

**Lease Purchase Agreement**

**LESSEE: Nutley Board of Education**  
**AGREEMENT # 40037213**

This agreement (the "Agreement") is a binding contract between Commerce Commercial Leasing, LLC ("COMMERCE") and Nutley Board of Education (the "Lessee", when referring to the governing body, and the "School District" when referring to the territorial boundaries and the legal entity governed by the Lessee).

**1. Agreement:** In executing this Agreement, Lessee agrees to rent the equipment described in Exhibit A (the "Equipment"). Exhibit B sets forth the terms of the Agreement, including the commencement (or "Dated") date, which is the date when the term begins and Lessee's obligation to pay rent accrues. Rental Payments (the "Rental Payments") should be paid to COMMERCE as instructed, and must be paid only out of legally available funds. A portion of each rental payment represents interest and the balance of each Rental Payment represents principal, as shown on Exhibit B. In order to maintain that interest rate, Lessee must comply with the tax covenants described below and file informational federal tax Form 8038 G in a timely manner. If not, each rental payment will be increased to compensate for the loss of the tax exemption status which was assumed in the initial interest rate, as set forth in Section 7 below. These are informational returns only and will not require Lessee to pay a tax. Lessee agrees to accept the Equipment when delivered, installed and operating to manufacturer's specifications and to execute the Acceptance Certificate, attached hereto as Exhibit D (the "Acceptance Certificate") supplied by COMMERCE as evidence thereof. Lessee agrees to hold COMMERCE harmless from damages, if for any reason, the vendor fails to deliver, or delays in delivery of, the Equipment so ordered or if the Equipment is unsatisfactory for any reason whatsoever. Lessee agrees that any delay in delivery of the Equipment shall not affect the validity of this Agreement or the obligation to make Rental Payments hereunder. Lessee's execution of the Acceptance Certificate shall conclusively establish that the Equipment covered thereby is acceptable to Lessee for all purposes of this Agreement. If Lessee fails or refuses to sign the Acceptance Certificate within a reasonable time, not to exceed five (5) business days, after the Equipment has been delivered, installed and is operating to manufacturer's specifications, COMMERCE shall have the option of treating this Agreement as cancelled by Lessee and Lessee shall automatically assume all of COMMERCE'S rights and obligations as purchaser of the Equipment.

**2. The Obligation to Make Payments:** Rental Payments shall be due and payable as set forth in Exhibit B hereto. The obligation of Lessee to pay Rental Payments hereunder is a current expense of Lessee and not a debt. This obligation is not in contravention of any applicable statutory or regulatory limitations or requirements; nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee. All payments made by or on behalf of Lessee hereunder shall be nonrefundable. Except in the Event of Nonappropriation (hereinafter defined) as set forth in this paragraph, Lessee's obligation to pay such rental payments shall be absolute and unconditional and is not subject to any abatement, set-off, defense or counterclaim for any reason whatsoever. Lessee hereby represents and warrants that it has funds available to pay the Rental Payments set forth on Exhibit B through the end of the current fiscal year ("First Appropriation Period"). Lessee intends to do all things lawfully within its power to obtain and to maintain funds from which the Rental Payments may be made. Notwithstanding the foregoing, after the First Appropriation Period, if Lessee has not appropriated sufficient funds to pay COMMERCE for the Rental Payments, and Lessee shall not have funds duly authorized for the Rental Payments or other amounts payable hereunder from other sources, an Event of Nonappropriation (an "Event of Nonappropriation") shall be deemed to have occurred. Lessee shall promptly deliver notice thereof to COMMERCE and shall endeavor to give such notice not less than one hundred twenty (120) days prior to the end of the last fiscal year for which an appropriation was made. Such notice shall state that the termination of this Agreement was caused by the failure of the Lessee to appropriate moneys to make Rental Payments due hereunder and that Lessee shall promptly, upon the effective date of such termination, return the Equipment as hereinafter provided.

If an Event of Nonappropriation has occurred, this Lease shall terminate, in whole, but not in part, as to all Equipment, effective upon the last day of the fiscal year for which funds were appropriated. Upon termination of this Lease as provided in this Section, Lessee shall not be responsible for the payment of any additional Rental Payments coming due in succeeding fiscal years. Lessee shall then, at Lessee's expense, promptly return the Equipment to COMMERCE to a location in the State of New Jersey specified by COMMERCE. If an Event of Nonappropriation has occurred, Lessee agrees, to the extent permitted by law and applicable public policy, not to purchase, lease or rent any other functionally similar equipment. Lessee agrees that it will not deliberately cause an Event of Nonappropriation so as to permit Lessee to terminate this Agreement in order to acquire any other equipment or obtain funds directly or indirectly to perform essentially the same application for which the Equipment is intended.

**3. The Equipment:** Lessee agrees and acknowledges that (I) Lessee has selected the Equipment to be acquired by COMMERCE and rented to Lessee, (II) the Equipment is, and during the period of this Agreement shall remain personal property, (III) the Equipment will have a useful life in Lessee's hands that is substantially in excess of the initial term of this Agreement, and (IV) Lessee does not intend to sell, or otherwise dispose of, the Equipment during the term of the Agreement. Lessee may contact the seller of the Equipment directly, as COMMERCE'S agent, to effect the acquisition of the Equipment. When Lessee accepts the Equipment, Lessee must deliver to COMMERCE an Acceptance Certificate. If the Equipment has not been identified on the date of this Agreement, the Purchase Price shall be deposited in an account held with COMMERCE ("Purchase Fund"). The Lessee shall submit an invoice for the Equipment to COMMERCE and upon COMMERCE'S approval of such invoice, COMMERCE shall fund the acquisition of the Equipment directly to the Equipment vendor out of moneys in the Purchase Fund. Lessee may assert claims and rights that COMMERCE may have against any manufacturer of the Equipment as well as the agents or dealers of the manufacturer (the "Vendor") of any portion of the Equipment.

**4. Security Interest and Title of the Equipment:** During the term of this Agreement, pursuant to the provisions of N.J.A.C. 5:34-3.3 ownership of all Equipment and any and all repairs, replacements, substitutions and modifications thereto shall remain with COMMERCE until Lessee has paid all rental payments. By paying all such rental payments, Lessee shall be deemed to have exercised Lessee's option to acquire ownership of the Equipment, and upon such payment, title shall transfer automatically to Lessee, and COMMERCE shall be obligated to take all actions necessary to vest such title and ownership in Lessee. Notwithstanding ownership of the Equipment by COMMERCE, for federal income tax and accounting purposes and for purposes of Section 7 hereof, equitable title to the Equipment during the term of this Agreement shall be in the Lessee. Lessee acknowledges that COMMERCE does not operate, control or have possession of the Equipment and has no control over Lessee or Lessee's operation, use, storage or maintenance of the Equipment. Following an event of default or an Event of Nonappropriation or upon other termination of this Agreement for any reason other than Lessee's rights under Section 5, title to the Equipment will immediately vest in COMMERCE and Lessee will surrender possession of the Equipment to COMMERCE. Lessee authorizes COMMERCE to file a financing statement with respect to the Equipment where permitted by the Uniform Commercial Code (the "UCC"). The filing of a financing statement is not to be construed as evidence that any security interest was intended to be created, but only to give public notice of COMMERCE'S ownership of the Equipment. If this Agreement is deemed at any time to be one intended as

security then Lessee grants COMMERCE a first priority security interest in the Equipment together with all related software (embedded therein or otherwise) and general intangibles, and all additions, accessories, attachments and accessions thereto whether furnished by the supplier of the Equipment, all subleases, chattel paper, accounts and security deposits relating thereto, and any and all substitutions, replacements or exchanges for such item of Equipment, in such case in which Lessee shall from time to time acquire an interest, and all proceeds (including insurance proceeds) of the Equipment and other collateral in and against which a security interest is granted hereunder. Lessee will promptly execute, or otherwise authenticate, and deliver to COMMERCE such further documents, instruments, assurances and other records, and take such further action as COMMERCE from time to time may reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of COMMERCE under such documents (including without limitation (i) lien searches and (ii) such UCC financing statements, fixture filings and waivers as reasonably may be required by COMMERCE in connection with any change in circumstances relating to Lessee, the Equipment or otherwise); provided, however, Lessee hereby authorizes COMMERCE to file any and all of the same without Lessee's authentication, to the extent permitted by applicable law. If requested by COMMERCE, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags and maintain such markings during the Lease Term so as clearly to disclose COMMERCE'S security interest in the Equipment. Upon termination of this Lease through exercise of Lessee's option to purchase pursuant to Section 5 or through payment by Lessee of all Rental Payments and, in either case, payment of all amounts relating thereto, COMMERCE'S security interest in the Equipment shall terminate, and COMMERCE shall execute and shall deliver to Lessee such documents as Lessee reasonably may request to evidence the termination of COMMERCE'S security interest in the Equipment.

**5. Option to Purchase:** Lessee shall be entitled and shall have exercised its option to purchase the Equipment: (a) upon payment in full of all Rental Payments in accordance with Exhibit B hereof and all other amounts due hereunder, or (b) upon written notice delivered at least thirty (30) days in advance of a proposed date (which shall be a date scheduled for payment of a Payment) for payment and upon payment on such date of the prepayment price equal to all principal due and remaining unpaid and interest accrued to such date of prepayment.

When Lessee exercises its purchase rights hereunder and COMMERCE shall have received all amounts due under this Agreement, then title shall pass simultaneously to Lessee, and this Agreement shall terminate. COMMERCE shall cooperate and execute such documents that are necessary for the title to the Equipment to vest with Lessee AS IS, WHERE IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE, except that the Equipment shall not be subject to any Lien created by or arising through COMMERCE.

**6. Responsibilities for Repair and Maintenance:** Lessee agrees to maintain the Equipment in good condition and make all necessary repairs and replacements at Lessee's expense. Lessee agrees to maintain a maintenance log for the Equipment and permit COMMERCE to inspect the Equipment and the log(s). Lessee must have the Equipment serviced and repaired at Lessee's expense when servicing or repair is required within intervals not exceeding 125% of those recommended in the owner's manual(s).

**7. Tax Covenants:** Lessee will not make or direct any use of the proceeds of the obligation provided herein or any other funds which will cause such obligation to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended and the treasury regulations promulgated thereunder (the "Code"), to be "federally guaranteed" within the meaning of Section 149 of the Code or to be a "private activity bond" within the meaning of Section 141(a) of the Code. To that end, so long as any Rental Payments are made, Lessee, with respect to such proceeds and such other funds, will comply with all requirements of such Code sections and all regulations of the United States Department of the Treasury issued thereunder to the extent that such

requirements are, at the time, applicable and in effect. Furthermore, to the extent applicable pursuant to Section 148(f) of the Code, Lessee covenants to complete or cause to be completed all reporting requirements and rebate all positive arbitrage to the United States of America. Lessee covenants that the Equipment will be used only for the purpose of performing one or more of Lessee's governmental or proprietary functions, and the Equipment will not be used in a trade or business of any person or entity other than Lessee on a basis different from the general public. Lessee will not use or permit the use of the Equipment by any person for a "private business use" within the meaning of Section 141(b) of the Code in such matter or to such extent as would result in the inclusion of interest received hereunder in gross income for federal income tax purposes under Section 103 of the Code.

The parties will cooperate in performing all acts and things legally required or desirable in order to assure that the interest component of the rental payments will not be included in the gross income of COMMERCE or its assigns for federal income tax purposes.

If any event shall occur so that interest payments on the lease are includible in the gross income for federal income tax purposes of the recipient of the interest payments on the lease ("Event of Taxability"), the interest rate on the lease payments shall increase to the prime rate as published on the first day of the month in the Wall Street Journal ("Prime Rate") plus two percent (2%) from the date of the occurrence of the Event of Taxability. Lessee agrees to pay and indemnify COMMERCE for all interest, penalties, fines, additions to taxes, levied or assessed on the lease or COMMERCE as a result of the Event of Taxability.

**8. Lessee's Risk of Loss or Damage:** Lessee agrees to bear all risk of loss, damage, destruction or theft of the Equipment. Lessee must maintain insurance of the types and in the amounts not less than that set forth on Exhibit C, directing Lessee's insurance company to give COMMERCE a certificate showing COMMERCE as lender loss payee and an additional named insured. If Lessee does not maintain the required insurance, COMMERCE may obtain it and charge Lessee for it. Lessee must give COMMERCE prompt notice of (1) the loss, theft or destruction of any part of the Equipment, (2) any damage to the Equipment exceeding \$500, or (3) any claim arising out of the ownership, maintenance, storage or use of the Equipment. The parties will cooperate in deciding if insurance proceeds will be applied to the repair of the Equipment or to its purchase price. If COMMERCE receives insurance proceeds exceeding the amount of the purchase price shown on Exhibit B, plus interest, or the amount required to complete the work, COMMERCE agrees to forward the excess proceeds to Lessee.

**9. Indemnification:** Except for the intentional or negligent acts or omissions of COMMERCE arising out of entering into this Agreement, including any misstatements of material fact, in connection with any transfer of this Agreement, because Lessee has selected the Equipment for Lessee's use and purposes, and because Lessee operates and maintains the Equipment, Lessee agrees, to the extent permitted by law of the State of New Jersey, to indemnify COMMERCE against any and all loss, damage, injury, claims, taxes (excluding COMMERCE'S income taxes), fees, fines, penalties and expenses (including legal fees and expenses) of every kind that relate to the use, operation, ownership, condition or maintenance of the Equipment. Lessee's obligation to indemnify COMMERCE will continue after termination of the Agreement as to all matters, except those which arise from COMMERCE'S (or anyone COMMERCE sells or re-leases the Equipment to) use, operation, ownership, condition or maintenance of the Equipment following termination.

**10. No Warranty:** COMMERCE MAKES NO EXPRESS OR IMPLIED WARRANTIES CONCERNING THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE. THIS SECTION IN NO EVENT IS INTENDED TO AFFECT THE WARRANTIES OR REPRESENTATIONS CONTAINED IN ANY CONTRACT ENTERED INTO FOR THE ACQUISITION OF THE EQUIPMENT.

**11. Termination:** This Agreement will terminate: (1) upon payment of all amounts due hereunder by Lessee to COMMERCE, (2) at the time and for the

reason set forth in Section 2, (3) if Lessee has returned the Equipment and paid all amounts due through the end of the term then in effect, including interest, (4) upon Lessee's purchase of the Equipment under Section 5 and Lessee's payment of all amounts due, (5) at COMMERCE'S option if Lessee defaults as described in Section 12, and (6) if all or any portion of the Equipment has been lost, stolen or damaged beyond repair, upon COMMERCE'S receipt of insurance proceeds covering the purchase price of the lost, stolen or damaged Equipment. When this Agreement terminates, if Lessee has not paid to COMMERCE all amounts due hereunder, Lessee must, at Lessee's expense, return the Equipment Lessee has not purchased to COMMERCE at the address specified by COMMERCE, in as good condition as when Lessee received it, ordinary wear excepted. Lessee must remove all signs and markings and make all repairs (other than for ordinary wear) requested by COMMERCE. If Lessee does not, COMMERCE may do so and charge Lessee for it. No prepaid interest will be rebated to Lessee upon termination.

**12. Default:** The following constitute "Events of Default" under this Agreement: (a) failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder when due; or (b) failure by Lessee to maintain insurance on the Equipment in accordance with Section 8; or (c) failure by Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of fifteen (15) days after written notice is given to Lessee by COMMERCE, specifying such failure and requesting that it be remedied; provided, however, that if the failure stated in such notice cannot be corrected within such fifteen (15) day period, COMMERCE will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected; or (d) initiation by Lessee of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning its indebtedness; or (e) the determination by COMMERCE that any representation or warranty made by Lessee in this Lease was untrue in any material respect upon the execution hereof. If any such default occurs, COMMERCE, without notice or demand, may declare this Agreement in default and declare all amounts eligible or actually appropriated for Rental Payments under this Agreement to be immediately due and payable. Equipment must then be returned to COMMERCE (at the address specified by COMMERCE) at Lessee's expense, and the Equipment and all Lessee's rights therein shall be deemed surrendered to COMMERCE. Upon declaration of default, COMMERCE may repossess the Equipment with or without process of law, and for the purposes may enter upon any of Lessee's premises or other's premises, wherever the Equipment may be found, without liability therefor. COMMERCE may recover from Lessee any unpaid amounts due or to become due for the remainder of the term of this Agreement, together with all expenses, including attorney's fees and legal expenses (to the extent permitted by law) incurred by COMMERCE to enforce its rights hereunder. The repossession and sale of the Equipment shall not affect COMMERCE'S right to recover from Lessee all damages which COMMERCE has suffered because of Lessee's breach. COMMERCE may sell or release the Equipment with or without advertisement, at public or private sale or leasing, without notice to Lessee, free of any of Lessee's interest, without any duty to account to Lessee for COMMERCE'S actions or inaction or for any sale or re-lease proceeds. The proceeds of any sale or re-lease will be applied in the following order: (1) to the proper and reasonable costs and expenses (including attorney's fees) associated with the default, repossession and restoration of title to COMMERCE, (2) to pay COMMERCE the amount of all unpaid Rental Payments, if any, which are then due and owing, together with interest and late charges thereon; then applicable prepayment 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, from the next proceeding due date of a Rental Payment until the date of payment by Lessee, and any other amounts due hereunder, and (3) if any proceeds remain, to Lessee. If COMMERCE is unable to repossess any Equipment after a default, the Equipment shall be deemed to have suffered a total loss compensable under Section 8. COMMERCE may also enforce Lessee's performance of Lessee's covenants to recover damages for the breach of those covenants. COMMERCE'S rights and remedies in this section are not exclusive but are additive and in addition to all other rights and remedies that COMMERCE has at law or in equity.

**13. Liens:** This Equipment must be kept free of all liens and encumbrances, except COMMERCE'S security interest, at all times.

**14. Limitation on Assignment:** The Lessee may not assign or sublease this Agreement or any interest in it or the Equipment without COMMERCE'S prior written consent and a written opinion of nationally recognized bond counsel to the effect that any such assignment or sublease of this Agreement or any interest in it or the Equipment will not adversely effect the exclusion of the interest component of the Rental Payments from gross income for federal income tax purposes. In no event may Lessee assign or sublet this Agreement or any interest in it or the Equipment to a non-governmental entity. COMMERCE may assign or sell its interest under this Agreement, in whole or in part, without Lessee's consent, but the assignment will not be effective until Lessee has received notice disclosing the name and address of assignee and information sufficient to enable Lessee to meet the requirements of Section 149(a) of the Code. Lessee shall be provided with written notice of COMMERCE'S assignment. During the term of this Agreement, Lessee shall keep a complete and accurate register of all such assignments in form necessary to comply with Section 149(a) of the Code.

**15. Late Charges:** If Lessee does not pay Rental Payments due under this Agreement on their due date, COMMERCE may charge Lessee a late fee of \$5.00 or 5% of the amount that is late, whichever is more.

**16. Exhibits:** Exhibits A through H attached hereto are part of this Agreement, incorporated herein by reference, and must be executed by Lessee, where applicable.

**17. Other Terms:** This Agreement constitutes the entire agreement between the parties as to the subject matter it covers and may not be changed except by a written agreement signed by Lessee and COMMERCE. If any part of this Agreement is or becomes invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other or remaining provisions hereof. This Agreement and all rights and actions arising under it shall be governed by the laws of the state of New Jersey. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. This Agreement may be executed in several counterparts. All notices must be addressed to the parties at their addresses shown on Exhibit B, or at another address specified by either party in writing and shall be deemed given when delivered or mailed by registered mail, postage prepaid. To the extent applicable, Lessee hereby waives any and all rights and remedies granted Lessee by Sections 508 through 522 of Article 2A of the Uniform Commercial Code including, by way of example only and not as a limitation, the right to repudiate this Agreement and reject the Equipment; the right to cancel this Agreement; the right to revoke acceptance of the Equipment; the right to grant a security interest in the Equipment in Lessee's possession and control for any reason; the right to recover damages thereunder for any breach of warranty or for any other reason deduct all or any part of the claimed damages resulting from COMMERCE'S default, if any, under this Agreement; the right to accept partial delivery of the Equipment; the right to "cover" by making any purchase or leases of or contract to purchase or lease Equipment in substitution for those due from COMMERCE; the right to recover any general, special, incidental or consequential damages, for any reason whatsoever; and the right to specific performance, replevin, detinue, sequestration, claim and delivery and the like for the Equipment. The waivers contained herein shall not constitute a waiver by Lessee of any of its rights or remedies against the vendor and/or manufacturer of the Equipment.

**18. Lessee Representations and Warranties:** Lessee hereby represents, warrants and covenants to COMMERCE the following with respect to this Agreement as of the date Lessee executes the Acceptance Certificate: (a) Lessee is organized and validly existing under the laws of the state of its organization listed below Lessee's signature herein, with adequate power and capacity to enter into this Agreement, all documents related to the purchase of the Equipment and any other documents required to be delivered in connection with this Agreement or the Equipment (hereinafter "Documents"); (b) the Documents have been duly authorized, executed and delivered by Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms, except to the extent that the enforcement of remedies therein provided may be

limited under applicable bankruptcy and insolvency laws; (c) no approval, consent or withholding of objections is required from any federal, state or local governmental authority or instrumentality with respect to the entry into or performance by Lessee of the Documents, except such as have already been obtained; (d) the entry into and performance by Lessee of its obligations under the Documents will not (i) violate any judgment, order, law or regulation applicable to Lessee or (ii) result in any breach of, constitute a default under or result in the creation of any lien, charge, security interest or other encumbrance upon any item of the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument (other than this Agreement or any purchase money security interest retained by any supplier) to which Lessee is a party; and (e) there are no suits or proceedings pending or threatened in court or before any regulatory commission, board or other administrative governmental agency against or affecting Lessee, which will have a material adverse effect on the ability of Lessee to fulfill its obligations under this Agreement; and (f) lessee has complied with all statutes, laws, regulations and procedures in entering into this Agreement and the matters contemplated hereby, including without limitation N.J.S.A. §18A:20 and N.J.A.C. §6A:26-10.

**19. Financial Conditions:** Lessee to provide, within 150 days of Fiscal Year End, annual financial statements prepared by a CPA acceptable to the Bank.

**20. COMMERCE Representations and Warranties:** COMMERCE represents, covenants and warrants as following:

a) COMMERCE is a corporation duly organized, existing and in good standing under the laws of the State of New Jersey and is authorized to do business in the State of New Jersey; has full and complete power to enter into the Agreement, to enter into and to carry out the transactions contemplated by it hereby and thereby and to carry out its obligations under the Agreement, is possessed of full power to own and to hold real and personal property and to lease the same, and has duly authorized the execution and the delivery of the Agreement, and all other agreements, certificates and documents contemplated hereby and thereby.

b) Neither the execution and the delivery of the Agreement, nor the fulfillment of or the compliance with the terms and the conditions thereof, nor the consummation of the transactions contemplated hereby and thereby conflicts with or results in a breach of the terms, the conditions or the provisions of any restriction, any agreement or any instrument to which COMMERCE is now a party or by which COMMERCE or its property is bound, constitutes a default under any of the foregoing that results in the creation or the imposition of any lien, charge or encumbrance whatsoever upon any of the property or the assets of COMMERCE or upon the Equipment.

**21. Financing:** In consideration for and upon the execution of this Agreement, COMMERCE hereby agrees to pay to the Lessee the amount of \$17,100.00 which will be deposited in a separate project account which will be maintained by the Lessee (subject to the provisions of Section 3 hereof) for the purchase of the equipment and related costs.

**22. Conditions of Closing:** At or prior to payment to Lessee as stated in Section 20, COMMERCE shall received the following:

a) this Agreement executed by Lessee and COMMERCE;

- b) an executed Exhibit B to this Agreement;
- c) an executed Insurance Coverage Requirements Certificate, a form of which is attached hereto as Exhibit C;
- d) an executed Acceptance Certificate, a form of which is attached hereto as Exhibit D;
- e) a duly adopted resolution of Lessee, in form and substance acceptable to COMMERCE and including those matters set forth in Exhibit E;
- f) an executed Certificate of Lessee, a form of which is attached as Exhibit F;
- g) and executed Arbitrage and Tax Certificate, a form of which is attached as Exhibit G-1 for New Money Projects or as Exhibit G-2 for Refunding Projects;
- h) an opinion of counsel to Lessee, substantially in the form of the opinions attached as Exhibit H;
- i) an executed Form 8038 G; and
- j) any and all opinions, certificates, instruments, financing statements or other documents as COMMERCE may request to evidence compliance with the agreements to be performed and all conditions to be satisfied under this Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first set forth above.

**COMMERCE COMMERCIAL LEASING, LLC**

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

**LESSEE:**

**NUTLEY BOARD OF EDUCATION**

**By:** \_\_\_\_\_  
**Name:** Robert A. Green, Jr.  
**Title:** Business Administrator/Board Secretary

**Jurisdiction of Organization:** New Jersey

**Organizational Number:** N/A

**Chief Executive Office:** 375 Bloomfield Avenue  
Nutley, NJ 07110

EXHIBIT A

QTY.      MAKE      SERIAL NO.      MODEL

SEE EQUIPMENT LIST ATTACHED HERETO AND MADE A PART HEREOF

LATHE

**EXHIBIT B**

**TERMS**

1. The Equipment which is the subject of the Lease Purchase Agreement is more fully described in Exhibit "A" to the Lease Purchase Agreement.
2. Fixed Interest Rate: 4.830%

Dated Date: 4/17/07

PAYMENT #	PAYMENT DATE	PAYMENT	PRINCIPAL PORTION	INTEREST PORTION	PRINCIPAL BALANCE	PURCHASE OPTION
1	05/01/07	5,970.88	5,970.88	0.00	11,129.12	11,129.12
2	05/01/08	5,970.88	5,433.34	537.54	5,695.77	5,695.77
3	05/01/09	5,970.88	5,695.77	275.11	0.00	0.00
		<b>17,912.64</b>	<b>17,100.00</b>	<b>812.64</b>		

3. The Equipment will be located at ~~375 Bloomfield Avenue~~, Nutley, NJ 07110.  
300 Franklin Avenue
4. Address of Lessee, for notification purposes, is: 375 Bloomfield Avenue, Nutley, NJ 07110
5. Address of COMMERCE for notification purposes, is: 2059 Springdale Road, Cherry Hill, NJ 08003

**Acknowledged and Accepted:**

**LESSEE: Nutley Board of Education**

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

Title: Business Administrator/Board Secretary

EXHIBIT C

INSURANCE COVERAGE REQUIREMENTS CERTIFICATE

1. In accordance with Section 8 of the Lease Purchase Agreement, we have instructed the insurance agent named below (please fill in name, address, contact person, telephone and facsimile numbers).

Suburban Essex Joint Insurance Fund

Park 80 West Plaza One

Saddle Brook, NJ 07663

Joseph Hrubash

973-659-6479

to issue:

- a. All Risk Physical Damage Insurance on the leased Equipment (as defined in the Agreement) evidenced by a certificate of Insurance and Long Form Lender Loss Payable Clause naming Lessor "and/or its assigns" as Lender Loss Payee.
- b. Public Coverage Required:  
\$1,000,000.00 per person  
\$1,000,000.00 aggregate bodily injury liability  
\$1,000,000.00 property damage liability

OR

2. We are self-insured for all risk, physical damage, and public liability and will provide proof of such self-insurance in letter form together with a copy of the statute authorizing this form of insurance.
3. Proof of insurance coverage as provided in Section 1 or 2 of this Exhibit C will be provided to COMMERCE prior to the time that the Equipment or Unit thereof is delivered to us.

Certified this \_\_\_\_ day of \_\_\_\_, 20\_\_

LESSEE: NUTLEY BOARD OF EDUCATION

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

Title: Business Administrator/Board Secretary

**EXHIBIT D**

**ACCEPTANCE CERTIFICATE**

The undersigned, as Lessee under the Lease Purchase Agreement (the "Agreement") numbered 40037213, with COMMERCE COMMERCIAL LEASING, LLC, Lessor, acknowledges receipt in good condition of the Equipment described in Exhibit "A" attached to the Lease Purchase Agreement, a copy of which is attached hereto, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

The undersigned officer of Lessee hereby reaffirms in all respects the provisions relating to arbitration contained in the Agreement, and represents that, to the best of his or her knowledge, information and belief, the expectations therein expressed were reasonable as of the date on which they were made, and are reasonable as of this date, and that there were, and are as of this date, no facts, estimates or circumstances other than those expressed therein that would materially affect the expectations expressed therein.

Certified this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ :

**LESSEE: NUTLEY BOARD OF EDUCATION**

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

Title: Business Administrator/Board Secretary

EXHIBIT F

CERTIFICATE OF LESSEE

THE UNDERSIGNED, duly authorized representative of the named Lessee under that certain Lease Purchase Agreement dated 4/17/07 with COMMERCE COMMERCIAL LEASING, LLC as Lessor (the "Agreement") hereby certifies as follows and in accordance with the requirements of the Agreement. Capitalized terms used herein have the same meaning as in the Agreement:

A. INCUMBENCY OF OFFICERS AND SIGNATURES:

I hold the position noted under my signature, and I have all the authority necessary to execute and deliver this Certificate. The following officers of Lessee are duly elected or appointed, and their signatures are true and correct, and where required, have been filed with the appropriate officials of the State:

\_\_\_\_\_  
Signature

Name Printed Robert A. Green, Jr.  
Title Printed Business Administrator/Board Sec.

\_\_\_\_\_  
Signature

Name Printed  
Title Printed

B. ESSENTIAL USE:

1. The Equipment will be used by the Lessee for the specific purpose of: Instruction
2. The Equipment is essential for the functioning of Lessee and is immediately needed by Lessee. Such need is neither temporary nor expected to diminish during the Lease Term. The Equipment is expected to be used by Lessee for a period in excess of the Lease Term.
3. Funds are expected to come from the General Fund of Lessee.

This certificate is based upon facts, circumstances, estimates and expectations of Lessee as of the date on which the Agreement was executed, and to the best of my knowledge and belief, as of this date, such facts, circumstances and estimates are true and correct and such expectations are reasonable.

IN WITNESS WHEREOF, I have executed and delivered this certificate as of the 17 day of Apr 2007.

WITNESS:

\_\_\_\_\_  
Signature

Madeline Cucuzza, Executive Secretary  
Name & Title Printed

WITNESS:

\_\_\_\_\_  
Signature

Josephine Mleziva, Executive Secretary  
Name & Title Printed

EXHIBIT G-1

ARBITRAGE AND TAX CERTIFICATE  
[NEW MONEY PROJECTS]

I, Robert Green, hereby certify that I am the duly qualified Bus. Admin/Bd. Sec [title of Officer executing Certificate] of the Nutley Board of Education in the County of Essex, New Jersey ("Lessee") and HEREBY CERTIFY TO THE BEST OF OUR KNOWLEDGE AND BELIEF as follows:

**I. GENERAL.**

1.1. The Lease. I am charged with the responsibility of executing a Lease Purchase Agreement (the "Lease") with COMMERCE COMMERCIAL LEASING, LLC ("Lessor"), dated as of 4/17/07 in the principal amount of \$17,100.00. The Lease provides the Lessor with certain rights to receive Rental Payments, consisting of a principal portion and an interest portion, and with certain other rights under the lease. All initially capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

1.2. Amount Deemed Received Under the Lease. The Lessee is deemed to have received \$17,100.00.

1.3. The Lease Approval. The Lessee is authorized to enter into the Lease pursuant to Section 4.2(f) of Chapter 20 of Title 18A, Education, of the New Jersey Statutes constituting Chapter 183 of the Laws of 1986 of the State of New Jersey.

1.4. Types of Proceeds. The proceeds from the Lease will consist of sale proceeds.

1.5. Regulations. References to Regulations mean the Treasury Regulations promulgated under Section 103, and Sections 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code").

1.6. Defined Terms. The following terms have the meanings ascribed to them in the Regulations (and the Code, where indicated) unless the context hereof clearly required otherwise:

- (a) available amount, §1.148-1(b);
- (b) Bona fide debt service fund, §1.148-1(b);
- (c) bond year, §1.148-1(b);
- (d) capital expenditure, §1.150-1(b);
- (e) computation date, §1.148-3(e);
- (f) fair market value, §1.148-5(d)(6);
- (g) gross proceeds, §1.148-1(b);
- (h) investment, §1.148-1(b);
- (i) investment proceeds, §1.148-1(b);
- (j) investment property, §148(b)(2);
- (k) Investment-type property, §1.148-1(e)(2);

- (l) issue, §1.150-1(c);
- (m) net sale proceeds, §1.148-1(b);
- (n) nonpurpose investment, §1.148-1(b);
- (o) nonpurpose receipts, §1.148-3(d)(2);
- (p) proceeds, §1.148-1(b);
- (q) rebate amount, §1.148-3(b);
- (r) rebate requirements, §1.148-3;
- (s) related party, §1.150-1(b);
- (t) replacement proceeds, §1.148-1(c);
- (u) sale proceeds, §1.148-1(b);
- (v) sinking fund, §1.148-1(c)(2); and
- (w) yield, §1.148-1(b).

## II. PURPOSE OF ISSUE.

2.1. Purpose of the Lease. The Lease is being executed to provide \$17,100.00 to finance the Acquisition of a Lathe (the "Project").

2.2. No Investment-Type Property. Unless expressly permitted herein, no portion of the proceeds derived from the Lease will be used to finance "investment property" or "investment-type property" with a yield in excess of the yield under the Lease.

2.3. No Overissuance. The proceeds derived from the Lease do not exceed the amount that is required for the purposes described in Section 2.1 above.

2.4. No Reimbursement. None of the proceeds derived from the Lease will be used to reimburse the Lessee for an expenditure paid prior to the date hereof.

2.5. No Refunding. No portion of the proceeds of the Lease will be used, directly or indirectly, to refund another issue.

2.6. No Hedge Bonds. Not more than 50% of the proceeds of the Lease will be invested in nonpurpose investments having a substantially guaranteed yield for four years or more within the meaning of Section 149(g)(3)(A) of the Code, and at least 85% of the spendable proceeds of the Lease will be used to carry out the governmental purposes of such issue within the three year period beginning on the date hereof. The Lease does not constitute a "hedge bond" within the meaning of Section 149(g) of the Code.

### 2.7. No Replacement Proceeds.

(a) Other than the proceeds of the Lease, the Lessee has on hand no funds that (i) could legally and practically be used for the governmental purposes for which the Lease is being issued that are not

pledged, budgeted, earmarked or otherwise necessary to be used for other purposes, or (ii) would be used for the governmental purposes of the Lease if the proceeds of the Lease were not used or to be used for such purpose.

(b) The Lessee does not reasonably expect that (i) the term of the Lease (which has a weighted average maturity of 1.512 years) will be longer than reasonably necessary for the governmental purposes of the Lease, and (ii) there will be available amounts during the period that the Lease remains outstanding longer than necessary.

(c) No portion of the proceeds of the Lease will be used directly or indirectly (i) to replace funds of the Lessee or other agency, department, or division of the Lessee that could be used for the Project, or (ii) to replace any proceeds of any prior issuance of obligations by the Lessee or other agency, department or division of the Lessee.

2.8. No Private Business Use of Project.

(a) Not more than five percent (5%) of the proceeds of the Lease will be used, directly or indirectly, in whole or in part, in any activity carried on by any person other than a state or local governmental unit. A use of the proceeds includes (i) ownership of the Project, (ii) actual or beneficial use of the Project pursuant to a lease or a management, incentive payment or output contract, or (iii) any other similar arrangement, agreement or understanding, whether written or oral. The payment of the principal of or the interest on more than five percent (5%) of the Lease will not be, directly or indirectly; (i) secured by any interest in (A) property used or to be used in any activity carried on by any person other than a state or local governmental unit, or (B) payments in respect of such property; or (ii) derived from payments (whether or not by or to the Lessee), in respect of property, or borrower money, used or to be used in any activity carried on by any person other than a state or local governmental unit. For purposes of this paragraph (a), persons (other than a state or local governmental unit) using such proceeds on the same basis as the general public shall not be taken into account.

(b) None of the proceeds of the Lease will be used, directly or indirectly, to make a finance loans to persons other than a state or local governmental unit.

(c) No proceeds of the Lease will be used to make grants to any person.

**III. SOURCE AND DISTRIBUTION OF FUNDS.**

3.1. Proceeds Derived from the Lease. The proceeds derived from the Lease are \$17,100.00 which constitute the "proceeds" for purposes of this Certificate.

3.2. Deposit of Proceeds to the Purchase Fund. The proceeds will be deposited in an account of the Lessee and will be applied for the costs of the Project.

3.3. Use of Proceeds. The Lessee will use the proceeds only for capital expenditures in connection with the Project. Such proceeds are not expected to be used to repay, at maturity or otherwise, any indebtedness of the Lessee. The proceeds will be used to pay all or a portion of the costs of the Project with three (3) years from the date hereof. The Lessee certifies that:

(a) It reasonably expects that at least 85% of the net sale proceeds of the Lease will be expended on the Project within three years after the date hereof;

(b) It reasonably expects to incur within 6 months from the date of issue hereof a substantial binding obligation (not subject to contingencies within the Lessee's or a related party's control) to a third party to expend at least 5% of the net sale proceeds of the Lease on the Project; and

(c) It reasonably expects the completion of the Project, and the allocation of net sale proceeds of the Lease to expenditures, to proceed with due diligence.

The proceeds of the Lease deposited into the account of the Lessee may be invested without regard to yield restriction until three years from the date hereof in accordance with Regulations Section 1.148-2(e)(2) and thereafter at a yield not materially higher (1/8 of one percentage point) than yield on the Lease, unless the requirements of Treas. Reg. § 1.148-5(c) are met with respect to yield reduction payments.

3.4. No Reserves. No reserve account has been established by the Lessee.

3.5. No Costs of Issuance. None of the proceeds will be used to pay the costs incurred by the Lessee in connection with the authorization of the Lease.

3.6. Investment Limitation on Sinking Fund Proceeds. Amounts treated as proceeds of the Lease because they are accumulated in any sinking fund for the Lease shall be invested without regard to yield restriction for a period of thirty (30) days beginning on the date of accumulation, and thereafter shall be invested at a yield not in excess of the yield on the Lease.

3.7. No Other Funds or Accounts. There are no other funds or accounts that are reasonably expected to be used to pay rents under the Lease or that are pledged to the Lease, and for which there is reasonable assurance that amounts on deposit therein will be available to pay rents on the lease if the Lessee encounters financial difficulty.

3.8. Investment of Proceeds Derived from the Lease. The Lessee covenants that any and all investment proceeds earned on gross proceeds in excess of the yield under the Lease will be held and set aside for rebate to the federal government. Such amount shall be calculated in the manner and paid at the times required by the provisions of the Regulations.

#### IV. TERMS OF THE LEASE AND CALCULATION OF YIELD.

4.1. Terms of the Lease and Method for Computing Yield. The dated date, the date of maturity and the rate of interest of the Lease are as shown in the Lease, which by this reference is made a part hereof as if set forth in full herein. When used in computing the present worth of all payments of principal and interest to be paid on the Lease, produces an amount equal to the purchase price thereof.

4.2. Computation of Purchase Price. The Purchase Price of the Lease (as defined in section 4.4 below) is the product of arm's length negotiations between the Lessor and the Lessee, who are unrelated parties. The Lessor has indicated that it does not intend to reoffer the Lease.

4.3. No Insurance. No insurance has been obtained for the Lease.

4.4. The Purchase Price. The Purchase Price under the Lease is \$17,100.00 ("Purchase Price").

4.5. Computation of Yield. The yield under the Lease, as computed in accordance with the method described in Section 4.1 above, using the Purchase Price that is specified in Section 4.4 above, is 4.83%.

#### V. REBATE.

5.1. Lessee (and all entities within the controlled group of the Lessee) has issued \$ 38,517,100 in tax-exempt bonds and notes in the calendar year 2007, including the Lease. Lessee (and all entities within the controlled group of the Lessee) does not expect to issue greater than \$5,000,000 (such \$5,000,000 shall be increased by the lesser of \$5,000,000 or the amount attributable to public school construction) in tax-exempt bonds or notes in the calendar year 2007 which will count towards the small issuer exemption from rebate under Section 148(f)(4)(D) of the Code and Regulation Section 1.148-8.

5.2. Unless the Lessee qualifies for an exemption from the application of the rebate requirements of Code Section 148, the Issuer will comply with the rebate requirements. Regulation Sections 1.148-7 and -8 sets forth the exemptions from rebate available to the Lessee.

## VI. MISCELLANEOUS.

6.1. Single Obligation. Except as discussed herein, there are no other issues of governmental obligations which (i) will be paid out of substantially the same source of funds, determined without regard to guarantees from unrelated parties, (ii) are being sold at substantially the same time as the Lease (*i.e.*, less than 15 days from the date of the execution of the Lease), and (iii) are being sold pursuant to the same plan of financing in connection with the Lease.

6.2. No Federal Guarantee. Except for the investments of the type described in the last sentence of this Section 6.2, no portion of the payment of the principal portion or interest portion of the rental payments or any credit enhancement or liquidity device relating to the foregoing is or will be guaranteed, directly or indirectly (in whole or in part), by the United States (or any agency or instrumentality thereof). No portion of the Lease has been or will be used to make loans the payment of principal or interest with respect to which is or will be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or invested (directly or indirectly) in federally insured deposits or accounts. The foregoing provisions shall not apply to (a) proceeds of the Lease invested for an initial temporary period, as described in section 148(c) of the Code, until such proceeds are needed for the purpose for which said Lease was issued, (b) investments in a bona fide debt service fund, as described in Regulation Section 1.148-1(b), (c) investments in a reserve fund that meets the requirements of Section 148(d), (d) investments in obligations issued by the United States Treasury, or (e) any other investments permitted under regulations promulgated by the Secretary of the Department of the Treasury.

6.3. No Investments to Reduce Yield. The Lessee has not entered into and will not enter into any transaction to reduce the yield on the investment of the proceeds of the Lease in such a manner that the amount to be rebated to the Federal government is less than it would have been had the transaction been at arm's length and had the yield on the issue not been relevant to either party.

6.4. Basis for Statements as to Expectations. The statements as to the expectations of the Lessee made herein are reasonable as of the date of this certificate, and there are no facts, estimates or circumstances that would materially change the expectations expressed in this certificate.

6.5. Management Contract Limitations. The Lessee shall not enter into, materially modify or extend a management or service agreement with respect to any portion of the Project financed with proceeds of the Lease with any entity other than a state or a local governmental unit unless such agreement complies with Rev. Proc. 97-13 issued January 10, 1997, as supplemented by Rev. Proc. 2001-39 issued June 18, 2001, or any successor revenue procedure or regulation thereto.

6.6. Filing of 8038-G. On the date hereof, or within the time prescribed for filing such report, the Lessee has caused (or will cause) the filing of a true and complete information report on Form 8038-G with the Internal Revenue Service.

6.7. No Abusive Arbitrage Device. The Lease is not and will not be part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code and the Regulations thereunder (i) enabling the Lessee to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage and (ii) overburdening the tax-exempt bond market. The Lessee shall not intentionally use any portion of the proceeds from the Lease to acquire higher yield investments or to replace funds which were used, directly or indirectly, to acquire higher yielding investments except as otherwise described herein.

6.8. No Sale of Project. No portion of the Project financed by the Lease is expected to be sold, encumbered or otherwise disposed of prior to the last Rental Payment date without a written opinion of nationally recognized bond counsel to the effect that any such disposition will not adversely affect the exclusion of interest on the Lease from gross income for Federal income tax purposes.

6.9. Alteration or Nonobservance of Restrictions. The yield restrictions and any other restriction or covenant contained herein may be altered or ignored if the Lessee receives an opinion of nationally recognized bond

counsel to the effect that such alteration or nonobservance will not adversely affect the tax exemption of interest under the Lease to which it is otherwise entitled.

6.10. Changes in Facts and Expectations. The Lessee acknowledges that any changes in facts or expectations from those set forth herein may result in different yield restrictions or rebate requirements from those set forth herein and that a nationally recognized bond counsel should be contracted if such changes do occur.

**IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS TO THIS ARBITRAGE AND TAX CERTIFICATE AS OF THE \_\_\_\_ DAY OF \_\_\_\_, 20\_\_.**

Name of Lessee: Nutley Board of Education  
County of Essex, State of New Jersey

By:

Name: Robert A. Green, Jr.  
Title: Business Administrator/Board Secretary

## EXHIBIT H

### OPINION OF LESSEE'S COUNSEL

1. Lessee is duly organized and validly existing under the laws of the State of New Jersey, with full power and authority to enter into the Lease Purchase Agreement, all documents related to the purchase of the Equipment and any other documents required to be delivered in connection with the Lease Purchase Agreement or the Equipment (hereinafter "Documents").
2. The Documents, including without limitation, the Lease Purchase Agreement have been duly authorized and executed and are legal, valid and binding obligations of Lessee, enforceable in accordance with the respective terms thereof, except as enforcement may be affected by any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws or legal or equitable principles relating to the enforcement of creditors rights.
3. The Transactions contemplated by and under the Lease Purchase Agreement are in compliance with all local, state and federal law.
4. No approval, consent or withholding of objections is required from any federal, state or local governmental authority or instrumentality with respect to the entry into or performance by Lessee of the Documents, except such as have already been obtained.
5. The entry into and performance by Lessee of its obligations under the Documents will not (i) violate any judgment, order, law or regulation applicable to Lessee or (ii) result in any breach of, constitute a default under or result in the creation of any lien, charge, security interest or other encumbrance upon any item of the Equipment pursuant to any indenture, mortgage deed of trust, bank loan or credit agreement or other instrument (other than the Lease Purchase Agreement or any purchase money security interest retained by any supplier) to which Lessee is a party.
6. There are no suits or proceedings pending or threatened in court or before any regulatory commission, board or other administrative governmental agency against or affecting Lessee, which will have a material adverse affect on the ability of Lessee to fulfill its obligations under the Lease Purchase Agreement.
7. The Lessee has covenanted to comply with any continuing requirements that may be necessary to preserve the exclusion from gross income for purposes of federal income taxation under the Internal Revenue Code of 1986, as amended ("Code"), of the portion of the Basic Rent payments designated as interest. In the event that the Lessee continuously complies with its covenants under the Lease and so long as the amounts payable to the Lessor are derived from the Basic Rent payments made by the Lessee, the portion of the Basic Rent payments designated as interest is not includible in gross income for federal income tax purposes under the current law. No opinion is expressed as to the tax treatment of payments made to the Lessor from sources other than from Basic Rent payments made by the Lessee. The Lease and the obligation to pay Basic Rent thereunder as represented by the Lease are not "specified private activity bonds" as such term is defined in the Code and the portion of the Basic Rent payments designated as interest is not includible as an item of tax preference under Section 57 of the Code for purposes of computing the alternative minimum tax. However, the portion of Basic Rent payments designated as interest and received by the Lessor may be subject to an alternative minimum tax. [Except as set forth in paragraph 9 herein,][W]we express no opinion regarding other federal tax consequences arising with respect to the Lease.
8. The portions of the Basic Rent payments designated as interest represented by the Lease and any gain on the sale of the Lease are not includible as gross income under the New Jersey Gross Income Tax Act.
9. [The Lessee has validly designated the Certificate as a "qualified tax-exempt obligation" as defined in and for the purposes of Section 265(b)(3) of the Code.]

**Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales**

(Rev. November 2000)

Under Internal Revenue Code section 149(e)

Department of the Treasury  
Internal Revenue Service

Caution: If the issue price of the issue is \$100,000 or more, use Form 8038-G.

<b>Part I Reporting Authority</b>		Check box if Amended Return <input type="checkbox"/>
1 Issuer's name <b>Nutley Board of Education</b>	2 Issuer's employer identification number <b>22 ; 6002168</b>	
3 Number and street (or P.O. box if mail is not delivered to street address) <b>375 Bloomfield Avenue</b>	Room/suite	
4 City, town, or post office, state, and ZIP code <b>Nutley, NJ 07110</b>	5 Report number <b>5</b>	
6 Name and title of officer or legal representative whom the IRS may call for more information <b>Robert A. Green, Jr., Business Administrator/Board Secretary</b>	7 Telephone number of officer or legal representative <b>( 973 ) 661-8503</b>	

<b>Part II Description of Obligations</b> Check if reporting: a single issue <input type="checkbox"/> or on a consolidated basis <input type="checkbox"/>	
8a Issue price of obligation(s) (see instructions) . . . . .	8a <b>17,100.00</b>
b Issue date (single issue) or calendar year (consolidated) (see instructions) ▶	
9 Amount of the reported obligation(s) on line 8a:	
a Used to refund prior issue(s) . . . . .	9a
b Representing a loan from the proceeds of another tax-exempt obligation (e.g., bond bank) . . . . .	9b
10 If the issuer has designated any issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check this box . . . . .	<input type="checkbox"/>
11 If an obligation is in the form of a lease or installment sale, check this box . . . . .	<input checked="" type="checkbox"/>
12 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check this box . . . . .	<input type="checkbox"/>

**Sign Here**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

**Robert A. Green, Jr.**

Business Administrator/Board Sec.

Issuer's authorized representative \_\_\_\_\_ Date \_\_\_\_\_ Type or print name and title

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

Form 8038-GC is used by the issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

**Who Must File**

Issuers of tax-exempt governmental obligations with issue prices of less than \$100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of \$100,000 or more must file Form 8038-G, Information Return for Tax-Exempt Governmental Obligations.

**Filing a separate return.** Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with an issue price of less than \$100,000.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to pay a penalty in lieu of arbitrage rebate (see the line 12 instructions).

**Filing a consolidated return.** For all tax-exempt governmental obligations with issue prices of less than \$100,000 that are not reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.

**When To File**

To file a **separate return**, file Form 8038-GC on or before the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued.

To file a **consolidated return**, file Form 8038-GC on or before February 15th of the calendar year following the year in which the issue is issued.

**Late filing.** An issuer may be granted an extension of time to file Form 8038-GC under Section 3 of Rev. Proc. 88-10, 1988-1 C.B. 635, if it is determined that the failure to file on time is not due to willful neglect. Type or print at the top of the form, "This Statement Is Submitted in Accordance with Rev. Proc. 88-10." Attach to the Form 8038-GC a letter briefly stating why the form was not submitted to the IRS on time. Also indicate whether the obligation in question is under examination by the IRS. Do not submit copies of any bond documents, leases, or installment sale documents. See **Where To File** below.

**Where To File**

File Form 8038-GC, and any attachments, with the Internal Revenue Service Center, Ogden, UT 84201.

**Other Forms That May Be Required**

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal government, use Form 8038-T, Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate. For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

**Rounding to Whole Dollars**

You may show the money items on this return as whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 to 99 cents to the next higher dollar.

**Definitions**

**Obligations.** This refers to a single tax-exempt governmental obligation if Form 8038-GC is used for separate reporting or to multiple tax-exempt governmental obligations if the form is used for consolidated reporting.

**Tax-exempt obligation.** This is a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

**Tax-exempt governmental obligation.** A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

**Private activity bond.** This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, and

• More than 10% of the payment of principal or interest of the issue is **either (a)** secured by an interest in property to be used for a private business use (or payments for such property) or **(b)** to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which **(a)** are to be used to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and **(b)** exceeds the lesser of 5% of the proceeds or \$5 million.

**Issue.** Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year **(a)** under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or **(b)** with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (e.g., under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

**Arbitrage rebate.** Generally, interest on a state or local bond is not tax exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

**Construction issue.** This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds of the issue are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, and
2. All of the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1½% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

## Specific Instructions

In general, a Form 8038-GC must be completed on the basis of available information and reasonable expectations as of the date the issue is issued. However, forms that are filed on a consolidated basis may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

### Part I—Reporting Authority

**Amended return.** If this is an amended Form 8038-GC, check the amended return box. Complete Part I and only those lines of Form 8038-GC that are being amended. Do not amend estimated amounts previously reported once the actual amounts are determined. (See the Part II instructions below.)

**Line 1.** The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. In the case of a lease or installment sale, the issuer is the lessee or purchaser.

**Line 2.** An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. This form may be obtained at Social Security Administration offices or by calling 1-800-TAX-FORM. If the EIN has not been received by the due date for Form 8038-GC, write "Applied for" in the space for the EIN.

**Line 5.** After the preprinted 5, enter two self-designated numbers. Number reports consecutively during any calendar year (e.g., 534, 535, etc.).

### Part II—Description of Obligations

**Line 8a.** The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

**Line 8b.** For a single issue, enter the date of issue, generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds; for a lease or installment sale, enter the date interest starts to accrue. For issues reported on a consolidated basis, enter the calendar year during which the obligations were issued.

**Lines 9a and 9b.** For line 9a, enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds, including proceeds that will be used to fund an escrow account for this purpose. Both line 9a and 9b may apply to a particular obligation. For example, report on line 9a and 9b obligations used to refund prior issues which represent loans from the proceeds of another tax-exempt obligation.

**Line 11.** Check this box if property other than cash is exchanged for the obligation, e.g., acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also check this box if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal. Do not check this box if the proceeds of the obligation are received in the form of cash, even if the term "lease" is used in the title of the issue.

**Line 12.** Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of rebate with Form 8038-GC. See Rev. Proc. 92-22, 1992-1 C.B. 736, for rules regarding the "election document."

### Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form varies depending on individual circumstances. The estimated average time is:

<b>Learning about the law or the form</b> . . . . .	1 hr., 58 min.
<b>Preparing the form</b> . . . . .	3 hr., 3 min.
<b>Copying, assembling, and sending the form to the IRS</b> . . . . .	16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. Do not send the form to this address. Instead, see **Where To File** on page 1.

