Section 11.05(c).

The Sub-Lessee shall prepare and file, in a manner satisfactory to the Lessor and the Lessee, any reports or returns required with respect to the Equipment. The Sub-Lessee shall furnish on the Lessor’s or the Lessee’s request reports or returns so filed.

## ARTICLE XII

*Section 12.01. Purchase Option.* The Sub-Lessee shall be entitled to full title and all ownership interests in the Equipment identified in a particular Lease, and the Lessor’s security interests in and to the Equipment subject to such Lease shall be terminated:

(a) from and after the date specified in the related Schedule (the “*Purchase Option Commencement Date*”), upon not less than thirty (30) and not more than 120 days’ prior written notice to the Lessor and the Lessee from the Sub-Lessee, and upon the payment to the Lessor of the applicable Purchase Price, which may include a prepayment premium on the unpaid principal

balance as set forth in the applicable Schedule, unless otherwise provided in the applicable Lease, and all other amounts due from the Sub-Lessee with respect to such Lease; or

(b) upon payment to the Lessor of the applicable Purchase Price pursuant to Section 10.02(b) and all other amounts due from the Sub-Lessee with respect to such Lease.

*Section 12.02. Consummation of Purchase.* The Lessor's security interests, if any, in and to the Equipment identified in a particular Lease and in the related Acquisition Fund will be terminated and released in conjunction with the Lessor's receipt of the full Purchase Price or the final Rental Payment due under such Lease unless an Event of Default shall have occurred and be continuing as of such date. On such date, the Lessor shall deliver to the Lessee and the Sub-Lessee such deeds, releases, termination statements, bills of sale and other documents and instruments as the Lessee and Sub-Lessee shall reasonably require to evidence the transfer of all right, title and interest of the Lessor in and to such Equipment to the Sub-Lessee free and clear of all liens and encumbrances created by or arising, directly or indirectly, through the Lessor.

*Section 12.03. Mandatory Prepayment.*

(a) A Lease shall be subject to mandatory prepayment in the event that at the end of the Acquisition Period there are unspent funds in the account within the Acquisition Fund relating to such Lease. In such event, such unspent funds shall, on the next Rental Payment date under the Lease, be applied *pro rata* to the prepayment of the principal components of outstanding Rental Payments, unless otherwise provided in such Lease. The remaining Rental Payments shall be recomputed based upon the reduced principal balance and the Lease shall be amended to reflect such prepayment of principal. The Lessor, the Lessee and the Sub-Lessee shall execute the revised Lease to acknowledge such prepayment of principal.

(b) All or substantially all of the assets of the Sub-Lessee, including the Sub-Lessee's interest in the Equipment under each Lease, may be acquired in any manner by another entity, subject to the opinion of the Lessor's special tax counsel as to the continued exclusion from gross income of the interest component of the Rental Payments. However, if all or substantially all of the assets of the Sub-Lessee, including the Sub-Lessee's interest in the Equipment under each Lease, are acquired in any manner by another entity, the Sub-Lessee shall, at the direction of the Lessor, prepay in whole the then applicable Purchase Price of all Equipment identified under all Leases.

### ARTICLE XIII

*Section 13.01. Assignment by Lessor.* The Lessor's right, title and interest in and to Rental Payments and any other amounts payable by the Sub-Lessee under any and all of the Leases and the Lessor's security interest in the Equipment subject to each such Lease and in the Acquisition Fund or any portion thereof, and all proceeds therefrom, may be assigned and reassigned in whole or in part to one or more assignees or subassignees by the Lessor without the necessity of obtaining the consent of the Lessee or the Sub-Lessee; *provided, however*, that no such assignment or reassignment shall be effective unless and until (a) the Lessee shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee, and (b) in the event that such assignment or reassignment is made to a

bank or trust company as trustee for holders of certificates representing interests in such a Lease, such bank or trust company agrees to maintain, or cause to be maintained, a book-entry system by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of the Lessee, to furnish such information to the Lessee. During the term of each Lease, the Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. The Lessee and the Sub-Lessee agree to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by the Lessor to protect its interest in the Equipment, in any Lease and in the Acquisition Fund. The Sub-Lessee shall not have the right to and shall not assert against any assignee of the Lessor any claim, counterclaim or other right that the Sub-Lessee may have against the Lessor, the Lessee or any Vendor; the parties acknowledge and agree that the foregoing does not limit or restrict the Sub-Lessee in the exercise of any of its rights against the Lessor, Lessee or any Vendor. Assignments in part may include without limitation assignment of all of the Lessor's security interest in and to the Equipment listed in a particular Lease and all rights in, to and under the Lease related to such Equipment. The option granted in this Section may be separately exercised from time to time with respect to the Equipment listed in each Lease, but such option does not permit the assignment of less than all of the Lessor's interests in all of the Equipment listed in a single Lease.

*Section 13.02. No Sale, Assignment or Subleasing by Sub-Lessee.* None of the Sub-Lessee's right, title and interest in, to and under any Lease or any portion of the Equipment may be assigned, sold, subleased or encumbered by the Sub-Lessee for any reason; except that the Sub-Lessee may sublease all or part of any Equipment if the Sub-Lessee obtains the prior written consent of the Lessor and the Lessee and an opinion of Bond Counsel that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income purposes. Any such sublease of all or part of any Equipment shall be subject to the applicable Lease and the rights of the Lessor and Lessee in, to and under such Lease and with respect to the Equipment.

#### ARTICLE XIV

*Section 14.01. Events of Default.* The following constitute "Events of Default" under a Lease:

- (a) failure by the Sub-Lessee to pay any Rental Payment or other payment required to be paid under any Lease at the time when due; or
- (b) failure by the Sub-Lessee to maintain insurance on the Equipment in accordance with Section 9.03 hereof; or
- (c) failure by the Sub-Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of thirty (30) days after written notice is given to the Sub-Lessee by the Lessor or the Lessee, specifying such failure and requesting that it be remedied; provided, however, that if the Sub-Lessee cannot reasonably cure such failure within thirty (30) days, there shall not be an Event of Default if Sub-Lessee commences cure within said thirty (30) days and diligently pursues the same to completion; or

(d) any statement, representation or warranty made by the Sub-Lessee in or pursuant to any Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made; or

(e) any default occurs under any other agreement for borrowing money or receiving credit under which the Sub-Lessee may be obligated as borrower for an amount greater than \$1,000,000, if such default consists of (i) the failure to pay any indebtedness when due or (ii) the failure to perform any other obligation thereunder and gives the holder of the indebtedness the right to accelerate the indebtedness; or

(f) the Sub-Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the Sub-Lessee, or of all or a substantial part of its assets, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the Sub-Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(g) an order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of the Sub-Lessee or of all or a substantial part of its assets, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days; or

(h) the Sub-Lessee liquidates, dissolves, dies or enters into any partnership, joint venture (other than in its ordinary course of business), consolidation, merger or other combination, or sells, leases or disposes of a substantial portion of its business or assets.

*Section 14.02. Remedies on Default.* Whenever any Event of Default shall have occurred and be continuing, the Lessor shall have the right, at its sole option without any further demand or notice, to take any one or any combination of the following remedial steps from time to time insofar as the same are otherwise accorded to the Lessor or the Lessee by applicable law:

(a) By written notice to the Sub-Lessee and the Lessee, declare immediately due and payable an amount equal to all Rental Payments and other amounts then due and unpaid under the related Lease, all interest accrued thereon and unpaid and the entire unpaid principal portion of all remaining Rental Payments due during the applicable Lease Term, whereupon the same shall become immediately due and payable without any further action or notice;

(b) With or without terminating the Lease Term under such Lease, retake possession of the Equipment (other than any portion thereof which constitutes Real Property) wherever situated, without any court order or other process of law and without liability for entering the premises, and lease, sub-lease or make other disposition of the Equipment for use over a term in a commercially reasonable manner, all for the account of the Lessor or the Lessee; *provided* that the Sub-Lessee shall remain directly liable for the deficiency, if any, between the rent or other amounts paid by a lessee or sub-lessee of the Equipment pursuant to such lease or sublease during the same period of time, after deducting all costs and expenses, including reasonable

attorney's fees and expenses, incurred with respect to the recovery, repair and storage of the Equipment during such period of time and the Rental Payments due under the related Lease;

(c) With or without terminating the Lease Term under such Lease, retake possession of the Equipment (other than any portion thereof which constitutes Real Property) wherever situated, without any court order or other process of law and without liability for entering the premises, and sell the Equipment in a commercially reasonable manner;

(d) Proceed by appropriate court action to enforce performance by the Lessee or the Sub-Lessee of the applicable covenants of such Lease or to recover for the breach thereof, including the payment of all amounts due from the Sub-Lessee. The Sub-Lessee shall pay or repay to the Lessor or the Lessee all costs of such action or court action other than attorneys' fees;

(e) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights with respect to the Equipment subject to such Lease. The Sub-Lessee shall pay or repay to the Lessor or the Lessee all costs of such action or court action other than attorneys' fees; or

(f) Deliver written notice to the Acquisition Fund Custodian to liquidate immediately all investments held in the Acquisition Fund and the Acquisition Fund Custodian shall liquidate such investments and transfer the proceeds thereof and all other moneys held in the Acquisition Fund to the Lessor.

Notwithstanding the provisions of any Lease relative to the passage of legal title to the Equipment thereunder to the Lessor upon an Event of Default by the Sub-Lessee and the delivery of possession to the Lessor or the taking of possession of the Equipment by the Lessor upon an Event of Default by the Sub-Lessee, the Lessor has not and does not hereby agree to accept or retain the Equipment in discharge of the Sub-Lessee's obligations under any Lease. The Lessor, the Lessee and the Sub-Lessee hereby acknowledge and agree that the passage of legal title to the Lessor upon an Event of Default by the Sub-Lessee in accordance with a Lease and the Lessor's obtaining possession of the Equipment is not an election by the Lessor under Section 9-620 of the applicable Uniform Commercial Code or any other provision to accept the Equipment in discharge and satisfaction of the Sub-Lessee's obligations under each Lease. Notwithstanding any other remedy exercised under any Lease, the Sub-Lessee shall remain obligated to pay to the Lessor any unpaid portion of the Purchase Price and all other amounts due under the related Lease.

All of the Sub-Lessee's right, title and interest in and to any Equipment the possession of which is retaken by the Lessor, in accordance with a Lease, upon the occurrence of an Event of Default (including, without limitation, construction contracts, warranties, guaranties or completion assurances applicable to such Equipment) shall terminate immediately upon such repossession.

*Section 14.03. Return of Equipment.* With respect only to Equipment which does not constitute Real Property, upon any Event of Default, the Sub-Lessee shall promptly, but in any event within ten (10) days after written demand by the Lessor, at the Sub-Lessee's own cost and expense: (a) perform any testing and repairs required to restore such Equipment to the condition

required by Section 9.01 hereof; (b) if deinstallation, disassembly or crating is required, cause such Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to the Lessor; and (c) return such Equipment to a location specified by the Lessor within the continental United States, freight and insurance prepaid by the Sub-Lessee. If the Sub-Lessee refuses to return such Equipment in the manner designated as provided herein, the Sub-Lessee shall permit the Lessor to recover such Equipment at the Sub-Lessee's sole cost and expense, including (without limitation) all costs of transportation. In the event that the Sub-Lessee made modifications to a site to accommodate the Equipment and such modifications impede the removal of the Equipment, the cost of removing the impediments and restoring the site shall be the sole responsibility of the Sub-Lessee.

*Section 14.04. No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under a Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required by this Article.

*Section 14.05. Application of Moneys.* Any net proceeds from the exercise of any remedy under a Lease (after deducting all expenses of the Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing Equipment and all brokerage, auctioneer's or attorney's fees) shall be applied as follows:

FIRST, to pay all proper and reasonable costs and expenses associated with the recovery, repair, storage and sale of the Equipment, including, but not limited to, sales taxes, and expenses but not including attorneys' fees;

SECOND, to pay (i) the Lessor the amount of all unpaid Rental Payments, if any, which are then due and owing, together with interest and late charges thereon, (ii) the Lessor the then applicable Purchase Price (taking into account the payment of past due Rental Payments as aforesaid), plus a pro rata allocation of interest, at the rate utilized to establish the interest component for the Rental Payment next due pursuant to the applicable Lease, from the next preceding due date of a Rental Payment until the date of payment by the buyer, and (iii) any other amounts due hereunder, including indemnity payments, reimbursement of any advances and other amounts payable to the Lessor under such Lease; and

THIRD, to pay the remainder of the sale proceeds, purchase moneys or other amounts paid by a buyer of the Equipment, to the Sub-Lessee.

*Section 14.06. Interest on Late Payment.* Any unpaid Rental Payment or other amount payable by the Sub-Lessee to or for the benefit of the Lessor hereunder shall bear interest at the lesser of the maximum interest rate permitted by law or twelve percent (12%) per annum, from the due date until paid and collected.



*Section 14.07. Force Majeure.* If by reason of *force majeure* the Sub-Lessee is unable in whole or in part to carry out its agreement herein contained, other than the obligations on the part of the Sub-Lessee contained in Article VI and Sections 9.03 and 11.04 hereof, the Sub-Lessee shall not be deemed in default during the continuance of such inability. The term "*force majeure*" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or any of their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods or explosions.

## ARTICLE XV

*Section 15.01. Notices.* All notices, certificates or other communications under any Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses immediately after the signatures to this Master Lease (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by the Lessee.

*Section 15.02. Binding Effect.* Each Lease shall inure to the benefit of and shall be binding upon the Lessor, the Lessee, the Sub-Lessee and their respective successors and assigns.

*Section 15.03. Severability.* In the event any provision of any Lease shall be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 15.04. Amendments.* The terms of this Master Lease or any Lease shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor, the Lessee and the Sub-Lessee.

*Section 15.05. Execution in Counterparts.* Each Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

*Section 15.06. Applicable Law.* Each Lease shall be governed by and construed in accordance with the laws of the State of New Jersey, including without limitation, the New Jersey Tort Claim Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., without regard to conflict of laws principles. The parties agree that pursuant to the New Jersey Contractual Liability Act, venue and jurisdiction regarding any matter pertaining to this Agreement shall be in the Superior Court of New Jersey, Law, Division and consent to same.

*Section 15.07. Compliance with P.L. 2005, c. 271 Reporting Requirements.* The Lessor hereby acknowledges that it has been advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission ("ELEC") pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3) if the Lessor enters into agreements or contracts such as this Master Lease or any Lease, with a New Jersey public

entity, such as the Lessee, and receives compensation or fees in excess of \$50,000 or more in the aggregate from New Jersey public entities, such as the Lessee, in a calendar year. It is the Lessor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

*Section 15.08. Covenant as to P.L. 2005, c. 92.* In accordance with P.L. 2005, c. 92, the Lessor covenants and agrees that all services performed under this Master Lease or any Lease or any amendment to this Master Lease or any Lease thereto shall be performed within the United States of America.

*Section 15.09. Business Registration.* The Lessor agrees that it will comply with the provisions of P.L. 2004, c. 57, which requires all companies doing business with the State of New Jersey or instrumentalities of the State of New Jersey to register with the New Jersey Department of Treasury. Lessor shall be required to provide Lessee with proof of business registration in accordance with P.L. 2004, c. 57 upon the execution of this Master Lease.

*Section 15.10. EEO/Affirmative Action.* The Lessor agrees that it does not discriminate in the hiring or promotion of any minorities, as designated by the Equal Opportunity Commission of the United States of America, or the Department of Civil Rights of the State of New Jersey, and that it does not discriminate against any person or persons on the basis of race, religion, age, color, sex, national origin, sexual orientation or handicap. The Lessor agrees to abide by all anti-discrimination laws, including, but not limited to, those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations thereunder.

In addition, the Lessor agrees to complete a Mandatory Language for Professional Contracts form and a State of New Jersey Affirmative Action employee Information Report (AA-302 Form). However, if Lessor maintains a current Certificate of Employee Information Report Approval as issued by the New Jersey Department of Treasury, it may be submitted in lieu of the AA-302 Form indicated above.

*Section 15.11. Captions.* The captions or headings in this Master Lease and in each Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Master Lease or any Lease.

IN WITNESS WHEREOF, the parties hereto have duly executed this Master Equipment Lease and Sublease Agreement in their respective names by their duly authorized officers, all as of the date first written above.

LESSOR:

LESSEE:

New Jersey Educational Facilities Authority  
103 College Road East  
Princeton, New Jersey 08540

By \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

Attest:

By \_\_\_\_\_  
Title \_\_\_\_\_

SUB-LESSEE:

The Board of Trustees of Thomas Edison  
State College

By \_\_\_\_\_  
Title \_\_\_\_\_

(Seal)

Attest:

By \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT A**  
**ACQUISITION FUND AGREEMENT**

**EXHIBIT B**

**ACCEPTANCE CERTIFICATE**

[lessor]

Re: Schedule of Property No. \_\_\_\_\_, dated \_\_\_\_\_,  
to Master Equipment Lease and Sublease Agreement, dated as of  
\_\_\_\_\_, 2010 among \_\_\_\_\_, as Lessor, the New  
Jersey Educational Facilities Authority, as Lessee, and The Board of  
Trustees of \_\_\_\_\_, as Sub-Lessee

Ladies and Gentlemen:

In accordance with the Master Equipment Lease and Sublease Agreement (the "*Master Lease*") described above, the undersigned Sub-Lessee hereby certifies and represents to, and agrees with, the Lessor and the Lessee as follows:

(1) All of the Equipment (as such term is defined in the Master Lease) listed in the above-referenced Schedule of Property (the "*Schedule*") has been delivered, installed and accepted on the date hereof.

(2) The Sub-Lessee has conducted such inspection and/or testing of the Equipment listed in the Schedule as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.

(3) The Sub-Lessee is currently maintaining the insurance coverage required by Section 9.03 of the Master Lease.

(4) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Master Lease) exists at the date hereof.

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

SUB-LESSEE:  
The Board of Trustees of Thomas Edison  
State College

By \_\_\_\_\_  
Title \_\_\_\_\_

(Seal)

**EXHIBIT C**

**SCHEDULE OF PROPERTY NO. \_\_\_\_\_**

Re: Master Equipment Lease and Sublease Agreement, dated as of \_\_\_\_\_, 2007 among \_\_\_\_\_, as Lessor, the New Jersey Educational Facilities Authority, as Lessee, and The Board of Trustees of \_\_\_\_\_, as Sub-Lessee

1. *Defined Terms.* All terms used herein have the meanings ascribed to them in the above-referenced Master Equipment Lease and Sublease Agreement (the "Master Lease").
2. *Equipment.* The following items of Equipment are hereby included under this Schedule to the Master Lease.

Quantity	Description	Serial No.	Model No.	Location

3. *Payment Schedule.*

(a) *Rental Payments.* The Rental Payments shall be in such amounts and payable on such dates as set forth in the Rental Payment Schedule attached to this Schedule as Exhibit C-1. Interest shall accrue on Rental Payments from the date on which the Equipment listed in this Schedule is accepted by the Sub-Lessee as indicated in a Certificate of Acceptance substantially in the form of Exhibit B to the Master Lease or the date on which sufficient moneys to purchase the Equipment are deposited for that purpose into the Acquisition Fund, whichever is earlier.

(b) *Purchase Price Schedule.* The Purchase Option Commencement Date is \_\_\_\_\_. The Purchase Price on each Rental Payment date for the Equipment listed in this Schedule shall be the amount set forth for such Rental Payment date in the "Purchase Price" column of the Rental Payment Schedule attached to this Schedule. The Purchase Price is in addition to all Rental Payments then due under this Schedule (including the Rental Payment shown on the same line in the Rental Payment Schedule).

4. *Representations, Warranties and Covenants.* The Lessee and the Sub-Lessee hereby represent, warrant and covenant that their respective representations, warranties and covenants set forth in the Master Lease are true and correct as though made on the date of commencement of Rental Payments under this Schedule. The Sub-Lessee further represents and

warrants that no material adverse change in Sub-Lessee's financial condition has occurred since the date of the Master Lease.

5. *The Lease.* The terms and provisions of the Master Lease (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

6. *Lease Proceeds.* The Lease Proceeds which the Lessor shall pay to the Acquisition Fund Custodian in connection with this Schedule is \$\_\_\_\_\_, of which \$\_\_\_\_\_ is for deposit to the Expense Account, if any, and the balance is for deposit to the Acquisition Fund.

7. *Acquisition Period.* The Acquisition Period applicable to this Schedule shall end at the conclusion of the \_\_\_\_\_ month following the date hereof.

8. *Scheduled Expiration Date.* The Scheduled Expiration Date applicable to this Schedule is \_\_\_\_\_.

9. *Counterparts.* This Schedule may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute but one instrument.

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

LESSOR:

LESSEE:

New Jersey Educational Facilities Authority  
103 College Road East  
Princeton, New Jersey 08540

By \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

Attest:

By \_\_\_\_\_  
Title \_\_\_\_\_

SUB- LESSEE:

The Board of Trustees of Thomas Edison  
State College

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

(SEAL)

Attest:

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

Counterpart No. \_\_\_\_\_ of \_\_\_\_\_ manually executed and serially numbered counterparts.  
To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial  
Code in effect in the State), no security interest herein may be created through the transfer or  
possession of any Counterpart other than Counterpart No. 1.



EXHIBIT C-1

RENTAL PAYMENT SCHEDULE

Rental Payment Date	Rental Payment Amount	Interest Portion	Principal Portion	Purchase Price

LESSEE:  
New Jersey Educational Facilities Authority  
State College

SUB-LESSEE  
The Board of Trustees of Thomas Edison

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

By \_\_\_\_\_  
Title \_\_\_\_\_

After payment of the applicable Purchase Price, the Sub-Lessee will own the related Equipment free and clear of any obligations under the related Lease.

**EXHIBIT D**

**OPINION OF COUNSEL TO LESSEE**

\_\_\_\_\_, 2007

New Jersey Educational  
Facilities Authority  
103 College Road East  
Princeton, New Jersey 08540

The Board of Trustees of Thomas Edison State College  
Trenton, New Jersey  
(w/reliance opinion to Lessor)

Re: Schedule of Property No. \_\_\_\_\_, dated \_\_\_\_\_, to the Master Equipment Lease and Sublease Agreement dated as of \_\_\_\_\_, 2007 by and among \_\_\_\_\_ as Lessor, the New Jersey Educational Facilities Authority, as Lessee and The Board of Trustees of \_\_\_\_\_, as Sub-Lessee

Ladies and Gentlemen:

We have acted as Bond Counsel to the New Jersey Educational Facilities Authority (the "Lessee", in connection with entry into the within defined Master Lease with \_\_\_\_\_ (the "Lessor") and The Board of Trustees of \_\_\_\_\_, as Sub-Lessee (the "Sub-

Lessee") and the within defined Schedule. The Master Lease and Schedule are entered under and pursuant to the provisions of the New Jersey Educational Facilities Authority Law, being Chapter 72A of Title 18A of the New Jersey Statutes as enacted by Chapter 271 of the Public Laws of 1967, as amended and supplemented (the "Act") and a Resolution Authorizing The Financing Of The Acquisition And Installation Of Equipment For Thomas Edison State College Through The New Jersey Educational Facilities Authority Lease Financing Program adopted on \_\_\_\_\_, 2010 (the "Lessee Resolution").

Capitalized terms used in this opinion and not otherwise defined herein shall have the same meanings are set forth in the Master Lease and Lessee Resolution.

The Master Lease and Schedule are being entered for the purpose of financing the acquisition and installation of the equipment listed in the Schedule (the "Equipment") and the payment of related costs.

The Master Lease and Schedule are special, limited obligations of the Lessee payable from and secured solely by Rental Payments made by the Sub-Lessee directly to the Lessor pursuant to the Master Lease and Schedule and moneys held by the Acquisition Fund Custodian designated pursuant to that certain Acquisition Fund and Account Control Agreement dated as of \_\_\_\_\_, 2010 (the "Acquisition Fund Agreement"), by and among the Lessor, the Lessee, the Sub-Lessee and \_\_\_\_\_ (the "Acquisition Fund Custodian"). Pursuant to the Master Lease and Schedule, the Sub-Lessee agrees, *inter alia*, to pay Rental Payments directly to the Lessor from any legally available funds of the Sub-Lessee.

In our capacity as Bond Counsel and as a basis for the opinions set forth below, we have examined certified copies of the Lessee Resolution and the Resolution of The Board of Trustees of Thomas Edison State College adopted on \_\_\_\_\_ (the "Sub-Lessee Resolution"), an executed copy of the Master Equipment Lease and Sub-Lease dated as of \_\_\_\_\_, 2010 by and among the Lessor, the Lessee and the Sub-Lessee (the "Master Lease"), an executed copy of the Schedule of Property No. \_\_\_\_ dated \_\_\_\_ the "Schedule" to the Master Lease which, among other things, provides for the lease and sublease to the Sub-Lessee of the Equipment, an executed copy of the Acquisition Fund Agreement, and such other opinions, documents, certificates and matters of law as we have deemed necessary or appropriate. As to matters of fact, we have relied upon the genuineness, accuracy and completeness of all the documents and other instruments which we have examined. We have assumed and relied upon the genuineness, accuracy and completeness of all of the documents, certificates and other instruments which we have examined.

Based on the foregoing, we are of the opinion that:

1. The Lessee is a body corporate and politic duly created and validly existing under the laws of the State of New Jersey, with full power and authority under the Act to enter into the Master Lease and Schedule, to adopt or execute, as appropriate, and deliver and perform its obligations under the Lessee Resolution, the Master Lease, Schedule and Acquisition Fund Agreement.

2. The Lessee Resolution has been duly and lawfully adopted by the Lessee, is in full force and effect and is valid and binding upon the Lessee, enforceable in accordance with its terms.

3. From an examination of such proceedings and proofs as we deem pertinent, the Master Lease, Schedule and Acquisition Fund Agreement have been duly authorized by the Lessee and Sub-Lessee pursuant to law, have been properly executed by the Lessee and Sub-Lessee and, assuming the due authorization and proper execution by the parties thereto other than the Lessee and Sub-Lessee, constitute a valid and legally binding agreements of the Lessee and Sub-Lessee, respectively, enforceable against the Lessee and Sub-Lessee, as the case may be, in accordance with their respective terms.

4. The obligations of the Lessee under the Master Lease and Schedule are special and limited obligations of the Lessee payable only out of the Rental Payments made directly by the Sub-Lessee to the Lessor under the Master Lease and Schedule and amounts held by the Acquisition Fund Custodian under the Acquisition Fund Agreement.

5. Under existing law, the portion of the Rental Payments designated as interest (the "Interest Component") is excluded from gross income for Federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code") and the Interest Component on Rental Payments is not an item of tax preference under Section 57 of the Code for purposes of computing the alternative minimum tax. We express no opinion regarding any other Federal income tax consequences arising with respect to the Rental Payments.

6. Under existing law, the Interest Component on the Rental Payments and net gains from the sale thereof are exempt from the tax imposed by the New Jersey Gross Income Tax Act, as amended.

With respect to our Federal income tax opinion, we note that the Code imposes certain requirements that must be met on the date of entry into the Master Lease and Schedule and on a continuing basis subsequent to the entry into the Master Lease and Schedule in order for the Interest Component on the Rental Payments to be excluded from gross income for Federal income tax purposes under Section 103 of the Code. Failure of the Lessee or the Sub-Lessee to comply with such requirements may cause the Interest Component on the Rental Payments to lose the exclusion from gross income for Federal income tax purposes, retroactive to the date of entry into the Master Lease and Schedule. The Lessee and the Sub-Lessee have each made representations in their respective tax certificates. In addition, the Lessee and the Sub-Lessee have covenanted to comply with the provisions of the Code applicable to the Master Lease and Schedule and have covenanted not to take any action or fail to take any action which would cause the Interest Component on the Rental Payments to lose the exclusion from gross income for Federal income tax purposes under Section 103 of the Code or cause the Interest Component on the Rental Payments to be treated as an item of tax preference under Section 57 of the Code. We have relied on the representations made in the tax certificates of the Lessee and the Sub-Lessee respectively, and we have assumed continuing compliance by the Lessee and the Sub-Lessee with the above covenants in rendering our opinion with respect to the exclusion of the Interest

Component on the Rental Payments from gross income for Federal income tax purposes and with respect to the Interest Component on the Rental Payments not constituting an item of tax preference.

We express no opinion herein with respect to the adequacy of the security for the Master Lease and Schedule or the sources of payment for the Master Lease and Schedule or with respect to the accuracy or completeness of any placement documents or other information pertaining to the placement of the Master Lease and Schedule.

For purposes of this opinion, the enforceability (but not the validity) of the documents mentioned herein may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws now or hereafter enacted by any state or by the federal government affecting the enforcement of creditors' rights, and by equitable principles, and the phrases "enforceable in accordance with their respective terms" and "enforceable in accordance with their terms" shall not mean that specific performance would necessarily be available as a remedy in every situation.

We call to your attention the fact that the obligations of the Lessee pursuant to the Master Lease and Schedule are special, limited obligations of the Lessee payable only out of Rental Payments and certain other moneys held by the Acquisition Fund Custodian under the Acquisition Fund Agreement, and that neither the Master Lease, the Schedule, the Lessee Resolution, the Sub-Lessee Resolution nor the Acquisition Fund Agreement pledge the credit or taxing power of the State of New Jersey or any political subdivision thereof. The Lessee has no taxing power.

The opinions expressed herein are limited to and based upon the laws and judicial decisions of the State of New Jersey and the federal laws and judicial decisions of the United States of America as of the date hereof, and are subject to any amendment, repeal or other modification of the applicable laws or judicial decisions that served as the basis for our opinions or to any laws or judicial decisions hereafter enacted or rendered.

Our engagement by the Authority with respect to the opinions expressed herein does not require, and shall not be construed to constitute, a continuing obligation on our part to notify or otherwise inform the addressee hereof of the amendment, repeal or other modification of the applicable laws or judicial decisions that served as the basis for this opinion letter or of any laws or judicial decisions hereafter enacted or rendered that impact on this opinion letter.

## EXHIBIT E

### OPINION OF COUNSEL TO LESSEE

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY

Points to be covered by the Opinion of the Attorney General:

1. The Authority has full power and authority to execute and deliver the Master Lease, the Schedule and the Acquisition Fund Agreement.
2. Assuming the due execution and delivery of the Master Lease, the Schedule and the Acquisition Fund Agreement by the respective parties thereto other than the Authority, the Master Lease, the Schedule and the Acquisition Fund Agreement constitute binding agreements of the Authority, enforceable in accordance with their respective terms (subject as to the enforcement of remedies to any applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other laws or equitable principles which may now or hereafter be in effect and which affect the enforcement of creditors' rights generally or against municipalities, state agencies or authorities such as the Authority).
3. There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or, to the best of our knowledge based upon such inquiry and investigation as we have deemed sufficient, threatened against or directly affecting the Authority contesting the due organization and valid existence of the Authority or the validity, due execution and authorization of the Master Lease, the Schedule and the Acquisition Fund Agreement, with respect to the Authority.

## **EXHIBIT F**

### **OPINION OF COUNSEL OF THE SUB-LESSEE**

#### POINTS TO BE COVERED BY OPINION OF COUNSEL OF THE SUB-LESSEE:

1. The Public College has full power and authority to execute and deliver the Master Lease, the Schedule and the Acquisition Fund Agreement.

2. Assuming the due execution and delivery of the Master Lease, the Schedule and the Acquisition Fund Agreement by the respective parties thereto other than the Public College, the Master Lease, the Schedule and the Acquisition Fund Agreement constitute binding agreements of the Public College, enforceable in accordance with their respective terms (subject as to the enforcement of remedies to any applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or other laws or equitable principles which may now or hereafter be in effect and which affect the enforcement of creditors' rights generally or against municipalities, state agencies or authorities).

3. There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or, to the best of our knowledge based upon such inquiry and investigation as we have deemed sufficient, threatened against or directly affecting the Public College contesting the due organization and valid existence of the Public College or the validity, due execution and authorization of the Master Lease, the Schedule and the Acquisition Fund Agreement, with respect to the Public College.





## ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

This Acquisition Fund and Account Control Agreement (this "Agreement"), dated as of \_\_\_\_\_, by and among \_\_\_\_\_ a \_\_\_\_\_ [limited liability company] [corporation] (together with its successors and assigns, hereinafter referred to as "Lessor"), the New Jersey Educational Facilities Authority (the "Lessee"), a body corporate and politic of the State of New Jersey established pursuant to the New Jersey Educational Facilities Authority Law, constituting Chapter 72A of Title 18A, Education, of the New Jersey Statutes, as amended and supplemented (the "Act"), The Board of Trustees of Thomas Edison State College, a public institution of higher education organized and existing under the laws of the State of New Jersey (the "Sub-Lessee") and \_\_\_\_\_, a \_\_\_\_\_ banking association organized under the laws of the State of \_\_\_\_\_ (hereinafter referred to as "Acquisition Fund Custodian").

Reference is made to that certain Master Equipment Lease and Sublease Agreement dated as of \_\_\_\_\_, 20\_\_ between Lessor and Lessee (hereinafter referred to as the "Lease"), covering the acquisition and lease of certain Equipment described therein (the "Equipment"). It is a requirement of the Lease that the Equipment Cost of the Equipment (an amount not to exceed \$\_\_\_\_\_) be deposited into an escrow under terms satisfactory to Lessor, for the purpose of fully funding the Lease, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment on or before \_\_\_\_\_, 200\_\_ (the "Acquisition Period").

The parties agree as follows:

1. Creation of Acquisition Fund.

(a) There is hereby created a special trust fund to be known as the "Thomas Edison State College Equipment Lease Acquisition Fund" (the "Acquisition Fund") and within such fund the "Thomas Edison State College Expense Account" (the "Expense Account") to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lessor, Lessee and Sub-Lessee, to be held, disbursed and returned in accordance with the terms hereof.

(a) (b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from the Sub-Lessee. Sub-Lessee shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments (as hereinafter defined) and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian, Lessor or Lessee shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and Sub-Lessee agrees to and does hereby release the Acquisition Fund Custodian, Lessor and Lessee from any such liability, cost, expenses, loss or claim. Interest on the Acquisition

Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this Agreement, "Qualified Investments" means (1) any direct and general obligations of, or any obligation fully and unconditionally guaranteed by, the United States of America; (2) any bond, debenture, note or participation certificate or other evidence of indebtedness issued by any United States Government Agency permitted as an investment under N.J.A.C. 17:16-11.1; (3) any guaranteed income contracts provided that: (i) the contract has a term of ten (10) years or less; (ii) the issuer of the guaranteed income contract is incorporated in the United States; (iii) the issuer is not in default as to payment of any of its outstanding obligations; (iv) (a) the issuer, in the case of an insurance company, has a total combined capital stock and surplus reserve for contingencies of at least \$200,000,000 at the date of its last published financial statement and a credit rating of at least A+ from A. M. Best Company; or (b) the issuer, in the case of a commercial bank, meets all capital requirements as defined by the Federal Reserve Board at the date of its last published financial statement and has a short term debt rating of at least P1 from Moody's Investor Service or at least the equivalent thereof from another nationally recognized rating agency; and (v) the issuer is on a list of companies certified by the Director of the State Division of Investment as having met the foregoing requirements; (4) investments in a money market fund rated "AAAm" or "AAAm-G" or better by Standard & Poor's Rating Service or the equivalent thereof by another nationally recognized rating agency; and (5) the New Jersey Cash Management Fund.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Sub-Lessee, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, Sub-Lessee shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Acquisition Fund after the expiration of the Acquisition Period shall be applied as provided in Section 4 hereof.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lessor of the occurrence of an "Event of Default" pursuant to Article XIV of the Lease or of a termination of the Lease in accordance with the terms thereof.

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. Except for any intentional acts or omissions of the Acquisition Fund custodian, the Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of negligence or willful misconduct with regard to its duties hereunder, Sub-Lessee agrees to and does hereby indemnify,

to the extent permitted by law, the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this Agreement; and in connection therewith, does to the extent permitted by law indemnify the Acquisition Fund Custodian against any and all expenses; including the cost of defending any action, suit or proceeding or resisting any claim (other than attorneys' fees); further provided that the foregoing is subject to the limitations of the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:2-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

(g) If Lessee or the Sub-Lessee disagrees with Lessor about the interpretation of the Lease, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement.

(h) The Acquisition Fund Custodian may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Acquisition Fund Custodian shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or willful misconduct.

(i) Sub-Lessee shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses (other than attorneys, agents and employees incurred for extraordinary administration of the Acquisition Fund) and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Lease, or in connection with any dispute between Lessor on the one hand and Lessee or Sub-Lessee on the other hand concerning the Acquisition Fund.

(j) Upon the prior written agreement of the parties hereto, a national banking association located in the United States or a state bank or trust company organized under the laws of a state of the United States, qualified as a depository of public funds, may be substituted to act as Acquisition Fund Custodian under this Agreement, and any substitution shall not be deemed to affect the rights or obligations of the parties hereto. Upon any such substitution, the Acquisition Fund Custodian agrees to assign to such substitute custodian its rights under this Agreement. The Acquisition Fund Custodian or any successor may at any time resign by giving mailed notice to Lessee, Sub-Lessee and Lessor of its intention to resign and of the proposed date of resignation, which shall be a date not less than 60 days after such notice is deposited in the United States mail with postage fully prepaid. The resignation shall be effective on such proposed resignation date except that the Acquisition Fund Custodian shall serve until the appointment of a successor shall have been approved by Lessee and Lessor and shall have become effective. Except as otherwise specifically provided herein, the Acquisition Fund Custodian may not delegate, transfer or assign any of the rights, duties, powers or remedies granted to the Acquisition Fund Custodian hereunder without the prior written consent of Lessee, Sub-Lessee and Lessor.

## 2. Acquisition and Installation of Property.

(a) Acquisition and Installation Contracts. Sub-Lessee will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Acquisition Fund. Sub-Lessee represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and neither Lessor nor Lessee make any warranty or representation with respect thereto. Lessor and Lessee shall have no liability under any of the applicable acquisition, equipping or installation contracts. Sub-Lessee shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof.

(b) Authorized Acquisition Fund Disbursements. Disbursements from the Acquisition Fund and any Expense Account therein shall be made for the purpose of paying (including the reimbursement to Lessee for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment and the costs of issuance incurred in connection with the Lease, respectively.

(c) Requisition Procedure. No disbursement from the Acquisition Fund shall be made unless and until Lessor has approved such requisition. Prior to disbursement from the Acquisition Fund the Sub-Lessee shall file with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due. Each such requisition shall be signed by an authorized representative of Sub-Lessee (an "Authorized Representative") and by Lessor, and shall be subject to the following:

1. Delivery to Lessor of a certificate of Sub-Lessee to the effect that:
  - (i) an obligation in the stated amount has been incurred by Sub-Lessee, and that the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease, and has not been paid;
  - (ii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made;
  - (iii) such requisition contains no item representing payment on account, or any retained percentages which Sub-Lessee is, at the date of such certificate, entitled to retain; and
  - (iv) the Equipment is insured in accordance with the Lease.
2. Delivery to Lessor of an Acceptance Certificate executed by Sub-Lessee together with invoices evidencing transfer of title to the Equipment from the vendor or supplier thereof to Sub-Lessee.
3. The disbursement shall occur during the Acquisition Period set forth in the Schedule applicable to such Equipment.
4. There shall exist no Event of Default under the Lease (nor any event which, with notice or lapse of time or both, would become an Event of Default).

3. Deposit to Acquisition Fund. Upon satisfaction of the conditions specified in Section 4.02 of the Lease, Lessor will cause the Lease Proceeds to be deposited in the Acquisition Fund (and any Expense Account therein) in amounts as directed by the Lessee. Sub-Lessee agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Acquisition Fund.

4. Excessive Acquisition Fund Moneys. Following the final disbursement from the Acquisition Fund (including any Expense Account therein) at the end of the Acquisition Period, or termination of the Acquisition Fund as otherwise provided herein, the Acquisition Fund Custodian shall transfer any remainder from the Acquisition Fund (or any Expense Account therein) to Lessor for application to the principal amounts of Rental Payments then outstanding under the Lease.

5. Security Interest. The Acquisition Fund Custodian, Lessee and Sub-Lessee acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Acquisition Fund Custodian for disbursement or return as set forth herein. Sub-Lessee hereby grants to Lessor a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to qualified investments as set forth in this Agreement, such qualified investments shall be made in the name of Acquisition Fund Custodian and the Acquisition Fund Custodian hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Acquisition Account. In order to perfect Lessor's security interest by means of control in (i) the Acquisition Fund established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (iii) all of Lessee's and Sub-Lessee's rights in respect of the Acquisition Fund, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "Collateral"), Lessor, Lessee, Sub-Lessee and Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the State of New Jersey ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Acquisition Fund Custodian will comply with all entitlement orders originated by Lessor with respect to the Collateral, or any portion of the Collateral, without further consent by Lessee or Sub-Lessee.

(c) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that Sub-Lessee is the sole owner of the Collateral, (b) that Acquisition Fund Custodian has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lessor's claim pursuant to this Agreement, and (c) that Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the

Collateral, except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lessor under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from Lessee with the consent of Sub-Lessee.

(d) Without the prior written consent of Lessor, the Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lessor or, subject to the provisions of paragraph (e) below, Lessee and Sub-Lessee, with respect to any portion or all of the Collateral. The Acquisition Fund Custodian shall promptly notify Lessor if any person requests Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) and Section 2 hereof, Acquisition Fund Custodian may allow Sub-Lessee to effect sales, trades, transfers and exchanges of Collateral within the Acquisition Fund, but will not, without the prior written consent of Lessor, allow Sub-Lessee to withdraw any Collateral from the Acquisition Fund. Acquisition Fund Custodian acknowledges that Lessor reserves the right, by delivery of written notice to Acquisition Fund Custodian, to prohibit Sub-Lessee from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Acquisition Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lessor to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lessor, the amount of any obligations of Sub-Lessee to Lessor or Lessee, the amount of any obligations of Lessee to Lessor, the validity of any of Lessor's claims against or agreements with Lessee or Sub-Lessee, the existence of any defaults under such agreements, or any other matter.

(f) Lessee and Sub-Lessee each hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lessor to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Acquisition Fund Custodian, Lessee and Sub-Lessee hereby agree that any property held in the Acquisition Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Commercial Code, notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

(i) The Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lessor at its address set forth in Section 10 herein, concurrently with the sending thereof to Lessee and Sub-Lessee, duplicate copies of any and all monthly

Acquisition fund statements or reports issued or sent to Lessee or Sub-Lessee with respect to the Acquisition Fund.

7. Compliance with P.L. 2005, c. 271 Reporting Requirements. The Acquisition Fund Custodian hereby acknowledges that it has been advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission ("ELEC") pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3) if the Acquisition Fund Custodian enters into agreements or contracts such as this Agreement, with a New Jersey public entity, such as the Lessee, and receives compensation or fees in excess of \$50,000 or more in the aggregate from New Jersey public entities, such as the Lessee, in a calendar year. It is the Acquisition Fund Custodian's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

8. Covenant as to P.L. 2005, c. 92. In accordance with P.L. 2005, c. 92, the Acquisition Fund Custodian covenants and agrees that all services performed under this Agreement or any amendment thereto shall be performed within the United States of America.

9. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey including without limitation, the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) without regard to conflict of laws principles. The parties agree that pursuant to the New Jersey Contractual Liability Act, venue and jurisdiction regarding any matter pertaining to this Agreement shall be in the Superior Court of New Jersey, Law Division, and consent to same. The parties waive any claim to a venue or jurisdiction different from the foregoing.

10. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease. This Agreement may not be amended except in writing signed by all parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns permitted hereunder and under the Lease. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lessor:

If to Lessee: New Jersey Educational Facilities Authority  
103 College Road East  
Princeton, New Jersey 08540-6612  
Attn: Executive Director  
Fax: (609) 987-0850

If to Sub-Lessee: Thomas Edison State College

Attn:  
Fax:

If to Acquisition  
Fund Custodian:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

In Witness Whereof, the parties have executed this Acquisition Fund and Account Control Agreement as of the date first above written.

\_\_\_\_\_  
as Lessor

New Jersey Educational Facilities Authority,  
as Lessee

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

The Board of Trustees of  
Thomas Edison, as Sub-Lessee

\_\_\_\_\_  
As Acquisition Fund Custodian

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**SCHEDULE 1**

**FORM OF DISBURSEMENT REQUEST**

Re: Master Equipment Lease and Sublease Agreement dated as of [ \_\_\_\_\_ ] by and between \_\_\_\_\_, as Lessor, the New Jersey Educational Facilities Authority, as Lessee and The Board of Trustees of Thomas Edison State College, as Sub-Lessee and the Schedule thereto dated \_\_\_\_\_ (the "Lease")

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of [ \_\_\_\_\_ ] (the "Acquisition Fund and Account Control Agreement") by and among \_\_\_\_\_ ("Lessor"), the New Jersey Educational Facilities Authority ("Lessee"), The Board of Trustees of Thomas Edison State College (the "Sub-Lessee") and \_\_\_\_\_, \_\_\_\_\_ (the "Acquisition Fund Custodian"), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement (the "Acquisition Fund") for the following purposes.

Payee's Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by Sub-Lessee, and the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease, and has not been paid. Attached hereto is the original invoice with respect to such obligation.

(ii) The undersigned, as Sub-Lessee's Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iii) This requisition contains no item representing payment on account, or any retained percentages which Sub-Lessee is, at the date hereof, entitled to retain.

(iv) The Equipment is insured in accordance with the Lease.

(v) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vi) The disbursement has occurred or shall occur during the Acquisition Period set forth in the Schedule applicable to such Equipment.

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

THE BOARD OF TRUSTEES OF THOMAS  
EDISON STATE COLLEGE

By: \_\_\_\_\_  
Authorized Representative

Disbursement of funds from the Acquisition  
Fund in accordance with the foregoing  
Disbursement Request hereby is authorized

\_\_\_\_\_  
as Lessor under the Lease

By: \_\_\_\_\_  
Title: Vice President