

**AGREEMENT WITH RESPECT TO THE
§ _____ BOARD OF EDUCATION OF THE TOWNSHIP OF NUTLEY
GENERAL OBLIGATION BONDS UNDER THE 1992 PROPERTY AND EQUIPMENT
LEASING PROGRAM OF THE ESSEX COUNTY IMPROVEMENT AUTHORITY**

BETWEEN

THE ESSEX COUNTY IMPROVEMENT AUTHORITY,

AND

THE BOARD OF EDUCATION OF THE TOWNSHIP OF NUTLEY

Dated as of September 1, 1992

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 101.	Definitions	3
Section 102.	Exhibits.	11

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES; DISCLAIMERS

Section 201.	Representations, Covenants and Warranties of the Board.	13
Section 202.	Representations, Covenants and Warranties of Authority.	16
Section 203.	Disclaimer of the Authority and the Pooled Trustee.	17

ARTICLE III

TERM OF AGREEMENT

Section 301.	Termination of Agreement Term.	18
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ARTICLE IV

THE PROJECT

Section 401.	Responsibility for the Project.	19
Section 402.	Performance Bonds and Other Guaranty.	19
Section 403.	Delay of Project.	19
Section 404.	Board's Negligence.	19
Section 405.	Construction Period Insurance.	20
Section 406.	Payments Associated with the Project	20

ARTICLE V

INSURANCE AND OTHER MATTERS

Section 501.	Insurance Coverage for the Project.	21
Section 502.	Public Liability Insurance.	21
Section 503.	Auto Liability Insurance.	22
Section 504.	Worker's Compensation Insurance.	22
Section 505.	Other Insurance and Requirements for All Insurance.	23
Section 506.	Indemnification.	23
Section 507.	Pooled Trustee Indemnification.	24
Section 508.	Advances by the Authority.	25
Section 509.	Net Proceeds of Insurance; Form of Policies.	25
Section 510.	Self-Insurance.	25

ARTICLE VI

PAYMENTS

Section 601.	Costs of Issuance.	29
Section 602.	Administrative Fee and Other Administrative Expenses	29
Section 603.	Capitalized Interest	29
Section 604.	Optional Redemption of the Bonds	29
Section 605.	Purchase Price of the Board Bonds	30
Section 606.	Payments for Costs of the Project	30

ARTICLE VII

EVENTS OF DEFAULT, REMEDIES

Section 701.	Events of Default.	32
Section 702.	Remedies	33
Section 703.	Election of Remedies; No Waiver of Elected Remedies.	33
Section 704.	No Additional Waiver Implied by One Waiver.	33
Section 705.	Agreement to Pay Attorneys' Fees and Expenses.	33
Section 706.	Late Charges.	34
Section 707.	Delay; Notice.	34

ARTICLE VIII

ADMINISTRATIVE PROVISIONS

Section 801.	Notices.	35
Section 802.	Severability.	35
Section 803.	Amendments, Changes and Modifications.	36
Section 804.	Further Assurances and Corrective Instruments.	36
Section 805.	Applicable Law.	36
Section 806.	Authority and Board Representatives	36
Section 807.	Captions.	36
Section 808.	Binding; Counterparts.	36
Section 809.	Time is of the Essence.	36
Section 810.	No Personal Liability or Accountability.	37
Section 811.	Gender.	37
Section 812.	Third Party Beneficiaries.	37

EXHIBIT A

DESCRIPTION OF THE PROJECT	A-1
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EXHIBIT B

FORM OF REQUISITION	B-1
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**AGREEMENT WITH RESPECT TO THE
\$ _____ BOARD OF EDUCATION OF THE TOWNSHIP OF NUTLEY
GENERAL OBLIGATION BONDS UNDER THE 1992 PROPERTY AND EQUIPMENT
LEASING PROGRAM OF THE ESSEX COUNTY IMPROVEMENT AUTHORITY**

This AGREEMENT WITH RESPECT TO THE \$ _____ BOARD OF EDUCATION OF THE TOWNSHIP OF NUTLEY GENERAL OBLIGATION BONDS UNDER THE 1992 PROPERTY AND EQUIPMENT LEASING PROGRAM OF THE ESSEX COUNTY IMPROVEMENT AUTHORITY, dated as of September 1, 1992 (this "Agreement") by and between The Essex County Improvement Authority (the "Authority") and the Board of Education of the Township of Nutley (the "Board"), a type II school district of the State of New Jersey.

W I T N E S S E T H:

WHEREAS, simultaneously herewith, the Authority has issued its "Property and Equipment Leasing Program County Guaranteed Pooled Revenue Bonds, Series 1992" in an aggregate principal amount not exceeding \$20,000,000 (the "Pooled Bonds") for the purpose of, among other things, purchasing all of the general obligation bonds of the Board also issued simultaneously herewith in an aggregate principal amount not exceeding \$1,700,000 (the "Board Bonds"), which purchase is authorized by applicable law, including without limitation, Section 12 (N.J.S.A. 40:37A-55(j)) of the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State of New Jersey (the "Act");

WHEREAS, the Board will use the proceeds from the sale of the Board Bonds to finance the capital improvements (the "Project") described on Exhibit A hereto;

WHEREAS, the Authority is authorized by law, specifically Section 11 (N.J.S.A. 40:37A-54(a)) of the Act, to provide public facilities, including without limitation, the Project, for the use of the County of Essex (the "County") and municipalities and certain local governmental units located within the County, including without limitation, the Board; and

WHEREAS, the Authority and the Board of Education intend to enter into this Agreement in order to detail each party's rights, duties and obligations concerning the Project.

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants, herein contained, the parties hereto recite and agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 101. Definitions. Unless the context otherwise specifically requires or indicates to the contrary, the following terms as used in this Agreement shall have the respective meanings set forth below. Terms used in this Agreement as defined terms and not otherwise defined herein shall have the meaning assigned to them in the Pooled Bond Resolution.

"Account" shall mean any account established in any of the Funds established under the Pooled Bond Resolution.

"Act" shall mean the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960, of the State of New Jersey, and the acts amendatory thereof and supplemental thereto.

"Administrative Fund" shall mean the fund of that name created in the Pooled Bond Resolution.

"Administrative Expenses" shall mean the expenses which are incurred by the Authority or the County, including the Administrative Fee, in carrying out their respective duties under the terms of this Agreement, the County Guaranty or the Pooled Bond Resolution, including, without limitation, accounting, administrative, financial advisory and legal expenses and the fees and expenses of the Pooled Trustee, any paying agents or any other fiduciaries or agents acting on behalf of the Authority under or pursuant to the terms of this Agreement or the Pooled Bond Resolution which amounts are payable by the Board to the Pooled Trustee under the Board Bond Resolution and the Agreement when due from time to time until the final maturity of the Bonds as that portion of interest on the Board Bonds that is not allocable to the payment of interest on the Pooled Bonds.

"Administrative Fee" shall mean \$ _____ payable upon the issuance of the Board Bonds to the Authority from a portion of the proceeds of the Pooled Bonds that have been deposited in the Costs of Issuance Account of the Administrative Expense Fund pursuant to Section 2.03(7)(c) of the Pooled Bond Resolution, plus for the first Bond Year, .1% of \$ _____ payable upon the issuance of the Board Bonds to the Authority from a portion of the proceeds of the Pooled Bonds that have been deposited in the Administrative Expense Account of the Administrative Expense Fund pursuant to Section 2.03(7)(d) of the Pooled Bond Resolution, plus for all Bond Years thereafter, .1% of the Outstanding Pooled Bonds as of the first day of any such Bond Year payable by the Board to the Pooled Trustee on the first day of any such Bond Year as that portion of interest on the

Board Bonds that is not allocable to the payment of interest on the Pooled Bonds.

"Agreement" shall mean this "AGREEMENT WITH RESPECT TO THE \$ _____ BOARD OF EDUCATION OF THE TOWNSHIP OF NUTLEY GENERAL OBLIGATION BONDS UNDER THE 1992 PROPERTY AND EQUIPMENT LEASING PROGRAM OF THE ESSEX COUNTY IMPROVEMENT AUTHORITY" between the Board and the Authority dated as of September 1, 1992 and any amendment or supplements hereto in accordance with the terms hereof.

"Agreement Term" or "Term" shall mean the term of this Agreement specified in Section 301 hereof.

"Authority" shall mean The Essex County Improvement Authority, a public body corporate and politic of the State of New Jersey organized and existing under the Act and created by virtue of a resolution of the Board of Chosen Freeholders of the County of Essex, New Jersey, duly adopted October 12, 1972.

"Authorized Officer" or "Authorized Representative" shall mean, (1) with respect to the Authority: the Chairman, the Vice Chairman, the Treasurer, the Secretary or the Executive Director of the Authority and, when used with reference to an act or document, also means any other person who shall be authorized by resolution or the by-laws of the Authority to perform such act or to execute such document or any other person or persons who shall be authorized by resolution of the Authority to act on behalf of the Authority or by a written certificate duly executed on behalf of the Authority by the Chairman or by the Executive Director of the Authority, which certificate shall set forth such authorization and shall contain the specimen signatures of each such person; (2) with respect to the Board: the President, the Board Secretary or any other person or persons who shall be authorized to act on behalf of the Board by virtue of a resolution of the Board, which resolution shall set forth such authorization; and (3) with respect to the Pooled Trustee: any officer of the Pooled Trustee authorized by the Pooled Trustee to act or execute documents on behalf of the Pooled Trustee.

"Board" shall mean the Board of Education of the Township of Nutley, a municipal corporation in and political subdivision of and a type II school district under the laws of the State of New Jersey.

"Board Bond" or "Board Bonds" shall mean the \$ _____ aggregate principal amount of general obligation bonds of the Board authorized for issuance in accordance with the terms of Title 18A, Education, of the New Jersey Revised Statutes and other applicable law or any other general obligation bonds of the Board, the payment of the principal and redemption premium, if

any, of and interest on which is pledged to the payment of the Pooled Bonds.

"Board Bond Resolution" shall mean the resolution of the Board adopted _____, 1992 authorizing the issuance of the Board Bonds adopted by the Board in accordance with Title 18A, Education, of the New Jersey Revised Statutes and other applicable law and entitled " _____ " and any resolution of the Board authorizing the issuance of any other general obligation bonds of the Board, the payment of the principal and redemption premium, if any, of and interest on which is pledged to the payment of the principal and redemption premium, if any, of and interest on the Pooled Bonds.

"Bond Counsel" shall mean any attorney at law, or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exclusion of interest on bonds or other obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state.

"Bond Holder", "Bondholder", "Holder of Bonds", "Holder", "holder" or "Owner" shall mean the registered owner of any Pooled Bonds.

"Bond Year" shall mean a period of 12 consecutive months beginning on September 1 of any calendar year and ending on August 31 of the immediately succeeding calendar year except that the first Bond Year shall be a period commencing on the date of issuance of the Bonds under the Pooled Bond Resolution and ending on August 31, 1992.

"Certificate" shall mean a written certificate signed in the name of the Authority the Board or the Pooled Trustee. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the instruments so combined shall be read and construed as a single instrument.

"Code" shall mean the Internal Revenue Code of 1986, as the same may from time to time be amended or supplemented, including any regulations promulgated thereunder and any administrative or judicial interpretations thereof.

"Construction Contract" for the Project shall mean any construction contract in respect of the Project by and between the Board, and any Contractors, each such contract to specify a fixed price for the construction to be performed and which may be a contract specifying a guaranteed maximum price for the construction of the Project in accordance with applicable

State law, subject to change as agreed to by the parties thereto in accordance with applicable law.

"Contractor" shall mean in connection with the Project, any Contractor selected by the Board, to acquire, construct, renovate and install the Project, in accordance with applicable State law and the Plans and Specifications.

"Costs or Costs of the Project" shall mean and shall be deemed to include, together with any other proper item of cost which is not specifically mentioned herein, whether incurred prior to or after the date of this Agreement, (a) costs and expenses of the Board or the Authority which are incurred for labor and materials and payments to Contractors, builders and materialmen in connection with the acquisition, construction, renovation and installation of the Project, including, but not limited to, advances, deposits, downpayments or progress payments, installation costs, administrative costs and capital expenditures relating to the acquisition, construction, renovation or installation of the Project, financing payments, sales taxes, excise taxes, costs of feasibility, environmental and other reports, inspection costs, permit fees, filing and recording costs, printing costs, reproduction and binding costs, fees and charges of the Pooled Trustee, the Authority or the Board pursuant to the Pooled Bond Resolution, financing documents, legal fees and charges, financial, accounting and other professional consultant fees, costs of rating agencies or credit ratings, fees for the printing, execution, transportation and safekeeping of the Bonds and all other charges and fees in connection with the issuance of the Bonds; (b) all costs associated with the temporary relocation of Board employees or agents and incurred as a consequence of the construction, renovation or installation of any portion of the Project; (c) the cost of contract bonds and of insurance of any kind that may be required or that may be necessary during the course of acquisition, construction, renovation and installation of the Project which is not paid by the Contractor or Contractors or which is otherwise provided for; (d) the costs and expenses of the Board for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties which are required by or which are consequent to the proper construction, acquisition, renovation and installation of the Project; (e) all other costs which the Board shall be required to pay under the terms of any Construction Contract or Contracts for the acquisition, construction, renovation or installation of the Project; (f) any sums which are required to reimburse the Board or the Authority for any advances which are made by any of them for any of the above items, or for any other costs which are incurred and for work which has been done by any or all of them, provided that same is properly chargeable to the Project; (g) deposits in the appropriate funds established by the

Pooled Bond Resolution for payment of interest on the Bonds and any required deposits in the Debt Service Fund or any other Fund or Account under the Pooled Bond Resolution; (h) the payment of any bonds, notes or other obligations of the Board which have been issued to finance the payment of any item or items of Cost of the Project (including any interest and redemption premiums); (i) the Administrative Expenses which are incurred in connection with the financing of the Project, as set forth herein; and (j) such other expenses which are not specified herein and which may be necessary or incidental to the construction, acquisition, renovation and installation of the Project, the financing thereof and the placing of the same in use and operation. "Costs or Costs of the Project," as defined herein shall also include the cost and expenses incurred by any agent of the Authority or the Board, for any of the above-mentioned items.

"Costs of Issuance Account" shall mean the account of that name created in the Pooled Bond Resolution.

"Event of Default" shall mean an Event of Default as described in Section 701 hereof.

"Fund" shall mean any of the funds established under the Pooled Bond Resolution.

"Independent Counsel" shall mean an attorney or firm of attorneys duly admitted to the practice of law before the highest court of the State who is not a full-time employee of the Authority, the Board or an assignee thereof.

"Independent Insurance Consultant" shall mean a nationally recognized, independent actuary, insurance company or broker acceptable to the Authority that has actuarial personnel experienced in the area of insurance for which the Board is to be self-insured.

"Interest Payment Date" shall mean, the date on which interest on the Pooled Bonds is required to be paid to the Holders thereof, being the 1st day of each March and September until final maturity of the Bonds, commencing March 1, 1993, each of which shall constitute a regularly scheduled Interest Payment Date, or the date of redemption or acceleration of the Pooled Bonds.

"Letter of Instructions" shall mean the letter of instructions attached to the Arbitrage Certificate as Exhibit A thereto provided by Bond Counsel in connection with the issuance of the Bonds, as such letter may be amended from time to time, as a source of guidance for compliance with the Code.

"Letter of Representations" shall mean the Letter of Representations to be dated and issued by the Board on the date

of the sale of the Pooled Bonds in a form acceptable to the Authority and the underwriter of the Pooled Bonds.

"Plans and Specifications" shall mean the architectural and engineering drawings and specifications prepared for the Project, and, any changes therein.

"Pooled Bond or Bonds" shall mean the \$ _____ aggregate principal amount of "Property and Equipment Leasing Program County Guaranteed Pooled Revenue Bonds, Series 1992" of the Authority authorized for issuance in accordance with the terms of the Act and the Pooled Bond Resolution.

"Pooled Bond Resolution" shall mean the bond resolution of the Authority authorizing the issuance of the Pooled Bonds entitled "Resolution Authorizing the Issuance of Property and Equipment Leasing Program County Guaranteed Pooled Revenue Bonds, Series 1992 of The Essex County Improvement Authority" adopted by the Authority on July 28, 1992, and as amended and supplemented by a Certificate of an Authorized Officer of the Authority dated _____, 1992, and all other amendments and supplements thereto adopted in accordance with the provisions thereof.

"Pooled Trustee" shall mean the Pooled Trustee appointed pursuant to Section 10.01 of the Pooled Bond Resolution, and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to the provisions of the Pooled Bond Resolution.

"Principal Payment Date" shall mean, the date on which principal on the Pooled Bonds is required to be paid to the Holders thereof, being the 1st day of each September until final maturity of the Pooled Bonds, commencing September 1, 1993, each of which shall constitute a regularly scheduled Principal Payment Date, or the date of redemption or acceleration of the Pooled Bonds.

"Proceeds" shall mean the aggregate moneys paid by the purchasers of the Pooled Bonds, including any accrued interest on the Pooled Bonds, which may be net of any applicable underwriter's discount with respect to the Pooled Bonds.

"Project" shall mean the acquisition, construction, renovation and installation of certain capital improvements to certain schools located within the jurisdiction of the Board as more particularly described in Exhibit A hereto.

"Project Site" shall mean the real property upon which the Project will be constructed.

"State" shall mean the State of New Jersey.

"State and Federal Law or Laws" shall mean the Constitution and laws of the State, and any ordinance, rule or regulation of any agency or political subdivision of the State, and any law of the United States, and any rule or regulation of any federal agency.

"Supplemental Resolution" shall mean any resolution or resolutions of the Authority amending, modifying or supplementing the Pooled Bond Resolution, or any other Supplemental Resolution adopted by the Authority pursuant to the provisions of the Pooled Bond Resolution.

"Tax Certificate", with respect to the Pooled Bonds, means the "Tax Certificate as to Arbitrage and Instructions as to Compliance with the Provisions of Section 103(a) of the Internal Revenue Code of 1986, as amended" executed and delivered by an Authorized Officer of the Authority on the date of issuance of the Bonds, as the same may be supplemented and amended from time to time.

"Tax Regulatory Agreement" shall mean the Tax Regulatory Agreement of the Board provided by Bond Counsel in connection with and dated the date of the issuance of the Pooled Bonds with respect to, among other things, the nature and use of the Project.

Section 102. Exhibits.

The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A: Description of the Project.

Exhibit B: Form of Requisition

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES; DISCLAIMERS

Section 201. Representations, Covenants and Warranties of the Board. The Board represents, covenants and warrants as follows:

(a) The Board is a municipal corporation and political subdivision of the State governed by the Constitution and laws of the State.

(b) The Constitution and the laws of the State authorize the Board (i) to establish, acquire, lease, construct, operate and maintain the Project and to use, operate and maintain the same; (ii) to enter into this Agreement, the Letter of Representations and the Tax Regulatory Agreement and the transactions contemplated hereby and thereby; and (iii) to carry out its obligations hereunder and thereunder.

(c) The execution and delivery by the Board of this Agreement, the Letter of Representations and the Tax Regulatory Agreement and the compliance with the provisions hereof, will not conflict with or constitute on the part of the Board a violation of, breach of or default under any ordinance, resolution, statute, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Board is bound, or, to the knowledge of the Board, any order, rule, or regulation of any court or governmental agency or body having jurisdiction over the Board or any of its activities or properties; and all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the consummation of the transactions contemplated hereby and (i) are presently obtainable and materially required before the commencement of construction, have been obtained and (ii) are not presently obtainable, the Board believes are obtainable and hereby agrees to use its best efforts to obtain same.

(d) The officers of the Board executing this Agreement, the Letter of Representations and the Tax Regulatory Agreement have been duly authorized to execute and deliver this Agreement, the Letter of Representations and the Tax Regulatory Agreement under the laws of the State and the terms and provisions of resolutions of the Board, and upon the execution and delivery thereof, and assuming the valid execution and delivery thereof by the other parties thereto, this Agreement, the Letter of Representations and the Tax Regulatory Agreement shall be a valid and binding obligation of the Board enforceable against the Board in accordance with its terms.

(e) The Board has complied with all open meeting laws and all other State and Federal Laws applicable to this

Agreement, the Letter of Representations and the Tax Regulatory Agreement and the acquisition, construction, renovation and installation of the Project that are applicable as of the date hereof and will comply with all other such laws applicable beyond the date hereof.

(f) The Project is essential for the Board to perform its constitutional mandate to provide a thorough and efficient system of education. The Board will use the Project during the Agreement Term only to provide a thorough and efficient system of education.

(g) During the term of this Agreement, the Board will comply with the requirements of the Code applicable to the Bonds as set forth in the Letter of Instructions in order to maintain the exclusion from gross income of interest on the Bonds for the owners thereof for Federal income tax purposes and will not take any action or fail to take any action as set forth in the Letter of Instructions which would cause the loss of such exclusion or cause the interest on the Bonds to be treated as an item of tax preference for the owners thereof under Section 57 of the Code. All representations made by the Board in its Tax Regulatory Agreement are true and correct and fully and accurately represent the facts as known to the Board. The Board agrees to comply with all of the covenants and requirements set forth in its Tax Regulatory Agreement and the Letter of Instructions.

(h) The Board currently intends to continue this Agreement for its entire Term.

(i) There are no lawsuits or administrative or other proceedings pending or to the best of the Board's knowledge threatened, which contest the Board's authority for, its authorization or performance of this Agreement, the Letter of Representations and the Tax Regulatory Agreement.

(j) Information supplied and statements made by the Board in any financial statement or current budget delivered prior to or contemporaneously with this Agreement present such information fairly and accurately, in accordance with generally accepted accounting principles. The representations, warranties and covenants contained in the Letter of Representations are true, accurate and complete on the date hereof.

(k) There is no action, suit, proceeding or investigation at law or in equity against the Board or to the best of the Board's knowledge threatened against the Board by or before any court or public agency, or, to the best of the knowledge of the Board, any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement, the Letter of

Representations and the Tax Regulatory Agreement, the Board Bonds, the Bonds or the Pooled Bond Resolution or which in any way would adversely affect the validity of said documents, or any agreement or instrument to which the Board is a party and which is used or contemplated for use in consummation of the transactions contemplated hereby.

(l) To the best knowledge of the Board, no legislation has been enacted which in any way adversely affects the issuance or delivery of the Bonds, the Board Bonds or the execution and delivery of this Agreement, the Letter of Representations and the Tax Regulatory Agreement or the existence of the Board or the titles to office of any officers thereof, or the powers of the Board to carry out its obligations under this Agreement, the Letter of Representations and the Tax Regulatory Agreement.

(m) The Project and the Project Site are not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the Project.

(n) The Project Site is properly zoned for the Project.

(o) The Board's past and current uses of the Project Site and any existing improvements located thereon, and to the best of the Board's knowledge, information and belief, all past and current uses of the Project Site and any existing improvements located thereon, complied and comply with all federal, state and local environmental laws, rules, regulations and ordinances. Neither the Board, nor anyone on behalf of the Board has received notice of any violations of any environmental law, rule, regulation or ordinance. No actions or lawsuits have been commenced or threatened by a governmental agency or any other person or entity claiming non-compliance with any environmental law, rule, regulation or ordinance. The Board has never applied for environmental liability insurance or, if it has so applied, it has never been denied such coverage. The Board has no knowledge or notice of any emission, discharge, seepage, release, or any hazardous pollutant in or upon the Project Site. To the extent the Board causes the Project Site, any existing improvements thereon or the Project to become subject to any environmental laws including without limitation the Environmental Cleanup and Responsibility Act, of the State of New Jersey (which could arise due to, among other reasons, the existence of asbestos on the Project Site), the Board shall be solely responsible for any and all costs associated with the compliance therewith.

Section 202. Representations, Covenants and Warranties of Authority. The Authority represents, covenants and warrants as follows:

(a) The Authority (i) is a public body corporate and politic duly organized, existing and in good standing under the Act and other applicable laws of the State; (ii) has full and complete power to enter into this Agreement, and to adopt the Pooled Bond Resolution and to issue the Bonds and to enter into and carry out the transactions contemplated hereby and thereby, and to carry out its obligations under this Agreement, the Bonds and the Pooled Bond Resolution; and (iii) has duly authorized the execution and delivery of this Agreement and the Bonds and the adoption of the Pooled Bond Resolution.

(b) Neither the execution and delivery of this Agreement nor the issuance of the Bonds, nor the adoption of the Pooled Bond Resolution, nor the fulfillment of or compliance with the terms and conditions hereof and thereof, nor the consummation of the transactions contemplated hereby and thereby conflicts with or results in a breach of the terms, conditions or provisions of any restriction, any agreement or any instrument to which the Authority is now a party or by which the Authority or its property are bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Authority.

(c) During the term of this Agreement, the Authority will comply with the requirements of the Code applicable to the Bonds as set forth in the Tax Certificate in order to maintain the exclusion from gross income of interest on the Bonds for the owners thereof for Federal income tax purposes and will not take any action or fail to take any action as set forth in the Tax Certificate which would cause the loss of such exclusion or cause the interest on the Bonds to be treated as an item of tax preference for the owners thereof under Section 57 of the Code. All representations made by the Authority in the Tax Certificate are true and correct and fully and accurately represent the facts as known to the Authority. The Authority agrees to comply with all of the covenants and requirements set forth in the Tax Certificate.

Section 203. Disclaimer of the Authority and the Pooled Trustee. NEITHER THE AUTHORITY, BY EXECUTION AND DELIVERY HEREOF OR BY ADOPTION OF THE Pooled Bond Resolution, NOR THE POOLED TRUSTEE, BY ITS ACCEPTANCE OF THE TRUSTS AND DUTIES OF POOLED TRUSTEE UNDER THE Pooled Bond Resolution, MAKES ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE PROVISION FOR THE GENERAL WELFARE OF THE BOARD CONTEMPLATED BY THE BOARD OR THE PROJECT OR THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR

USE OF ANY ITEM OF EQUIPMENT OR WARRANTY WITH RESPECT TO THE
PROJECT.

ARTICLE III

TERM OF AGREEMENT

Section 301. Termination of Agreement Term. This Agreement shall be and remain in effect for an Agreement Term commencing on the date of execution, authentication and delivery of the Bonds and continuing until the later of the date on which (a) all of the Bonds are no longer Outstanding under the Pooled Bond Resolution, (b) the Board can take no action or fail to take an action, the effect of which would be to adversely affect the exclusion from gross income of interest on the Bonds for Federal income tax purposes or (c) all the obligations created hereunder and under the Bonds have been fulfilled.

The Board will not terminate this Agreement or be excused from its obligations hereunder for any reason including, without limiting the generality of the foregoing, any acts or circumstances that may constitute a failure of consideration, failure of title, or frustration of purpose, or any damage to or destruction of the Project, or the taking by eminent domain of title or the right of temporary use of all or any part of the Project, or the failure of the Authority to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation which arises out of or which is related to this Agreement.

ARTICLE IV

THE PROJECT

Section 401. Responsibility for the Project. (a) The Board shall be solely responsible for (i) the design, acquisition, construction, renovation and installation of the Project, (ii) the supervision of acquisition, construction, renovation and installation of the Project, (iii) the acceptance of the completed Project and (iv) all other matters which are incidental to the performance thereof in connection with the acquisition, construction, renovation and installation of the Project.

(b) The Authority makes no warranties or representations and accept no liabilities or responsibilities with respect to or for the adequacy, sufficiency or suitability of or defects in or with respect to the design, acquisition, construction, renovation or installation of the Project.

Section 402. Performance Bonds and Other Guaranty. Any contracts entered into by the Board in connection with the design, acquisition, construction, renovation and installation of the Project shall be let in accordance with applicable law. All such contracts shall have either the same general form and content or shall contain greater protections for the Board as construction contracts which are generally let by the Board for its other public purposes. However, the Board shall cause each Contractor to provide a performance bond and/or a maintenance bond or bonds, a letter of credit or any other form of financial guaranty covering with respect to the Project the (a) performance of the Construction Contract, including coverage for correction of defects developing within one year after completion and acceptance and (b) payment for labor and materials, in each case issued by a responsible surety company qualified to do business in the State.

Section 403. Delay of Project. In the event that the Board is unable to comply with its requirements under this Agreement prior to the completion of the Project or if for any reason the acquisition, construction, renovation and installation of the Project is delayed, there shall be no resulting liability on the part of the Authority and there shall be no diminution in or postponement of the amounts which are due and payable by the Board to the Authority.

Section 404. Board's Negligence. The Board assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Project Site, any existing improvements located on the Project Site and the Project, or any portion thereof, and for injury to or death of any person or damage to any property, whether such injury or death be with respect to

agents or employees of the Board or of third parties, and whether such property damage be to the Board's property or the property of others, which is proximately caused by the negligent conduct of the Board, its officers, employees and agents. The Board hereby assumes responsibility for and agrees to reimburse the Authority and the Pooled Trustee for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against the Authority or the Pooled Trustee that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of the Board, its officers, employees and agents, to the maximum extent permitted by law.

Section 405. Construction Period Insurance. Each Contractor shall be required to provide and maintain in force during the entire acquisition, construction, renovation or installation period of the Project, and prior to the Contractor's performance of work under any Construction Contract, builder's risk or property damage insurance in an amount required by applicable law, comprehensive liability insurance, worker's compensation insurance and other insurance required by law or customarily maintained with respect to like projects. Evidence of such insurance shall be filed with the Pooled Trustee.

Section 406. Payments Associated with the Project. The Board shall comply with and pay all local, state and federal taxes, including without limitation, income, franchise, gross receipts, sales, use, documentary stamp, excise, and real and personal property taxes, payments in lieu of taxes, assessments, licenses, registration fees, freight and transportation charges, maintenance costs and any other charges imposed or liabilities incurred with respect to the ownership, possession or use of the Project, and any penalties, fines or interest imposed on any of the foregoing during the Agreement Term. The Authority and the Pooled Trustee shall have no liability with respect to any payments associated with the Project, the Project Site or any existing improvements located on the Project Site.

ARTICLE V

INSURANCE AND OTHER MATTERS

Section 501. Insurance Coverage for the Project.

The Board shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Agreement and in accordance with the further terms of this Article V, (i) public liability insurance, including without limitation bodily injury and property damage coverage, (ii) auto liability insurance, including without limitation bodily injury and property damage coverage and (iii) worker's compensation insurance, all to be procured and maintained with an insurance company approved by the State and a copy of such insurance policy or policies naming the Board, the Pooled Trustee and the Authority as insureds or if the Board elects and receives the consent of the Authority, the Board shall provide to the Authority a Certificate of an Authorized Board Representative to the effect that adequate reserves are deposited and maintained in trust with an independent trustee in the amounts sufficient to cover the loss.

Section 502. Public Liability Insurance. The Board shall procure and maintain or cause to be procured and maintained, throughout the Term of this Agreement, a standard comprehensive general liability insurance policy or policies in protection of the Board, the Authority and the Pooled Trustee. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by the operation or ownership of the Project. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in a single accident or event, and in a minimum amount of \$500,000 for damage to property (subject to a deductible clause of not to exceed \$250,000 for any one loss when the Board is procuring and maintaining such insurance or \$50,000 for any one loss when any other entity, including any Contractor, is procuring or maintaining such insurance) resulting from a single accident or event. Such public liability insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks. Such public liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the Board, and may be maintained in whole or in part in the form of self-insurance by the Board, provided such self-insurance complies with the provisions of Section 510 hereof. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the net proceeds of such insurance shall have been paid.

Section 503. Auto Liability Insurance. The Board shall procure and maintain or cause to be procured and maintained, throughout the Term of this Agreement, a standard comprehensive automobile liability insurance policy or policies in protection of the Board, the Authority and the Pooled Trustee. Said policy or policies shall be written in a comprehensive form and shall comply with N.J.S.A. 39:6b-1 et seq., and all local regulations and case law with regard to the scope and effect of the New Jersey Compulsory Motor Vehicle Insurance Statute and shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage arising from the maintenance, use or operation of any owned or non-owned vehicle used, in or in connection with, the Project. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in a single accident or event, and in a minimum amount of \$500,000 for damage to property (subject to a deductible clause of not to exceed \$250,000 for any one loss when the Board is procuring and maintaining such insurance or \$50,000 for any one loss when any other entity, including any Contractor, is procuring or maintaining such insurance) resulting from a single accident or event. Such auto liability insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks. Such auto liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the Board, and may be maintained in whole or in part in the form of self-insurance by the Board, provided such self-insurance complies with the provisions of Section 510 hereof. The net proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the net proceeds of such insurance shall have been paid.

Section 504. Worker's Compensation Insurance. If required by State law, the Board shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Agreement, Worker's Compensation Insurance covering all employees on, in, near or about the Project, and upon request, shall furnish to the Authority certificates evidencing such coverage. To the extent the Board is procuring or maintaining such insurance, such coverage may, at the option of the Board, be provided through a self-insurance program that is established and operating in conformity with all applicable State law. To the extent that any other entity is procuring or maintaining such insurance, such insurance shall be provided under a policy written by an insurance company approved by the State, which policy is in a minimum amount of \$500,000 for damage resulting from a single accident or event.

Section 505. Other Insurance and Requirements for All Insurance. All insurance required by Article IV hereof or this Article V may be carried under a separate policy or a rider or endorsement; shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State or may be maintained as part of any insurance pool permitted under the laws of the State; shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the Authority and the Pooled Trustee at least thirty (30) days before the cancellation or revision becomes effective; and shall name the Board, the Authority and the Pooled Trustee, as insured parties as their respective interests may appear. The Board shall deposit with the Pooled Trustee original policies evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy, the party obligated under the terms of this Agreement to maintain such insurance shall furnish to the Authority and the Pooled Trustee evidence that the policy has been renewed or replaced by another policy conforming to the provisions of Article IV hereof and this Article V, unless such insurance is no longer obtainable in which event such party shall notify the Authority and the Pooled Trustee of this fact and the Board shall thereafter self-insure pursuant to the terms of this Article. The Pooled Trustee shall have no responsibility with respect to any determinations as to the sufficiency of any insurance.

Section 506. Indemnification. (a) To the extent and subject to limits permitted by applicable laws of the State as in effect from time to time during the term of this Agreement, the Board shall (i) indemnify and save harmless the Authority and its agents, employees, officers and directors from and against claims, demands, liabilities, damages, losses, costs, charges and any and all expenses (including but not limited to reasonable attorney's fees) that the Authority may incur or be subject to as a consequence directly or indirectly, of any breach or non-performance by the Board of its obligations under this Agreement, or negligence or misconduct by the Board in connection with such performance or non-performance, or the ownership, rental, possession, operation or condition of the Project and (ii) reimburse the Authority for all losses, costs, charges, and expenses (including reasonable attorneys' fees) that the Authority may incur or be subject to as a consequence, directly or indirectly, of involvement in any legal proceeding or action relating to the foregoing; provided however, that no indemnification or reimbursement shall be due to the extent that the Authority has acted with gross negligence or willful misconduct in connection with the liabilities of which the Authority is seeking indemnification or reimbursement. All amounts which become due from the Board under this Section

506(a), shall be credited with any amounts received by the Authority from insurance provided by the Board and shall be payable by the Board within thirty (30) days following demand therefor by the Authority (which demand cannot be made prior to the Board's receipt thereof) and shall survive the termination or expiration of this Agreement.

(b) To the extent and subject to limits permitted by applicable laws of the State as in effect from time to time during the term of this Agreement, the Authority shall (i) indemnify and save harmless the Board and its agents, employees, officers and directors from and against claims, demands, liabilities, damages, losses, costs, charges and any and all expenses (including but not limited to reasonable attorney's fees) that the Board may incur or be subject to as a consequence directly or indirectly, of any breach or non-performance by the Authority of its obligations set forth under Section 203(c) of this Agreement, and (ii) reimburse the Board for all losses, costs, charges, and expenses (including reasonable attorneys' fees) that the Board may incur or be subject to as a consequence, directly or indirectly, of involvement in any legal proceeding or action relating to the foregoing; provided however, that no indemnification or reimbursement shall be due to the extent that the Board has acted with gross negligence or willful misconduct in connection with the liabilities of which the Board respectively is seeking indemnification or reimbursement. All amounts which become due from the Authority under this Section 506(b), shall be credited with any amounts received by the Board from any insurance provided by the Authority and shall be payable by the Authority within thirty (30) days following demand therefor by the Board (which demand cannot be made prior to the Authority's receipt thereof) and shall survive the termination or expiration of this Agreement.

Section 507. Pooled Trustee Indemnification. To the extent and subject to limits permitted by applicable laws of the State as in effect from time to time during the term of this Agreement, the Board shall (a) indemnify and save harmless the Pooled Trustee and their agents, employees, officers and directors from and against any and all liabilities including without limitation all claims, demands, damages, losses, costs, penalties, charges and expenses (including but not limited to reasonable attorneys' fees) in any way relating to or arising from (i) the ownership, possession, operation or condition of the Project; (ii) the Pooled Bond Resolution or this Agreement, or any other agreement related to the Project, or the enforcement thereof and (iii) any resignation by the Pooled Trustee in accordance with Section 10.07(2) of the Pooled Bond Resolution; and (b) reimburse the Pooled Trustee for all losses, costs, charges, and expenses (including reasonable attorneys' fees) that the Pooled Trustee may respectively incur or be subject to as a consequence, directly or indirectly, or involvement in any legal

proceeding or action relating to the foregoing; provided, however, that no indemnification or reimbursement shall be due to the extent that the Pooled Trustee has acted with gross negligence or willful misconduct in connection with the liabilities for which the Pooled Trustee is seeking indemnification or reimbursement. All amounts which become due from the Board under this Section 507, shall be credited with any amounts received by the Pooled Trustee from insurance provided by the Board and shall be payable by the Board within thirty (30) days following demand therefor by the Pooled Trustee and shall survive the termination or expiration of this Agreement.

Section 508. Advances by the Authority. If the Board shall fail to perform any of its obligations under this Agreement, the Authority may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the Board shall be obligated to repay all such advances on demand to the Authority.

Section 509. Net Proceeds of Insurance; Form of Policies. The Board shall pay or cause to be paid when due the premiums for all insurance policies required by this Agreement, and shall promptly furnish or cause to be furnished to the Pooled Trustee evidence of such payments. All such policies shall provide that the Pooled Trustee and the Authority shall be given not less than thirty (30) days' notice of each expiration, any intended cancellation and any intended reduction of the coverage provided thereby. The Pooled Trustee shall not be responsible for the sufficiency of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Pooled Trustee. The Board shall cause to be delivered to the Pooled Trustee and the Authority on each anniversary of the Closing Date a certificate of the Authorized Representative of the Board satisfactory to the Pooled Trustee and the Authority that the insurance policies required by this Agreement are in full force and effect.

Section 510. Self-Insurance. Any self-insurance maintained by the Board pursuant to any of the foregoing sections in this Article V, except for Section 503 hereof, shall comply with the following:

- (i) the self-insurance program shall be acceptable to the Authority;
- (ii) the self-insurance program shall be approved by an Independent Insurance Consultant;
- (iii) the self-insurance program shall include an actuarially sound claims reserve fund

out of which each self-insured claim shall be paid; the adequacy of each such fund shall be evaluated on an annual basis by the Independent Insurance Consultant; and any deficiencies in any self-insurance claims fund shall be remedied in accordance with the recommendation of the Independent Insurance Consultant;

- (iv) the self-insurance claims fund shall be held in a separate trust fund by an independent trustee who may be the Pooled Trustee;
- (v) the self-insurance program shall comply in every particular with N.J.S.A. 40A:10-1 et seq.; and
- (vi) in the event the self-insurance program shall be discontinued, the actuarial soundness of its claims reserve fund, as determined by the Independent Insurance Consultant, shall be maintained.

ARTICLE VI

PAYMENTS

Section 601. Costs of Issuance. In accordance with Section 2.03(7)(c) of the Pooled Bond Resolution, the Board shall pay or cause payment to be made to the Pooled Trustee \$_____ from a portion of the proceeds of the Board Bonds for deposit in the Costs of Issuance Account of the Administrative Expense Fund created pursuant to the Pooled Bond Resolution, which amount is equal to the initial Administrative Fee of \$_____ and certain other Costs of Issuance approved by the Executive Director.

Section 602. Administrative Fee and Other Administrative Expenses.

(a) In accordance with Section 2.03(7)(d) of the Pooled Bond Resolution, the Board shall pay or cause payment to be made to the Pooled Trustee \$_____ from a portion of the proceeds of the Board Bonds for deposit in the Administrative Expense Account of the Administrative Expense Fund created pursuant to the Pooled Bond Resolution, which amount is equal to the first Bond Year's Administrative Fee payable in advance.

(b) The Administrative Fee for all subsequent Bond Years shall be payable by the Board to the Pooled Trustee in accordance with the provisions of Section 5.04(4) of the Pooled Bond Resolution.

(c) All other Administrative Expenses shall be payable by the Board to the Pooled Trustee in accordance with the provisions of Section 5.04(4) of the Pooled Bond Resolution.

Section 603. Capitalized Interest. In accordance with Section 2.03(7)(e) of the Pooled Bond Resolution, the Board shall pay or cause payment to be made to the Pooled Trustee \$_____ from a portion of the proceeds of the Board Bonds for deposit in the Capitalized Interest Subaccount in the Interest Account of the Debt Service Fund created pursuant to the Pooled Bond Resolution, which amount, together with interest earned from the investment thereof in accordance with the Pooled Bond Resolution, will be sufficient to pay interest on the Bonds though and including _____ and shall constitute a credit to the Board's obligation to pay interest on the Board Bonds through and including such date.

Section 604. Optional Redemption of the Bonds.

(a) The Board shall have the right to direct the optional redemption of all or a portion of the Bonds and send the written notice to the Authority directing same as required under

Section 2.03(5)(a) of the Pooled Bond Resolution. The Board may select the source of moneys to effect such optional redemption, including without limitation, through the issuance of general obligation bonds of the Board in accordance with applicable law or from an equity contribution of the Board.

(b) In addition to the optional redemption contemplated by Section 604(a) hereof, the Authority may cause an optional redemption of all or a portion of the Bonds, but only if the Board provides the Authority with its written consent to such action by providing the Board's consent as required under Section 2.03(5)(b) of the Pooled Bond Resolution and only if the Authority complies with all requirements therein.

Section 605. Purchase Price of the Board Bonds.

(a) Simultaneously with the execution and delivery hereof, the Pooled Trustee shall apply \$_____ in immediately available funds from the Bond Proceeds Fund established under the Pooled Bond Resolution for the purchase of all of the outstanding principal amount of the Board Bonds at a purchase price equal to \$_____ (the "Purchase Price"). The Board Bonds shall be dated their date of issuance. Accordingly, the purchase price of the Board Bonds shall not include accrued interest thereon.

(b) In accordance with N.J.S.A. 18A:24-47, N.J.S.A. 18A:17-31 and all other applicable law, the Purchase Price shall be paid by the Pooled Trustee to the custodian of school moneys. Immediately upon receipt of such moneys, the custodian of school moneys shall make the payments to the Pooled Trustee required under Sections 601, 602 and 603 hereof. The balance of such funds should be deposited in accordance with N.J.S.A. 40A:5-15.

Section 606. Payments for Costs of the Project.

(a) The custodian of school moneys shall pay to the Board for reimbursement thereto or to any third party vendor the amount of any Cost of the Project detailed in a requisition for payment to be submitted to the custodian of school moneys by an Authorized Officer of the Board. Any such requisition shall state: (1) the requisition number, (2) the name and address of the person, corporation or other entity to whom payment is due or, if for reimbursement to the Board, to whom and when payment has previously been made, (3) the amount to be paid, (4) the portion of the Project to which such payment is to be applied, (5) that such payment obligation has been properly incurred as a proper charge (as the Board in its sole discretion determines) against the account held by you and established for the Project, is an item of the Cost of the Project and has not been the basis of any previous withdrawal, and (6) that attached thereto is a bill, invoice, receipt or other evidence that payment on such

Cost of the Project is due and owing or has been paid by or on behalf of the Board.

(b) Upon receipt of a properly executed requisition fulfilling the provisions of Section 606(a) hereof, the custodian of school moneys shall immediately pay over the requisitioned amount to the Board or third party vendor, as the case may be. The Board hereby expressly waives any rights that it may at any time have to offset all or a portion of any obligations of any third party vendor to the Board with all or a portion of any such requisitioned payment.

ARTICLE VII
EVENTS OF DEFAULT, REMEDIES

Section 701. Events of Default. An Event of Default hereunder means the occurrence of any one or more of the following events:

(a) The Board fails to maintain any insurance requirement set forth hereunder; or

(b) The Board fails to perform or observe, any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within thirty (30) days after written notice thereof has been given to the Board by the Authority or the Pooled Trustee; provided, however, that if such failure cannot be cured within said thirty (30) day period, the Board will not be in default if it has commenced to cure within such thirty (30) day period if such action to cure the default is acceptable to the Authority and the Authority indicates the same in writing; provided further that such period to cure shall not extend beyond ninety (90) days from the date the Board initially fails to perform or observe any other covenant, condition or agreement giving rise to the Event of Default; or

(c) The discovery by the Authority or the Pooled Trustee that any material statement, representation or warranty made by the Board in this Agreement, or in any writing delivered by the Board pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; or

(d) The Board becomes insolvent or admits in writing its inability to pay its debts as they mature or applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian for the Board or a substantial part of its property; or in the absence of such application, consent or acquiescence, a trustee, receiver or custodian is appointed for the Board or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, moratorium or any proceeding under bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is instituted by or, if permitted by law, against the Board and, if instituted against the Board, is consented to or acquiesced in by the Board or is not dismissed within sixty (60) days; or

(e) The entering of an order or decree appointing a receiver for the Project or for any part thereof or for the revenues thereof with the consent or acquiescence of the Board or the entering of such order or decree without the acquiescence or consent of the Board and such order or decree shall not be

vacated, discharged or stayed within ninety (90) days after the date of such entry; or

(f) The Authority does not comply with its covenant in Section 2.03(c) hereof.

Upon the occurrence of an Event of Default under this Section 701, the Pooled Trustee shall transmit a written notice of such Event of Default to the Authority and the Board.

Upon the occurrence of an Event of Default, all obligations of the Board under this Agreement shall remain in full force and effect.

Section 702. Remedies. Upon the occurrence and continuation of any Event of Default as described in Section 701 hereof, the Authority shall have the right, without any further demand or notice, to take whatever action at law or in equity may appear necessary or desirable to collect any amounts owing to the Authority and thereafter to become due or enforce performance and observance of any obligation, agreement or covenant of the Board under this Agreement. Notwithstanding the prior sentence, to the extent the Authority causes the Agreement to be in default in accordance with Section 701(f) hereof, the sole remedies of the parties hereto is set forth in Section 506(b) hereof.

Section 703. Election of Remedies; No Waiver of Elected Remedies. No failure on the part of any party to exercise, and no delay in exercising any right or remedy so provided for herein, shall operate as a waiver thereof, nor shall any single or partial exercise by any party of any right or remedy so provided hereunder preclude any other or further exercise of any other right or remedy provided hereunder.

Section 704. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder, and shall not be construed to be an implied term hereof or a course of dealing among the parties hereto.

Section 705. Agreement to Pay Attorneys' Fees and Expenses. In the event any party to this Agreement should default under any of the provisions hereof and the nondefaulting parties should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting parties the reasonable fee of such attorneys and such other expenses so incurred by the nondefaulting parties.

Section 706. Late Charges. Whenever any payment is not made when due, the Board promises to pay the Authority, any expenses incurred by the Authority, the Pooled Trustee or any counsel or other agent of the Authority or the Pooled Trustee incurred by such person in trying to collect such late payment; provided, however, that this Section 706(a) shall not be applicable if or to the extent that the application thereof would affect the validity of this Agreement, or if in the opinion of Bond Counsel, the imposition or collection of any such expenses would adversely affect the tax exempt status under the Code of the interest payable on the Bonds.

Section 707. Delay; Notice. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient, and any one exercise thereof shall not be deemed an exclusive exercise. To entitle any party to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice other than as may be specifically required in this Agreement.

ARTICLE VIII

ADMINISTRATIVE PROVISIONS

Section 801. Notices. Unless otherwise provided in writing, any notices to be given or to be served upon any party hereto, in connection with this Agreement, must be in writing and may be delivered personally or by certified or registered mail, and, if so mailed shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail, and if given otherwise shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at their following respective addresses or at such other address as either party may hereafter designate to the other party in writing:

If to Authority:

The Essex County Improvement
Authority
125 Passaic Avenue
Fairfield, New Jersey 07004
Attention: Executive Director

If to the Board:

Board of Education of the
Township of Nutley

Nutley, New Jersey _____

If to the Pooled Trustee:

Section 802. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 803. Amendments, Changes and Modifications. This Agreement may be amended to provide for the issuance of Additional Bonds under the Pooled Bond Resolution or for any other purpose or any of its terms may be modified, but only by written amendment authorized and executed by the Board and the Authority; provided however, that this Agreement shall not be amended if the effect of such amendment would be to adversely affect the security of the Bondholders without obtaining the consent of all of the Bondholders. Any amendment to this Agreement which adversely affects the Pooled Trustee or increases the scope of the duties or obligations of the Pooled Trustee under the Pooled Bond Resolution or hereunder shall require the prior written approval of the Pooled Trustee.

Section 804. Further Assurances and Corrective Instruments. The Authority, the Board agree that they will, if necessary, execute, acknowledge and deliver, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

Section 805. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 806. Authority and Board Representatives. Whenever under the provisions of this Agreement the approval of the Authority, the Board is required or the Authority, the Board is required to take some action at the request of the others, such approval of such request shall be given for the Authority by an Authorized Representative of the Authority and for the Board by an Authorized Representative of the Board, and any party hereto shall be authorized to rely upon any such approval or request.

Section 807. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 808. Binding; Counterparts. This Agreement shall be binding upon the parties hereto only when duly executed on behalf of the Board and the Authority together; provided, however, that each set of counterparts taken together shall constitute an original.

Section 809. Time is of the Essence. Time is of the essence with respect to this Agreement and no covenant or obligation hereunder to be performed by the Board may be waived except by the written consent of the Authority and waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation or any other covenant or obligation as to any other occasion and shall not preclude the Authority from invoking such remedy at any later time prior to the Board's cure of the condition giving rise to such remedy. Each of the Authority's rights hereunder are cumulative to its other rights hereunder and not alternative thereto.

Section 810. No Personal Liability or Accountability. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any present, past or future officer, agent or employee of the Board or the Authority, in his or her individual capacity, and neither the officers, agents or employees of the Board or the Authority nor any official executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or

accountability by reason of any transaction or activity relating to this Agreement.

Section 811. Gender. Use of the masculine, feminine or neuter gender herein is for purposes of convenience only and shall be deemed to mean and include the other genders whenever and wherever appropriate.

Section 812. Third Party Beneficiaries. The parties hereto hereby agree that the Pooled Trustee and the Bond Insurer shall be third party beneficiaries hereof.

IN WITNESS WHEREOF, the Authority has caused this Agreement to be executed in its name by its duly authorized officer; and the Board has caused this Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

ATTEST:
[SEAL]

THE ESSEX COUNTY IMPROVEMENT
AUTHORITY, as Authority

Charles M. Grossman
Secretary

BY: _____
Thomas A. Banker
Executive Director

ATTEST:
[SEAL]

BOARD OF EDUCATION OF THE
TOWNSHIP OF NUTLEY, as Board

By: _____