



103 College Road East • Princeton, New Jersey 08540  
phone 609-987-0880 • fax 609-987-0850 • Eric.Brophy@njefa.nj.gov

Eric D. Brophy, Esq.  
*Executive Director*

**MINUTES OF THE MEETING OF THE  
NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
HELD AT 103 COLLEGE ROAD EAST, PRINCETON, NEW JERSEY  
ON TUESDAY, JANUARY 28, 2020**

The meeting was called to order at 10:02 a.m. by Chair Hodes. The New Jersey Educational Facilities Authority gave notice of the time, place and date of this meeting via fax and email on June 17, 2019, to The Star Ledger, The Times of Trenton and the Secretary of State and by posting the notice at the offices of the Authority in Princeton, New Jersey. Pursuant to the New Jersey Open Public Meetings Act, a resolution must be passed by the New Jersey Educational Facilities Authority in order to hold a session from which the public is excluded.

**AUTHORITY MEMBERS PRESENT:**

Joshua Hodes, Chair  
Ridgeley Hutchinson, Vice Chair  
Louis Rodriguez  
Elizabeth Maher Muoio, State Treasurer, Treasurer (represented by Ryan Feeney)  
Zakiya Smith Ellis, Secretary of Higher Education

**AUTHORITY MEMBERS ABSENT:**

None

**STAFF PRESENT:**

Eric D. Brophy, Executive Director  
Sheryl A. Stiff, Deputy Executive Director  
Steven Nelson, Director of Project Management  
Brian Sootkoos, Director of Finance-Controller  
Ellen Yang, Director of Compliance Management  
Zachary Barby, Communications/IT Coordinator

Rebecca Clark, Associate Project Manager  
Matthew Curtis, Information Technology Manager  
Carl MacDonald, Project Manager  
Jamie O'Donnell, Grant Program Manager  
Sheila Toles, Human Resources Manager  
Gary Vencius, Accounting Manager

**ALSO PRESENT:**

George Loeser, Esq., Deputy Attorney General  
Craig Ambrose, Esq., Governor's Authorities Unit

**ITEMS OF DISCUSSION**

**1. Approval of the Minutes of the Meeting of December 17, 2019**

The minutes of the meeting of December 17, 2019 were delivered via United Parcel Service to Governor Philip Murphy under the date of December 18, 2019. Mr. Rodriguez moved the meeting minutes for approval as presented; the motion was seconded by Secretary Smith Ellis and passed unanimously.

**2. Executive Director's Report**

Mr. Brophy provided the Executive Director's report for informational purposes only.

Mr. Brophy reported on various meetings attended by himself and/or Authority staff since the December Authority meeting. Mr. Brophy reported that he had attended the Governor's State of the State address and was looking forward to new legislation affecting higher education in the new term.

Mr. Brophy reported that staff continued to work with the State Librarian to implement the Library Construction Bond Act. He reported that staff had recorded a technical assistance session with members of the State Library and bond counsel and that the webinar had been posted to the State Librarian's website.

Mr. Brophy reported that staff continued to work with the Department of Education (DOE), Office of the Secretary of Higher Education (OSHE), Schools Development Authority (SDA) and the Governor's policy office to implement the Securing Our Children's Future grant program and continuing to work with OSHE and DOE to complete Memoranda of Understanding.

Mr. Brophy reported that the Authority had made an administrative amendment to the Employee Policy Manual. He reported that Policy #525 - Emergency Closings had been revised to inform staff that in the event of a delayed opening or emergency closing, a group text would be sent to staff and that the emergency information would be posted on the Authority's website by 8:00 a.m.

Mr. Brophy reported that the Authority had an active employment posting for a Public Information Officer/Manager and hoped to fill the position as soon as possible.

3. **Resolution of the New Jersey Educational Facilities Authority Authorizing Changes to Loan Agreement for Stevens Institute of Technology Issue, 2020 Series A**

Mr. Nelson reported that the Authority sought the Members' approval to authorize changes to the Loan Agreement for the 2020 Series A Stevens Institute of Technology issue. He reported that the Authority had agreed to certain changes to the Loan Agreement that would allow, in the future, the University to issue debt on parity with Authority debt upon receiving a financial consultant's analysis that such additional pro-forma debt service is adequately covered by the level of University tuition.

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

RESOLUTION AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A REVISED FORM OF LOAN AGREEMENT IN CONNECTION WITH THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY'S REVENUE BONDS, STEVENS INSTITUTE OF TECHNOLOGY ISSUE, 2020 SERIES A (GREEN BONDS), AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH

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

The adopted resolution is appended as Exhibit I.

4. **Resolution of the New Jersey Educational Facilities Authority Authorizing the Issuance and Sale of NJEFA Revenue Bonds, Stevens Institute of Technology Issue, 2020 Series B**

Mr. Nelson reported that the Authority sought the Members' approval to issue a direct bank purchase for Stevens Institute of Technology. He reported that PNC Bank was the proposed purchaser of the bond and that last year, the Members approved a tax-exempt Series A and taxable Series B financing, which were initially contemplated as being public sales under one official statement. Mr. Nelson reported that the University now had an existing opportunity to take

advantage of highly competitive rates in the private bank market and as such, had requested the Authority seek board approval to change the taxable Series B financing from a public sale to a private, direct bank purchase with PNC Bank.

John Cavaliere, Esq. of McManimon, Scotland & Bauman described the resolution for the Members' consideration.

Louis Mayer, CFO and VP for Finance & Treasurer thanked the Members and Authority staff.

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

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF A NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY REVENUE BOND, STEVENS INSTITUTE OF TECHNOLOGY ISSUE, 2020 SERIES B (FEDERALLY TAXABLE) IN A PRINCIPAL AMOUNT NOT TO EXCEED \$30,000,000 AND AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A BOND AGREEMENT AND RELATED INSTRUMENTS AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH

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

The adopted resolution is appended as Exhibit II.

5. **Resolution of the New Jersey Educational Facilities Authority Authorizing the Issuance and Sale of NJEFA Revenue Bonds, Stockton University Issue, Series 2020 A**

Mr. MacDonald reported that the Authority sought the Members' approval and authorization for the issuance of NJEFA Revenue Bonds, Stockton University Issue, Series 2020 A in a principal amount not to exceed \$7,000,000. He reported that the Authority also sought approval for the execution and delivery of a Bond Agreement, Lease and Agreement and other actions in connection with the issuance of the bonds previously issued on behalf of the University.

Mr. MacDonald reported that the proceeds of the Series 2020 A bonds would be used to finance the acquisition by the University of a currently leased 126 bed residence facility located approximately two miles from the University's main campus in Galloway, New Jersey and to pay certain costs of issuance. Mr. MacDonald reported that in accordance with the Authority's policies and procedures for the procurement of professional services for direct placements, the University had selected TD Bank, N.A. to purchase the bonds. He reported that McManimon, Scotland & Baumann, LLC would be serving as bond counsel.

John Cavaliere, Esq. of McManimon, Scotland & Bauman described the resolution for the Members' consideration.

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

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF  
NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
REVENUE BONDS, STOCKTON UNIVERSITY ISSUE, SERIES  
2020 A IN A PRINCIPAL AMOUNT NOT TO EXCEED \$7,000,000  
AND AUTHORIZING AND APPROVING THE EXECUTION AND  
DELIVERY OF A BOND AGREEMENT AND RELATED  
INSTRUMENTS AND DETERMINING OTHER MATTERS IN  
CONNECTION THEREWITH

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

The adopted resolution is appended as Exhibit III.

6. **Resolution of the New Jersey Educational Facilities Authority  
Reauthorizing Conveyance of Certain Property to Rowan University**

Ms. Yang reported that the Authority is the owner of property where the Triad Apartments are located on Rowan University's campus. She reported that the Authority became owner as part of the financing structure for acquisition, development and renovation of the apartments and that the property is no longer a leased facility under any outstanding lease and agreement.

Ms. Yang reported that in 2019, the University requested that the Authority convey title of the property to the University to explore a public private partnership to enhance its academic and development goals. She reported that at the October 22, 2019 Authority meeting, a resolution was adopted authorizing the conveyance provided that any bond proceeds allocated to the Triad Apartments from all prior bonds shall have been defeased. Ms. Yang reported that the University was now requesting that the Authority agree to convey the property to the University without requiring a simultaneous defeasance of bonds and that in the future, if the University enters into a public private partnership or other transaction requiring transfer with regard to the property that poses private use or tax issues, any required defeasance of bonds shall occur at that time.

Melissa Wheatcroft, General Counsel for Rowan University thanked the Members and Authority staff.

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

RESOLUTION OF THE NEW JERSEY EDUCATIONAL  
FACILITIES AUTHORITY REAUTHORIZING THE CONVEYANCE

OF A CERTAIN PARCEL OF REAL PROPERTY TO ROWAN  
UNIVERSITY AND ALL OTHER DOCUMENTS, APPROVALS  
AND ACTION NECESSARY TO IMPLEMENT SUCH  
CONVEYANCE

The motion was seconded by Secretary Smith Ellis and passed unanimously.

The adopted resolution is appended as Exhibit IV.

7. **Guest Speakers, Susan Shaffer, Vice President/Senior Credit Officer and Alex Greenwald, Vice President/Business Development, Moody's Investors Service**

Ms. Shaffer and Mr. Greenwald provided the Members with an informative presentation on Moody's higher education outlook. Topics covered in the overview included Macro conditions affecting the higher education sector, Moody's outlook for 2020 and Moody's general overview of the rating environment for New Jersey's higher education institutions.

8. **Report on Operating and Construction Fund Statements and Disbursements**

Mr. Sootkoos reviewed the Results of Operations and Budget Variance Analysis and reported on the status of construction funds and related investments for December 2019.

Mr. Hutchinson moved that the reports be accepted as presented; the motion was seconded by Mr. Rodriguez and passed unanimously.

The reports are appended as Exhibit V.

9. **Next Meeting Date**

Mr. Hodes reminded everyone that the next meeting was scheduled for Tuesday, February 25, 2020 at 10:00 a.m. at the Authority offices and requested a motion to adjourn.

Mr. Hutchinson moved that the meeting be adjourned at 10:54 a.m. The motion was seconded by Mr. Rodriguez and passed unanimously.

Respectfully submitted,



Eric D. Brophy  
Secretary

**RESOLUTION AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A REVISED FORM OF LOAN AGREEMENT IN CONNECTION WITH THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY'S REVENUE BONDS, STEVENS INSTITUTE OF TECHNOLOGY ISSUE, 2020 SERIES A (GREEN BONDS), AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.**

**ADOPTED: JANUARY 28, 2020**

**WHEREAS**, the New Jersey Educational Facilities Authority (the "*Authority*") is a body corporate and politic with corporate succession, constituting a political subdivision of the State of New Jersey (the "*State*"), created and established by the New Jersey Educational Facilities Authority Law, being Chapter 72A of Title 18A of the New Jersey Statutes as enacted by Chapter 271 of the Laws of 1967, as amended and supplemented (the "*Act*"); and

**WHEREAS**, on August 20, 2019, pursuant to the Act, the Authority adopted a resolution (the "*Prior Resolution*") authorizing, among other things, the issuance of New Jersey Educational Facilities Authority Revenue Bonds, Stevens Institute of Technology Issue, 2020 Series A (Green Bonds) (the "*Bonds*") to finance a capital project and the entering into of certain financing documents in connection therewith on behalf of The Trustees of the Stevens Institute of Technology (the "*University*"); and

**WHEREAS**, one of the documents authorized by the Prior Resolution is a Loan Agreement (the "*Loan Agreement*") to be entered into by and between the Authority and the University in connection with the issuance of the Bonds; and

**WHEREAS**, the University has requested that Section 3.4 of the Loan Agreement be revised to allow the University to enter into additional indebtedness incurred by the University (and not issued by the Authority) secured by a pledge of and lien on Tuition (as defined in the Loan Agreement) upon certain conditions set forth therein; and

**WHEREAS**, the Authority has agreed to the University's request and desires to approve the revised form of the Loan Agreement.

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

Section 1. The form of the revised Loan Agreement presented at this meeting (a copy of which shall be filed with the records of the Authority) is hereby approved. Any of the Chair, Vice Chair, Executive Director, Deputy Executive Director, Treasurer, Director of Project Management, Director of Compliance Management, Secretary, Assistant Treasurer or any Assistant Secretary of the Authority, and any other person authorized by resolution of the Authority and any of such officers designated as "acting" or "interim" (each an "*Authorized Officer*"), is hereby authorized and directed to execute, acknowledge and deliver, and any other Authorized Officer is hereby authorized and directed to affix and attest the official common seal of the Authority to, the revised Loan Agreement in substantially such form, with such changes therein (including, without limitation, the date thereof and any acceptable covenants or provisions that may be required by the Underwriter (as defined in the Prior Resolution) or the

bond insurer, if any) and any supplements thereto as the Authorized Officer executing the same may approve, with the advice of Bond Counsel and the Attorney General of the State, such approval to be evidenced conclusively by such Authorized Officer's execution thereof.

Section 2. All prior resolutions of the Authority or portions thereof inconsistent herewith are hereby repealed.

Section 3. This resolution shall take effect in accordance with the Act.

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

**AYE:** Joshua Hodes  
Ridgeley Hutchinson  
Louis Rodriguez  
Elizabeth Maher Muoio (represented by Ryan Feeney)  
Zakiya Smith Ellis

**NAY:** None

**ABSTAIN:** None

**ABSENT:** None

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



**NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY**

**AND**

**THE TRUSTEES OF THE STEVENS INSTITUTE OF TECHNOLOGY**

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**LOAN AGREEMENT**

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**Dated as of March 1, 2020**

**relating to**

**New Jersey Educational Facilities Authority  
Revenue Bonds, Stevens Institute of Technology Issue,  
2020 Series A (Green Bonds)**

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This **LOAN AGREEMENT**, dated as of March 1, 2020, by and between the NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY (hereinafter called the "*Authority*"), a public body corporate and politic with corporate succession, constituting a political subdivision organized and existing under and by virtue of the laws of the State of New Jersey (the "*State*"), created and established by the New Jersey Educational Facilities Authority Law, being Chapter 72A of Title 18A of the New Jersey Statutes as enacted by Chapter 271 of the Laws of 1967, as amended and supplemented, having its principal place of business at 103 College Road East, Princeton, New Jersey 08540-6612, and THE TRUSTEES OF THE STEVENS INSTITUTE OF TECHNOLOGY (together with its successors and assigns, hereinafter called the "*University*"), a corporation not-for-profit duly organized and existing under the laws of the State, located at Castle Point on Hudson, Hoboken, New Jersey 07030, and constituting a "private institution of higher education" under the Act.

The Authority and the University hereby mutually covenant and agree as follows:

## ARTICLE I

### 1.1. Definitions.

As used in this Agreement, unless the context shall otherwise require, all capitalized terms shall have the meanings set forth in Section 1.01 of the Trust Indenture, dated as of March 1, 2020 (the "*Indenture*"), by and between the Authority and U.S. Bank National Association, as Trustee.

The following terms have the meanings given:

"*Act*" means the New Jersey Educational Facilities Authority Law, being Chapter 72A of Title 18A of the New Jersey Statutes as enacted by Chapter 271 of the Laws of 1967, as amended and supplemented.

"*Additional Loan Payments*" shall have the meaning given to such term in Section 2.10 hereof.

"*Agreement*" means this Loan Agreement, dated as of March 1, 2020, by and between the Authority and the University, and any amendments hereto.

"*Annual Administrative Fee*" means the annual fee for the general administrative expenses of the Authority, including, without limitation, attendance at Authority events, in an amount equal to 1/10 of 1% of the Outstanding principal amount of each series of the Bonds, with a maximum Annual Administrative Fee of \$50,000 per series of Bonds to commence on the Closing Date.

"*Authority's Bonds*" shall have the meaning given to such term in Section 5.5(b) hereof.

"*Authority Written Procedures*" shall have the meaning given to such term in Section 5.5(b) hereof.

"*Basic Loan Payments*" shall have the meaning given to such term in Section 2.8 hereof.

"*Bonds*" means the \$ \_\_, \_\_, 000 principal amount of New Jersey Educational Facilities Authority Revenue Bonds, Stevens Institute of Technology Issue, 2020 Series A (Green Bonds), dated their date of delivery.

"*Deductible Amount*" shall have the meaning given to such term in Section 4.1 hereof.

"*Documents*" shall have the meaning given to such term in Section 5.12 hereof.

"*Event of Default*" shall have the meaning given to such term in Section 2.5 hereof.

"*Indemnified Parties*" shall have the meaning given to such term in Section 2.13 hereof.

"*Initial Fee*" means the fee paid or payable to the Authority for its services in connection with the issuance of the Bonds, calculated at the rate of 1/5 of 1% of the aggregate principal amount of each series of the Bonds, with a maximum initial fee of \$100,000 payable by the University on the closing date for the Bonds.

"*Lien*" shall have the meaning given to such term in Section 3.9 hereof.

"*Loan*" means the loan made pursuant to this Agreement.

"*Official Statement*" shall have the meaning given to such term in Section 2.13 hereof.

"*Prepayment Price*" shall have the meaning given to such term in Section 2.12 hereof.

"*Project*" means the financing, through the issuance of the Bonds, of the costs of a project consisting of: (a) the construction, renovation and equipping of the new Student Housing and University Center and the construction, renovation, expansion and equipping of certain additional facilities at the University for research and education, including, but not limited to, projects included in the University's long-range facilities plan; (b) funding capitalized interest for the Bonds through July 1, 2022; and (c) paying certain costs of issuing the Bonds.

"*Project Facilities*" means certain educational facilities financed and refinanced with the proceeds of the Bonds, including any additions, improvements, modifications, substitutions and renewals thereof.

"*Project Fund*" means the fund described in Section 3.5 hereof.

"*Special Notice Event*" shall have the meaning given to such term in Section 5.5(b) hereof.

"*Swap Agreement*" means any agreement between the University and a Swap Provider confirming a transaction that is a rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, corridor transaction, currency swap transaction, cross-currency rate swap transaction, currency option or other similar transaction (including any option with respect to any of the foregoing transactions) or any combination of these transactions and any related agreements.

"*Swap Payment Obligations*" means all net amounts payable, respectively, by the University or the Swap Provider under any Swap Agreement.

"*Swap Provider*" means the University's counterparty under a Swap Agreement.

"*Swap Revenues*" means all amounts received by the Trustee on behalf of the University pursuant to any Swap Agreement, including, without limitation, any Swap Termination Payment.

"*Swap Termination Payment*" means, with respect to any Swap Agreement, any settlement amount payable by the applicable Swap Provider or the University by reason or on account of the early termination of such Swap Agreement, either in whole or in part.

"*Tax Certificate*" means the Arbitrage and Tax Certificate, dated the date of issuance of the Bonds, provided by the University with respect to, among other things, the nature, use and costs of the Project Facilities.

"*Tuition*" means the price of or payment for academic instruction at the University.

"*University Written Procedures*" shall have the meaning given to such term in Section 5.5(b) hereof.

"*Written Procedures*" shall have the meaning given to such term in Section 5.5(b) hereof.

Words importing persons include firms, associations and corporations, and words importing the singular number include the plural number and vice versa.

## ARTICLE II

### 2.1. Term of Agreement; Benefits.

This Agreement shall remain in full force and effect until the date on which the principal of and redemption premium, if any, and interest on the Bonds and all other payment obligations of the University owing to the Authority and to the Trustee under this Agreement shall have been fully paid or provision for the payment thereof shall have been made as provided by the Indenture and any other documents related thereto, at which time the Authority shall release and cancel this Agreement.

This Agreement is executed in part to induce the purchase by others of the Bonds, and, accordingly, all covenants and agreements on the part of the University and the Authority as set forth in this Agreement are hereby declared to be for the benefit of the Holders from time to time of the Bonds, reserving always the right of the Authority to amend and supplement this Agreement, with the written consent of the University as set forth in Section 2.7 hereof.

### 2.2. Agreements of University.

The University agrees to do all things within its power in order to enable the Authority to comply with all requirements and to fulfill all covenants of the Indenture, including, but not limited to, making all payments due from the University under this Agreement, including, without limitation, the Initial Fee, and all payments to the Authority described in Sections 2.8 and 2.10 of this Agreement.

### 2.3. Agreements of Authority.

The Authority agrees that, upon the issuance of the Bonds and the execution and delivery of this Agreement, it will lend the proceeds of the Bonds to the University and cause same to be deposited with the Trustee and applied in accordance with the provisions of the Indenture to finance the Project.

### 2.4. Authority's Right to Inspect.

The Authority may make inspections of the Project Facilities at reasonable times upon reasonable notice.

### 2.5. Events of Default; Remedies.

(a) As used herein, the term "*Event of Default*" shall mean (after any applicable notice or cure periods):

(1) If payment of any amount due under Section 2.8 of this Agreement is not made when it becomes due and payable;

(2) If payment of any amount due under Section 2.10 of this Agreement is not made when it becomes due and payable and if such amount remains unpaid for a period of forty-five (45) days after receipt by the University of the bills required to be paid by Section 2.10 of this Agreement;

(3) If the University shall: (A) admit in writing its inability to pay its debts generally as they become due, or (B) file a petition to be adjudicated a voluntary bankrupt in bankruptcy or a petition to otherwise take advantage of any State or federal bankruptcy or insolvency law, or (C) make an assignment for the benefit of its creditors or seek a composition with its creditors, or (D) consent to the appointment of a receiver of itself, or its fees or charges, or of the whole or any substantial part of the Project Facilities;

(4) If the University shall, upon an involuntary petition under any section or chapter of the federal bankruptcy laws filed against it, be adjudicated a bankrupt or if a court of competent jurisdiction shall enter an order or decree appointing a trustee or receiver (interim or permanent) or appointing the University a debtor-in-possession, with or without the consent of the University, or approving a petition filed against it seeking reorganization or an arrangement of the University under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

(5) If final judgment for the payment of money in excess of \$250,000 that, in the judgment of the Authority, will adversely affect the rights of the Holders of the Bonds and that is not covered by adequate insurance shall be rendered against the University and at any time after thirty (30) days from the entry thereof (A) such judgment shall not have been discharged or (B) the University shall not have taken and be diligently prosecuting an appeal therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, and shall not have caused, within thirty (30) days, the execution of or levy under such judgment, order, decree or process or the enforcement thereof to have been stayed pending determination of such appeal;

(6) If the University defaults in the due and punctual performance of any other covenant in this Agreement (including, without limitation, failure of the University to comply with its covenant that it will operate or use the Project Facilities and each portion thereof as educational facilities constituting an authorized "project" under the Act) and such default continues for thirty (30) days after written notice requiring the same to be remedied shall have been given by the Authority; or

(7) If any representation or warranty made by the University herein shall prove to be untrue in any material respect when made.

(b) The University agrees that it shall notify the Authority, in writing, of an Event of Default described in Sections 2.5(a)(2) through (7). The Authority agrees that it shall notify the Trustee, in writing, of the occurrence of an Event of Default hereunder other than an Event of Default described in Section 2.5(a)(1) or with respect to an Event of Default described in Section 2.5(a)(2) with respect to fees or payments that are made directly to the Trustee by or on behalf of the University. The Authority and the University agree that, upon the occurrence of an Event of Default, the Authority may, by notice in writing to the University, declare all, including future,

payments under this Agreement to be due and payable immediately. At any time after such payments shall have been so declared to be due and payable and before the entry of a final judgment or decree in any suit, action or proceeding instituted on account of such default or before the completion of the enforcement of any other remedies under this Agreement, the Authority may annul such declaration and its consequences if moneys shall have accumulated in any fund created or held under the Indenture sufficient to pay all arrears of such payments under this Agreement other than payments due only because of such declaration. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

The Authority and the University further agree that, upon the occurrence of an Event of Default, the Authority and/or the Trustee may exercise, with respect to any amount in any Fund under the Indenture (other than the Rebate Fund, the Project Fund and the Additional Loan Payments Fund), all the rights of a secured party under the New Jersey Uniform Commercial Code.

## **2.6. Insurance.**

The amounts paid by any insurance company pursuant to any contract of insurance may be applied to the Extraordinary Optional Redemption of the Bonds in accordance with Section 4.01(b) of the Indenture or released for the repairing or rebuilding of the Project Facilities. All insurance prescribed by this Section 2.6 shall be procured from financially sound and reputable insurers qualified to do business in the State or otherwise approved by the Authority.

## **2.7. Amendments to this Agreement.**

The Authority and the University may, without the consent of or notice to the Bondholders, amend this Agreement as may be required or permitted (i) by the provisions of this Agreement, (ii) for the purpose of curing any ambiguity or formal defect or omission in this Agreement, (iii) so as to identify or modify more precisely the scope of the Project or the Project Facilities, (iv) to enter into an indenture or indentures supplemental to the Indenture as provided in Section 9.01 of the Indenture, (v) to make any revisions that shall be required by a Rating Agency in order to obtain or maintain an investment grade rating on the Bonds, or (vi) in connection with any other change herein that, in the opinion of Bond Counsel, in the case of any amendment described in clauses (i) through (v) above, neither adversely affects the Pledged Property to repay the Bondholders nor adversely affects the exclusion of interest on the Bonds from gross income for federal income tax purposes; *provided*, that no such amendment may modify the rights or obligations of the Trustee without the written consent of the Trustee.

## **2.8. Basic Loan Payments.**

The obligation of the University to pay or cause to be paid the amounts payable under this Agreement shall be absolute and unconditional, and the amount, manner and time of payment of such amounts shall not be decreased, abated, postponed or delayed for any cause or by reason of the happening of any event. The amounts payable by the University shall equal the sums necessary for the payment of the principal of and redemption premium, if any, and interest on the Bonds and all amounts required to be deposited in the Funds established under the Indenture.



The University agrees to pay from any legally available funds of the University "*Basic Loan Payments*" in immediately available funds, at the times set forth below, and in amounts sufficient to enable the Trustee to make the transfers and deposits required at the times and in the amounts pursuant to Article V of the Indenture. Each payment shall be made in immediately available funds.

Notwithstanding the foregoing, the University agrees to make payments, or cause payments to be made, in the amounts required to be paid as the principal of and redemption premium, if any, and interest on the Bonds from time to time Outstanding under the Indenture and any other amounts required to be paid under the Indenture as the same shall become due, whether at maturity, upon redemption, by declaration of acceleration or otherwise.

All Basic Loan Payments required under this Agreement shall be made at the times required by Section 3.5 hereof.

Except as otherwise expressly provided herein, all amounts payable hereunder by the University to the Authority shall be paid to the Trustee or other parties entitled thereto as assignee of the Authority, and this Agreement and all right, title and interest of the Authority in any such payments are hereby assigned and pledged to the Trustee or other parties entitled thereto as assignee of the Authority so long as any Bonds remain Outstanding.

Notwithstanding anything to the contrary contained herein, the University covenants and agrees that it will pay the Basic Loan Payments at such times and in such amounts as to assure that the Authority will not be in default in the payment of the principal of and redemption premium, if any, and interest on the Bonds.

## **2.9. Swap Payments.**

The University further covenants and agrees that, in the case of any Swap Agreement that the University enters into in connection with the Bonds, the University will pay to any applicable Swap Provider all of the University's Swap Payment Obligations and may pay or cause each Swap Provider of such Swap Agreement to pay the Swap Provider's Swap Payment Obligations to the Trustee for deposit in the Interest Account of the Debt Service Fund.

## **2.10. Additional Loan Payments.**

In addition to the Basic Loan Payments, the University shall also pay to the Authority and the Trustee "*Additional Loan Payments*" as follows:

(a) all reasonable fees, charges, expenses and indemnities of the Authority and the Trustee as and when the same become due and payable, including reasonable attorneys' fees;

(b) the reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare audits, financial statements, reports and opinions or to provide such other services required under this Agreement or the Indenture;

(c) the Annual Administrative Fee of the Authority and any other expenditures for insurance, fees and expenses of auditing and fees and expenses as required by the Indenture and not otherwise paid or provided for by the University and all other expenditures reasonably and necessarily incurred by the Authority by reason of the financing of the Project or the Project Facilities, including expenses incurred by the Authority to compel full and punctual performance of all of the provisions of this Agreement in accordance with the terms hereof; and

(d) all other reasonable and necessary fees and expenses attributable to the Bonds and this Agreement, including, without limitation, all payments required pursuant to the Indenture and the Tax Certificate (including payments of all amounts required to be deposited in the Rebate Fund and any fees of the Authority in connection with any arbitrage compliance services, including rebate calculations performed by or at the direction of the Authority).

Such Additional Loan Payments shall be billed to the University by the Authority or the Trustee, from time to time. After such a demand, amounts so billed shall be paid by the University within forty-five (45) days after receipt of the bill by the University. Payment of the initial Annual Administrative Fee shall be made in the Bond Year ending June 30, [2020] and in each Bond Year thereafter.

Payments required to be made under this Section 2.10 shall be made in legally available funds of the University to the Trustee unless otherwise directed in an agreement pursuant to which such payments are required.

### **2.11. Credits for Payments.**

The University may receive, in the sole discretion of the Authority, credit against its payments required to be made under Section 2.8, in addition to any credits resulting from payment or repayment from other sources, as follows:

(a) on the portion of Basic Loan Payments allocable to interest, in an amount equal to moneys on deposit in the Interest Account of the Debt Service Fund, which amounts are available to pay interest on the Bonds, to the extent such amounts have not previously been credited against such payments. Amounts on deposit in the Interest Account of the Debt Service Fund that may be available for credit against the interest portion of Basic Loan Payments include, without limitation, payments made directly to the Trustee by a Swap Provider, if any, to satisfy the Swap Provider's Swap Payment Obligations on behalf of and at the direction of the University;

(b) on the portion of Basic Loan Payments allocable to installments of principal, in an amount equal to moneys deposited in the Principal Account of the Debt Service Fund, which amounts are available to pay principal of the Bonds, to the extent such amounts have not previously been credited against such payments. Amounts on deposit in the Principal Account of the Debt Service Fund that may be available for credit against the principal portion of

Basic Loan Payments include, without limitation, payments made directly to the Trustee by a Swap Provider, if any, to satisfy the Swap Provider's Swap Payment Obligations on behalf of and at the direction of the University;

(c) on the portion of Basic Loan Payments representing installments of principal and interest, in an amount equal to the principal amount of the Bonds for the payment at maturity or redemption of which sufficient amounts (as determined by Section 2.01 of the Indenture) in cash or non-callable United States Obligations are on deposit as provided in Section 2.01 of the Indenture, to the extent such amounts have not previously been credited against such payments, and the interest on such Bonds from and after the date fixed for payment at maturity or redemption thereof. Such credits shall be made against the installments of principal and interest that would have been used, but for such call for redemption, to pay principal of and interest on such Bonds when due; and

(d) on the portion of Basic Loan Payments allocable to installments of principal and interest, in an amount equal to (i) the principal amount of the Bonds acquired by the University and surrendered to the Trustee for cancellation or purchased by the Trustee on behalf of the University and canceled, and the interest on such Bonds from and after the date interest thereon has been paid prior to cancellation, or (ii) the principal amount of Prior Non-Mandatory Redemptions that the Authority, with the consent of the University, has elected to credit against sinking fund redemption payments. Such credits shall be made against the installments of principal and interest that would have been used, but for such cancellation, to pay principal of and interest on such Bonds when due.

## **2.12. Prepayment.**

(a) The University shall have the right, so long as all amounts that have become due hereunder have been paid, at any time or from time to time, to prepay all or any part of the Basic Loan Payments and the Authority agrees that the Trustee shall accept such prepayments when the same are tendered. Any partial prepayment shall not affect the Authority's rights under this Agreement, but shall be credited to the principal portion of Basic Loan Payments due from the University as determined by the Authority and the Trustee. The University is further hereby granted the option to prepay its payment obligations under this Agreement in whole by paying to the Trustee the "*Prepayment Price*", which for any date of calculation shall be equal to, or shall be the amount, together with investment income pursuant to Section 2.01 of the Indenture (as verified pursuant to such Section and paragraph (b) below), equal to the sum of (i) the aggregate amount of unpaid principal of the Bonds to their redemption date under the terms of the Indenture and as set forth in the University's notice to the Trustee of such prepayment, (ii) any interest to accrue on the Bonds from the last Interest Payment Date thereof on which interest thereon was paid to the redemption date set forth in clause (i) above, (iii) the redemption premium, if any, applicable to the payment of the Bonds on the redemption date set forth in clause (i) above, and (iv) any costs of redemption or defeasance or other expenses incurred in implementing such prepayment. The Prepayment Price shall be deposited, upon receipt by the Trustee, in the Debt Service Fund (or in such other Trustee-held escrow account as may be specified by the University) and, at the request of and as determined by the University, credited against payments due hereunder or used for the redemption or purchase of Outstanding Bonds in the manner and subject to the terms and conditions set forth in the Indenture. Notwithstanding

any such prepayment, as long as any Bonds remain Outstanding or any Additional Loan Payments required to be made hereunder remain unpaid, the University will not be relieved of its obligations hereunder.

(b) Said option may be exercised by the University at any time by (i) giving written notice to the Trustee and the Authority of the exercise of such option at least forty-five (45) days prior to the redemption date set forth in such notice, and (ii) complying with any other requirements of the Indenture that may be required by the Trustee or the Authority to defease the Bonds in accordance with the terms of the Indenture, including, without limitation, a verification report from a nationally recognized accounting firm approved by the Authority to the effect that the amount so prepaid will equal the Prepayment Price (for a full prepayment) and will therefore be sufficient to defease the Bonds (in whole or in part, as the case may be) by paying all of the principal thereof and redemption premium, if any, thereon through and including the redemption date thereof, plus all interest accruing thereon to such redemption date. Such option shall be exercised by depositing with said notice cash and/or United States Obligations in such amount as shall be sufficient, together with interest to accrue thereon, to pay the Bonds to be defeased on said redemption date.

(c) The University may also prepay at any time or from time to time all or any part of the Basic Loan Payments from moneys derived from condemnation awards or the proceeds of hazard insurance relating to the facilities of the University, and the Authority agrees that the Trustee shall accept such prepayments when the same are tendered. Such amount shall be used to redeem bonds as set forth in Section 4.01(b) of the Indenture.

### **2.13. Indemnification.**

The University agrees to indemnify and hold harmless the Authority, any member, officer, official, employee, counsel, consultant or agent of the Authority, including the Trustee and each and any underwriter that purchases the Bonds from the Authority, and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of each and any purchaser of the Bonds through the ownership of voting securities, by contract or otherwise (collectively, the "*Indemnified Parties*"), against any and all losses, claims, damages, liabilities or expenses whatsoever caused by any untrue statement or misleading statement or alleged untrue statement or misleading statement of a material fact contained in the official statement relating to the offer and sale of the Bonds (the "*Official Statement*") or caused by any omission from the Official Statement of any material fact required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading, but only if and insofar as such losses, claims, damages, liabilities or expenses are caused by any such untrue or misleading statement or alleged untrue or misleading statement contained in the Official Statement or such omission or alleged omission from the Official Statement with respect to information contained in the Official Statement furnished by, or on behalf of, or relating to, the University, the Project or the Project Facilities. In case any action shall be brought against the Indemnified Parties based upon the Official Statement and in respect of which indemnity may be sought against the University in accordance with this Section 2.13, the Indemnified Parties shall promptly notify the University in writing. However, failure on the part of the Authority to give such notification shall not relieve the University from its obligation under this Section 2.13 to the Authority. For

any Indemnified Party other than the Authority, to the extent the University suffers actual prejudice as a result of any such failure to give notification, such failure to give such notification shall not relieve the University from its obligation under this Section 2.13, but it shall reduce the liability of the University by the amount of damages attributable to such failure of the Indemnified Party to give such notification. Upon receipt of such notification, the University shall promptly assume the defense of such action, including the retention of counsel, the payment of all expenses in connection with such action, including any expenses incurred prior to such notification, and the right to negotiate and settle any such action on behalf of such Indemnified Parties with such Indemnified Parties' consent. Any Indemnified Party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, unless the employment of such counsel has been specifically authorized by the University or unless by reason of conflict of interest, determined by the written opinion of counsel to any such Indemnified Party delivered to the University, it is advisable for such party to be represented by separate counsel to be retained by such Indemnified Party, in which case the fees and expenses of such separate counsel shall be borne by the University. The University shall not be liable for any settlement of any such action effected without its written consent, but if settled with the written consent of the University or if there be a final judgment for the plaintiff in any such action with or without its written consent, the University agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment. Nothing in this Section 2.13 shall require or obligate the University to indemnify or hold harmless the Indemnified Parties from or against any loss, claim, damage, liability or expense caused by any gross negligence or willful misconduct on the part of the Indemnified Parties in connection with the offer or sale of the Bonds.

The University releases the Authority and the Trustee from, and agrees that the Authority and the Trustee shall not be liable for, and agrees to indemnify and hold the Authority and the Trustee harmless from, any liability for, or expense (including, but not limited to, attorneys' fees) resulting from, or any loss or damage that may be occasioned by any cause whatsoever pertaining to the sale, issuance and delivery of the Bonds, or the actions taken or to be taken by the Authority or the Trustee under this Agreement, the Indenture or any Swap Agreement, except for the gross negligence or willful misconduct of the Authority or the Trustee. The parties intend that no general obligation or liability or charge against the general credit of the Authority shall occur by reason of making this Agreement, the issuance of the Bonds, the entry into any Swap Agreement or the performance of any act required of it by this Agreement or any Swap Agreement. Nevertheless, if the Authority shall incur any such pecuniary liability, then in such event the University shall indemnify and hold the Authority harmless by reason thereof, to the extent permitted by law, unless such liability results from gross negligence or willful misconduct of the Authority. The indemnification provisions of this paragraph are subject to the same limitations and qualifications thereto as are set forth in the immediately preceding paragraph, including, but not limited to, notice, conflict of interest and consent provisions, as if set forth fully in this paragraph.

The provisions of this Section 2.13 shall survive the termination of this Agreement, the payment of the Bonds and the resignation or removal of the Trustee.

#### **2.14. Consent to Authority's Use of Photographs and Videos.**

The University agrees that, upon reasonable notice and coordination with the University, the Authority may use photographs or videos taken on the University's campus (whether taken by the Authority or other person) in the Authority's newsletters, reports or other publications or materials (including PowerPoint presentations) in connection with the Authority's operations.

#### **2.15. Consent to Assignment by Authority.**

The University hereby consents to and authorizes the assignment and reservation of rights set forth in the Indenture by the Authority to the Trustee of the Authority's rights to receive the payments required by Section 2.8 hereunder. Upon such assignment, the Trustee shall be fully vested with all of the rights of the Authority so assigned and may thereafter exercise or enforce, by any remedy provided therefor (subject to the reservations of rights) by law or by this Agreement, such right directly in its own name.

## ARTICLE III

### 3.1. Nature of Obligation.

The University agrees to make payments hereunder in the amounts, at the times and in the manner as set forth herein. The University agrees that its obligations to make the payments required hereunder in the manner set forth herein shall constitute a general obligation of the University payable from any moneys legally available to the University.

### 3.2. Use of Bond Proceeds.

The proceeds of the Bonds shall be used to make a Loan to the University to finance the Project.

### 3.3. Information to be Provided by University.

Whenever requested by the Authority, the University shall within thirty (30) days provide and certify, or cause to be provided and certified, such information concerning the University, its finances and other topics as the Authority considers necessary to enable it to complete and publish an official statement or other offering or disclosure document, or any supplement or amendment thereto, relating to the Bonds at the time when the Bonds are to be offered for sale, at other times upon the reasonable request of the Authority or to enable it to make any reports required by law or the Indenture.

### 3.4. General Obligation of University; Pledge of Tuition.

The University agrees unconditionally to repay the Loan in the amounts, at the times and in the manner as is necessary to pay the Bonds fully when due. This Agreement and the obligation of the University to make the payments required hereunder are general obligations of the University, such payments to be made from any moneys of the University legally available therefor. As security for such general obligation, the University grants the Authority a pledge of and lien on Tuition. The Authority may issue additional bonds on behalf of the University secured by a pledge of and lien on Tuition on a parity basis with the pledge of and lien on Tuition hereunder. Additionally, as a special accommodation to the University by the Authority, the University may secure additional indebtedness incurred by the University by a pledge of and lien on Tuition on a parity basis with the pledge of and lien on Tuition hereunder upon receiving the written consent of the Authority (which consent shall not be unreasonably withheld). When considering the reasonableness of the University's request to issue such parity debt that is not Authority debt, the Authority will evaluate the level of Tuition to ensure that it is adequate to cover annual debt service obligations of the University on debt secured and proposed to be secured with the parity lien. To assist the Authority with its review, at the time the University seeks consent of the Authority, the University will deliver a certificate of the University evidencing that the level of Tuition to *pro forma* debt service is adequate, taking into account all outstanding indebtedness secured on a parity basis with the pledge of and lien on Tuition hereunder and the proposed indebtedness to be incurred. In order to determine the adequacy of the level of Tuition to *pro forma* debt service, the Authority shall be entitled to rely conclusively on the certificate of a financial consultant reasonably acceptable to the Authority and the University and in form and substance satisfactory to the Authority. The Tuition revenues shall

be based on the most recent Fiscal Year preceding the date of delivery of the certificate for which audited financial statements of the University are available. This Section 3.4 shall in no way be construed as a limitation in any manner on the University's ability to incur additional indebtedness other than as it relates to providing information to support the Authority's consent for additional indebtedness to be issued on a parity basis with the pledge of and lien on Tuition hereunder.

The University further covenants and agrees to impose such Tuition, fees, rentals and other charges sufficient at all times to generate revenues that, together with other legally available funds of the University, will be sufficient to pay the cost of operating and maintaining the Project Facilities and to pay all amounts required under this Agreement.

### **3.5. Project Fund.**

To secure payment of the amounts required hereunder, the University agrees that it shall create a special account (the "*Project Fund*") to be maintained with the Trustee separate and apart from the other funds of the University. Except for the payments on account of rebate required by Section 2.10(d) hereof, the University covenants and agrees that it will deposit or cause to be deposited in the Project Fund held with the Trustee:

(i) on the first day of December in each Bond Year, one hundred percent (100%) of the interest payments due pursuant to this Agreement on the immediately succeeding January 1 and one-half (1/2) of the principal payments due pursuant to this Agreement on the immediately succeeding July 1; and

(ii) on the first day of June in each Bond Year, one hundred percent (100%) of the interest payments due pursuant to this Agreement on the immediately succeeding July 1 and one-half (1/2) of the principal payments due pursuant to this Agreement on the immediately succeeding July 1.

Moneys in the Project Fund deposited pursuant to this Section 3.5 shall be transferred by the Trustee without further direction by the Authority to the applicable account of the Debt Service Fund as set forth in the Indenture on June 20 and December 20 of each year.

Any balances remaining in the Project Fund on June 30 of each Bond Year, after payment of all amounts due hereunder, shall be returned to the University, at the direction of the Authority.

The moneys in the Project Fund may be invested at the written direction of the University or the Authority in (a) United States Obligations and (b) money market funds described in clause (K) of the definition of Investment Obligations. If the investment instructions of the Authority and the University conflict, then the University's instructions shall control.

### **3.6. Taxes.**

The University shall pay when due at its own expense all taxes, assessments, utilities, water and sewer charges and other impositions thereon, if any, that may be levied or assessed upon the Project Facilities. The University shall file exemption certificates as required by law.



### **3.7. Compliance With Applicable Law.**

In connection with the acquisition, construction, renovation, operation, maintenance, repair and replacement of the Project Facilities, the University shall comply with all applicable ordinances and laws of the government of the United States, the State and the municipality in which the Project Facilities or any part thereof is located.

In connection with the Project Facilities, the University hereby acknowledges that the provisions of N.J.S.A. 18A:72A-5.1 through 5.4 relating to payment of the prevailing wage rate determined by the Commissioner of Labor and Workforce Development pursuant to the Prevailing Wage Act (N.J.S.A. 34:11-56.25 *et seq.*) apply to the construction and rehabilitation undertaken in connection with the Authority's assistance in financing the Project Facilities and covenants to comply with such provisions.

In accordance with L. 2005, c. 92, the University covenants and agrees that all services performed under this Agreement by the University shall be performed within the United States of America.

### **3.8. Secondary Market Disclosure.**

The University hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding Section 2.5 or any other provision of this Agreement, failure of the University to comply with or perform its obligations under this Section 3.8 or under the Continuing Disclosure Agreement shall not be considered an Event of Default hereunder; *however*, the Trustee may (and, at the written request of the Underwriter or the Holders of at least twenty-five percent (25%) in aggregate principal amount of Outstanding Bonds, shall), after provision of indemnity in accordance with Section 2.13 hereof, or any Holder of the Bonds may take such actions as may be necessary or desirable, including seeking specific performance by court order, to cause the University to comply with its obligations under this Section 3.8.

### **3.9. Negative Pledge.**

The University agrees and covenants that, as long as the Bonds are Outstanding, the University shall not pledge or create or suffer to be created or exist upon that portion of its real property constituting (i) the Gateway Academic Center, (ii) the Wesley J. Howe Center, (iii) the Lawrence T. Babbio, Jr. Center for Business and Technology Management and (iv) the Student Housing and University Center, any additional Liens that secure any indebtedness for money borrowed by the University in an aggregate amount greater than \$10,000,000, unless there is provision made, in each instance, to secure the Bonds equally and ratably with such indebtedness by such Lien.

For purposes of this Section 3.9, "*Lien*" shall mean any mortgage of, security interest in or pledge of property.

## ARTICLE IV

### 4.1. Covenants as to Insurance.

The University shall, at the times specified in the following paragraphs, procure and maintain, or cause to be procured and maintained, to the extent reasonably obtainable in the opinion of the Authority, the following insurance:

(a) At all times, Special Form perils insurance, or current equivalent, with a deductible clause in an amount not-to-exceed one hundred thousand dollars (\$100,000) or such other deductible provisions as are approved in writing by the Authority (the "*Deductible Amount*"), on the plant, structure, machinery, equipment and apparatus comprising the Project Facilities, plus Boiler and Machinery coverage, and Flood Insurance if the Project Facilities are located within a Special Flood Hazard Area, each with deductible clauses and coverage sublimits acceptable to the Authority. Coverage for Contingent Liability From Operation of Building Laws shall be included, and an Agreed Amount Endorsement shall be attached to the policy. The foregoing insurance shall be maintained as long as any of the obligations of the Authority issued with respect to the Project Facilities are Outstanding and shall be in an amount not less than \$250,000,000 or such other amount as may be approved, in writing, by the Authority. The inclusion of the Project Facilities under a blanket insurance policy or policies of the University insuring against the above hazards or any additional hazards of the types and in the amounts approved, in writing, by the Authority shall be a complete compliance with the provisions of this Section 4.1(a). The University shall give at least thirty (30) days' notice, in writing, to the Authority of the cancellation or non-renewal of the policy, except in the event of nonpayment of premiums, in which case ten (10) days' notice shall be provided. In any event, each such policy shall be in an amount sufficient to prevent the University and the Authority from becoming co-insurers under the applicable terms of such policy. In the event that the University is unable to procure insurance with a loss deductible clause of not exceeding the Deductible Amount, the deposit with the Trustee on behalf of the Authority or the setting aside in a special fund of United States Obligations or moneys at least equal to the difference between the Deductible Amount and the amount deductible on such policy or policies shall be deemed to be in complete compliance with the provisions of this Section 4.1(a) establishing a Deductible Amount; and

(b) At all times, insurance protecting the Authority and the University against loss or losses from liabilities imposed by law or assumed in any insured written contract and arising from bodily injury of persons or damage to the property of others caused by accident or occurrence, with limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence and two million dollars (\$2,000,000) general aggregate for bodily injury and property damage, or such other amounts as may be approved, in writing, by the Authority. The University shall give at least thirty (30) days' notice, in writing, to the Authority of the cancellation or non-renewal of the policy, except in the event of nonpayment of premiums, in which case ten (10) days' notice shall be provided. The Authority and the Trustee shall be named as Additional Insureds on such policy or policies.

Upon closing of the Bonds and thereafter upon each renewal of insurance coverage, the University shall deliver to the Authority either a complete copy of the policy or policies, including all declarations and endorsements, or a fully completed Certificate of Insurance

detailing all coverage in force, including full blanket property limits and any excess coverages and evidence of the required Additional Insured Endorsement.

All policies of insurance shall be payable to the University and the Authority (with respect to liability insurance), as their interests may appear, and the University shall have the sole right to receive the proceeds of such policy or policies affecting the Project Facilities and receipt for claims thereunder.

The proceeds of all such property insurance policies shall either be: (i) applied by the University to the repair and replacement of the damaged property of the Project Facilities or (ii) deposited by the University with the Trustee for payment into the applicable account of the Debt Service Fund accompanied by a certificate of the University stating that such deposit is being made pursuant to this Section 4.1 for the purpose of paying the principal of and interest on the Bonds in accordance with Section 4.01(b) of the Indenture.

All insurance prescribed by this Section 4.1 shall be procured from financially sound and reputable insurers qualified to do business in the State or insurers approved, in writing, by the Authority. To the extent that any such insurance required by this Section 4.1 is not obtainable on reasonable terms as determined by the Authority, the Authority may make exceptions to the required coverage or provide for reasonable substitutions of coverage. The policies shall be open to inspection by the Authority and the Trustee at all reasonable times, and a list prepared as of June 30 of each Bond Year describing such policies shall be furnished by the University to the Authority and the Trustee annually within sixty (60) days after the beginning of each Bond Year, together with a certificate of an Authorized Officer of the Authority certifying that such insurance meets all the requirements of this Agreement. The Trustee shall have no responsibility with respect to any such insurance except to receive such annual Authority certificates and hold the same for inspection by any Bondholders.

In the event that the University shall fail to obtain or maintain the insurance required under this Section 4.1, the Authority may, at its sole option, obtain such coverage. In such event, the Authority shall promptly notify the University of its actions. The University agrees to promptly reimburse the Authority for the costs of such coverage, such amounts constituting Additional Loan Payments due by the University to the Authority pursuant to Section 2.10 of this Agreement.

#### **4.2. University Covenant as to Swap Agreements.**

The University agrees that, so long as the Bonds are Outstanding, it shall not enter into, amend, novate or terminate any Swap Agreement without prior notice being sent to the Authority so long as such Swap Agreement is with respect to or in connection with the Bonds. The University also agrees that in connection with any such Swap Agreement it shall cooperate with the Authority to take any actions deemed necessary by the Authority related to the Bonds and/or such Swap Agreement.

## ARTICLE V

### 5.1. Termination of Agreement.

The Authority and the University agree that, upon sixty (60) days' written notice to the Authority and the Trustee, the University shall have the right to terminate this Agreement by paying to the Trustee, for the account of the Authority, an amount equal to the sum of: (i) the aggregate principal amount of the Bonds Outstanding on the date of such termination; (ii) accrued interest thereon to the date that the Bonds mature or are next redeemable; (iii) applicable redemption premium, if any, due thereon to the date of maturity or next applicable redemption date in accordance with the provisions of the Bonds and the Indenture; and (iv) all other costs and expenses of the Authority and the Trustee in connection therewith, including amounts presently due and amounts reasonably expected by the Authority and the Trustee to become due, all in accordance with the provisions of this Agreement, the Bonds and the Indenture.

The Authority and the University agree that if, at the time the moneys on deposit in the Debt Service Fund are at least equal to the sum of: (i) the aggregate principal amount of the Bonds then Outstanding; (ii) accrued interest thereon to the date that the Bonds are next redeemable; (iii) redemption premium, if any, due thereon to the next applicable redemption date in accordance with the provisions of the Bonds and the Indenture; and (iv) all other costs and expenses of the Authority and the Trustee due and owing with respect to the Bonds or necessary in connection with such redemption, including amounts presently due and amounts reasonably expected by the Authority and the Trustee to become due, all in accordance with the provisions of this Agreement, the Bonds and the Indenture, the Authority, upon the written request of the University, shall give written notice to the Trustee of the Authority's election to redeem all of the Bonds Outstanding. The University understands and agrees that redemption premium, if any, and costs and expenses of the Authority and the Trustee in connection therewith will also be payable by the University as Additional Loan Payments pursuant to Section 2.10 of this Agreement.

The Authority agrees that the security interest in the Project Facilities shall terminate when all of the Bonds, the interest thereon and all other amounts due pursuant to this Agreement have been paid or provision for the payment thereof has been made by the University, as provided by Section 2.01 of the Indenture and any applicable Swap Agreement or other agreement.

The Authority further agrees that, after payment to it in trust by the Trustee of all moneys or securities held by the Trustee pursuant to the Indenture, the Authority shall pay the same to the University after first deducting any moneys due to the Authority for the Authority's reasonable expenses incurred or accruing relating to the financing of the Project.

### 5.2. Operation and Maintenance of Project Facilities.

The University agrees that sufficient funds are and shall be available for effective use of the Project Facilities for the purposes for which they were acquired, constructed, renovated and improved and for educational purposes within the meaning of the Act. The University further agrees to pay all costs of operating and maintaining the Project Facilities.

The University agrees that it shall not request the Authority to enter into any contracts or agreements or to perform any acts that may substantially and adversely affect any of the assurances or rights of the Authority. The University further agrees not to use the Project Facilities or any part thereof for sectarian instruction or as a place for religious worship and this covenant shall continue as long as the Project Facilities shall remain in existence.

The University shall, at its own expense, hold, operate and maintain the Project Facilities and any equipment related thereto in a careful and prudent manner, and it shall keep the Project Facilities and any equipment related thereto in a good, clean and orderly fashion.

### **5.3. Rights and Remedies Not Exclusive.**

All rights and remedies herein given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or be given by reason of any law, statute, ordinance or otherwise.

### **5.4. Notices.**

All notices required to be given or authorized to be given by either party pursuant to this Agreement shall be in writing and sent by facsimile, electronic mail or registered or certified mail to the main office of the other party, in the case of the Authority addressed to it at its office in Princeton, New Jersey, or such other address as the Authority may direct upon notice given to the parties named in this Section 5.4, and in the case of the University, addressed to it at its address stated hereinabove to the attention of its Vice President for Finance and Treasurer and with a copy to its General Counsel, or such other address as the University may direct upon notice given to the parties named in this Section 5.4. All notices required to be given to the Trustee by either party pursuant to this Agreement shall be in writing and sent by registered or certified mail to the main office of the Trustee at the address of such principal office.

The University agrees that it shall send to the Authority a duplicate copy or executed copy of all certificates, notices, correspondence or other data and materials sent to or received from the Trustee under the Indenture as may be required by the Authority.

### **5.5. Tax Covenants.**

(a) The University covenants that:

(i) it will maintain its status as an organization described in Section 501(c)(3) of the Code that is exempt from federal income taxation under Section 501(a) of the Code, or corresponding provision of future federal income tax laws, and it will use the proceeds of the Bonds exclusively for facilities used in activities forming a part of the basis of such exemption and costs and expenses necessary and incidental to such activities;

(ii) it shall not perform any acts nor enter into any agreements that shall cause any revocation or adverse modification of such federal income tax status of the University;

(iii) it shall not carry on or permit to be carried on in the Project Facilities or its other projects or permit the Project Facilities or its other projects to be used in or for any trade or business the conduct of which is not substantially related (aside from the need of the University for income or funds or the use it makes of the profits derived) to the exercise or performance by the University of the purposes or functions constituting the basis for its exemption under Section 501(a) of the Code, if such use of the Project Facilities or any of its other projects would result in the loss of the University's exempt status under Section 501(a) of the Code or would cause the interest on the Bonds to be included in gross income for purposes of federal income taxation;

(iv) neither it nor any related party (as defined in §1.150-1(b) of the Treasury Regulations) shall purchase the Bonds pursuant to an arrangement, formal or informal, in an amount related to the amount of the Loan made by the Authority under this Agreement;

(v) it will not use any portion of the proceeds of the Bonds for the acquisition, construction, improving and equipping of facilities for use in sectarian worship, sectarian instruction or other sectarian purposes or for other costs and expenses or activities of a sectarian character incident to any of the foregoing;

(vi) it will not use any portion of the proceeds of the Bonds for the acquisition, construction, improving and equipping of facilities for the use in any unrelated trade or business within the meaning of Section 513 of the Code or corresponding provisions of future federal income tax laws, if such use of the proceeds thereof would result in the loss of the University's exempt status under Section 501(a) of the Code or would cause the interest on the Bonds to be included in gross income for purposes of federal income taxation;

(vii) it will comply with the applicable requirements of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds and will not take any action or fail to take any action that would cause the loss of such exclusion;

(viii) it will not use the proceeds of the Bonds, the earnings thereon and any other moneys on deposit in any Fund or account maintained in respect of the Bonds (whether such moneys were derived from proceeds of the sale of the Bonds or from other sources) in a manner that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the regulations promulgated thereunder, as the same may be from time to time amended;

(ix) it will not take any action nor cause any action to be taken that would cause the Bonds to be "federally guaranteed" as defined in Section 149(b) of the Code;

(x) it will create and maintain records with respect to: (A) all allocations of proceeds of the Bonds to expenditures under §1.141-6 and §1.148-6(d) of the Treasury Regulations and any reallocations of proceeds of the Bonds under §1.141-12(e) of the Treasury Regulations; (B) all allocations of the non-Bond proceeds to expenditures for costs of the Project Facilities or costs of issuing the Bonds; (C) the ownership and any disposition of any of the property financed with proceeds of the Bonds under Section 145(a)(1) of the Code; (D) the economic lives of each portion of the property financed with proceeds of the Bonds; (E) the date

each portion of the property financed with proceeds of the Bonds is placed in service (within the meaning of §1.150-2(c) of the Treasury Regulations); (F) any use of proceeds of the Bonds, or the property financed with proceeds of the Bonds, in an unrelated trade or business (within the meaning of Section 513 of the Code); (G) any private trade or business use (within the meaning of Sections 141 and 145 of the Code and §1.141-2 of the Treasury Regulations) of the property financed with proceeds of the Bonds; (H) any investments of the University of the gross proceeds (within the meaning of §1.148-1(b) of the Treasury Regulations) of the Bonds (including, without limitation, records required under §1.148-5(d)(6) of the Treasury Regulations); (I) any use of proceeds of the Bonds or the property financed with proceeds of the Bonds in an unrelated trade or business (within the meaning of Section 513 of the Code); (J) all information necessary to compute the yield on the Bonds, including the information necessary to establish the existence of any qualified guarantee or qualified hedge (within the meaning of §1.148-4(f) and (h) of the Treasury Regulations) with respect to the Bonds, the amount and date of payments for a qualified guarantee or qualified hedge with respect to the Bonds and the issue price of the Bonds; and (K) all information necessary to establish that the 6-month, the 18-month or the 2-year construction exception to arbitrage rebate (with the meaning of §1.148-7 of the Treasury Regulations) has been met with respect to proceeds of the Bonds, which the University will retain for at least three (3) years after the final scheduled maturity date of the Bonds; and

(xi) all representations made in the Tax Certificate are true and correct and fully and accurately represent the facts as known to the University. The University agrees to comply with all of the covenants and requirements set forth in the Tax Certificate; notwithstanding any other provision of the Indenture or this Agreement to the contrary, so long as necessary in order to maintain the exclusion of interest on the Bonds from gross income under Section 103 of the Code, the covenants contained in subparagraphs (i) through (x) of this Section 5.5 shall survive the discharge and satisfaction of the Bonds and the term of this Agreement.

(b) The University acknowledges and agrees that the Authority has adopted written Post-Issuance Compliance Procedures intended to meet the guidelines set forth in Internal Revenue Manual Section 7.2.3.4.4 (the "*Authority Written Procedures*"). Within sixty (60) days of the issuance of the Bonds, the University shall adopt written Post-Issuance Compliance Procedures intended to meet the guidelines set forth in Internal Revenue Manual Section 7.2.3.4.4 (the "*University Written Procedures*"; and together with the Authority Written Procedures, the "*Written Procedures*"). The University agrees to provide a copy of the current University Written Procedures or upon their adoption. The University agrees to comply with the Written Procedures and at least once a year review the use of the Bonds and any other outstanding bonds of the Authority that have financed facilities for the University (together with the Bonds, the "*Authority's Bonds*") in order to determine whether the Authority's Bonds meet all federal tax law conditions applicable to such bonds and certify its findings in writing to the Authority. In addition, the University shall, with respect to any of the Authority's Bonds, provide prompt written notice to the Authority of any of the acts or events listed on **Exhibit A** attached hereto and made a part hereof that may jeopardize the tax-exempt status of the Bonds (a "*Special Notice Event*"). The University will use its best efforts to provide advance notice, but will in any event provide notice no later than thirty (30) days after the occurrence of such Special Notice Event, whether the University is on notice of such Special Notice Event by its diligence or internal procedures or its own filing of any statement, tax schedule, return or document with the Internal Revenue Service disclosing that a Special Notice Event shall have occurred, by its

receipt of any oral or written advice from the Internal Revenue Service that a Special Notice Event has occurred, or otherwise. The University agrees that, in consultation with the Authority, at the expense of the University, it shall take such actions, if any, as may be necessary or appropriate to remediate such Special Notice Event, including, without limitation, such actions required under §1.141-12 of the Treasury Regulations or a closing agreement with the Internal Revenue Service, and to provide to the Authority an Opinion of Bond Counsel outlining the plan of remediation and whether or not the tax-exempt status of the Bonds will be preserved. In the event the Authority becomes aware of a Special Notice Event, the Authority shall have the right, upon prior written notice to the University, to conduct its own investigation and, at the sole reasonable cost and expense of the University, retain Bond Counsel to determine any and all actions required to remediate such Special Notice Event. The University shall adopt and follow its own written post-issuance compliance procedures to supplement the foregoing.

#### **5.6. Tax-Exempt Status.**

The University affirmatively represents that, as of the date of this Agreement: (i) it is an organization described in Section 501(c)(3) of the Code or corresponding provisions of prior law and it is not a "private foundation" (as such term is defined under Section 509(a) of the Code); (ii) it has received a letter from the Internal Revenue Service to such effect and such letter has not been modified, limited or revoked; (iii) it is in compliance with all terms, conditions and limitations, if any, contained in such letter; (iv) the facts and circumstances that form the basis of such letter as represented to the Internal Revenue Service continue substantially to exist; and (v) it is an organization exempt from federal income taxes under Section 501(a) of the Code.

The University affirmatively represents that, as of the date hereof, it is an organization organized and operated: (i) exclusively for educational purposes; (ii) not for pecuniary profit; and (iii) no part of the net earnings of which inures to the benefit of any person, private stockholder or individual, all within the meaning of the Code. The University agrees that it shall not perform any act or enter into any agreement that shall change its organization or operations as set forth in items (i), (ii) and (iii) of this paragraph of Section 5.6.

#### **5.7. Additional Representations and Warranties.**

The University hereby makes the following representations and warranties to the Authority:

(a) Uniform Commercial Code. If revisions to Article 9 of the Uniform Commercial Code are enacted by the State Legislature or by any other jurisdiction whose laws govern the perfection and enforceability of any security for the Bonds, the University covenants and agrees to cooperate with the Authority in taking all steps necessary to perfect and maintain the priority and enforceability of the security for the Bonds.

(b) Financial Statements. The audited financial statements of the University for the most recent fiscal year, including its balance sheets as of such date, as heretofore delivered to the Underwriter, correctly and fairly present, in all material respects, the financial condition of the University as of said dates and the results of the operations of the University for such period, and have been prepared in accordance with generally accepted accounting principles



consistently applied except as stated in the notes thereto; and there has been no material adverse change in the condition, financial or otherwise, of the University since the date of such financial statements from that set forth in said financial statements as of, and for the period ended on, that date.

(c) Existence and Standing. The University is a corporate body created under the laws of the State and has the necessary power and authority to execute and deliver this Agreement and any other Documents (as defined in Section 5.12 hereof) to which the University is a party, and to perform its obligations hereunder and thereunder.

(d) Authorization and Validity. The execution and delivery by the University of this Agreement and any other Documents to which the University is a party have been duly authorized by proper proceedings of the University, and no further approval, authorization or consents are required by law or otherwise. This Agreement and such other Documents constitute the legal, valid and binding obligations of the University enforceable against the University in accordance with their respective terms, except as future enforceability may be limited by bankruptcy, insolvency or similar laws affecting the rights of creditors and by general equitable principles.

(e) Compliance With Laws and Contracts. Neither the execution and delivery by the University of this Agreement or any of the other Documents to which the University is a party, nor the consummation of the transactions herein or therein contemplated, nor compliance with the provisions hereof or thereof, will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the University, the University's organizational documents or the provisions of any indenture, instrument or agreement to which the University is a party or is subject, or by which it or its property is bound, or conflict with or constitute a default under or result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement.

(f) Litigation. There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the University, threatened against or affecting the University (i) wherein an unfavorable decision, ruling or finding would materially adversely affect (A) the transactions contemplated by or the validity of this Agreement or any other Documents to which the University is a party, (B) the tax-exempt status of the University or of the interest on the Bonds, or (C) the University's property, assets, operations or condition, financial or otherwise, or its ability to perform its obligations hereunder or under such other Documents, or (ii) that, in any way, contests the existence, organization or powers of the University or the titles of the officers of the University to their respective offices, except as described in the Official Statement relating to the Bonds.

#### **5.8. Additional Covenants.**

During the term of this Agreement and until the University has paid in full all of its obligations hereunder, the University hereby covenants and agrees as follows:

(a) Existence. The University shall maintain its existence as a non-profit corporation operating as a private college formed under the laws of the State, and it shall not merge, consolidate, liquidate or sell substantially all of its assets.

(b) Compliance With Laws. The University shall comply with all laws, rules and regulations and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject and that are material to the Bonds, this Agreement or any other Documents to which the University is a party, or the operations, affairs, properties or condition (financial or otherwise) of the University; *provided, however*, that the University may contest the validity or application thereof and appeal or otherwise seek relief therefrom and exercise any and all of the rights and remedies that it may have with regard thereto, so long as such acts do not affect the University's power and authority to execute and deliver this Agreement and such other Documents and to perform its obligations and pay all amounts payable by it hereunder and thereunder.

(c) Maintain Existence of Authority "Project". The University shall operate and use or cause the Project Facilities and each portion thereof to be operated and used as educational facilities constituting an authorized "project" under the Act.

(d) Rebate. The University acknowledges that the Authority shall calculate or cause to be calculated the Rebate Amount at the times and in the manner set forth in the Tax Certificate and shall pay or direct in writing the Trustee to pay (but only from amounts received from the University under this Agreement) the amount to be paid to the Internal Revenue Service pursuant to Section 148 of the Code from the Rebate Fund in the percentage, at the times and in the manner set forth in the Tax Certificate.

#### **5.9. Alternate Dates for Payment.**

If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided herein, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding day that is a Business Day with the same force and effect as if done on the day provided herein, and no interest shall accrue for the period from such day to the next Business Day authorized herein.

#### **5.10. Agreement for Benefit of Bondholders.**

This Agreement is executed in part to induce the purchase by others of the Bonds, and, accordingly, all covenants and agreements on the part of the University and the Authority as set forth in this Agreement are hereby declared to be for the benefit of the Holders from time to time of the Bonds, reserving always the right of the Authority to amend and supplement this Agreement, with the written consent of the University, in accordance with Section 2.7 hereof.

The University agrees to do all things within its power in order to enable the Authority to comply with all requirements and to fulfill all covenants of the Indenture.

### **5.11. Reports Furnished by University.**

The University shall render a report periodically on request of the Authority as to the physical condition of the Project Facilities. In addition, the University shall, if and when requested by the Authority, render such other reports to the Trustee and the Authority concerning the condition of the Project Facilities and the University as the Authority may reasonably request. The University also shall furnish annually to the Trustee and the Authority, and such other parties as the Authority may designate, copies of (i) its annual audited financial statements not later than each December 27th following the end of each fiscal year of the University, commencing with the fiscal year ending June 30, 2020; *provided*, that if the fiscal year of the University should change, then the audited financial statements shall be due not later than one hundred eighty (180) days after the end of each fiscal year, and (ii) such other reports and such other information as may be reasonably requested by the Authority, as soon as practicable.

### **5.12. Review and Execution of Documents.**

The University hereby represents and warrants to the Authority that the University has reviewed and has a full understanding of all the terms, conditions and risks (economic and otherwise) of this Agreement, the Indenture, the Bond Purchase Agreement, the Swap Agreement, if any, and any of the other documents or instruments executed in connection with the issuance of the Bonds and herewith (collectively, the "*Documents*"), that it is capable of assuming and is willing to assume (financially and otherwise) all such risks, that it has consulted with its own legal and financial advisors (to the extent it has deemed necessary) and is not relying upon any advice, counsel or representations (whether written or oral) of the Authority or the Authority's legal and financial advisors, and that it has made its own investment, hedging and trading decisions (including decisions relating to the suitability of each of the Documents) based upon its own judgment and upon any advice from its own legal and financial advisors as it has deemed necessary. The University hereby acknowledges that the Authority is entering into certain of the Documents at the request of, and as an accommodation to, the University, and that the terms of the Documents have been negotiated by, and are acceptable to, the University.

### **5.13. Multiple Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**NEW JERSEY EDUCATIONAL  
FACILITIES AUTHORITY**

By: \_\_\_\_\_  
**Eric D. Brophy, Esq.**  
**Executive Director**

**ATTEST:**

By: \_\_\_\_\_  
**Steven P. Nelson**  
**Assistant Secretary**

**THE TRUSTEES OF THE STEVENS  
INSTITUTE OF TECHNOLOGY**

By: \_\_\_\_\_  
**Louis J. Mayer, Ed.D.**  
**Vice President for Finance  
and Treasurer**

**ATTEST:**

By: \_\_\_\_\_  
**Kathy L. Schulz, Esq.**  
**Secretary**

## EXHIBIT A

### SPECIAL NOTICE EVENTS

1. **Private Business Use of Bond Financed Property** – if any portion of the property financed with proceeds of the Bonds will be used by anyone other than a State or local governmental unit or members of the general public who are not using the property in the conduct of a trade or business (*e.g.*, use by a person as an owner, lessee, purchaser of the output of facilities under a "take and pay" or "take or pay" contract, purchaser or licensee of research, a manager or independent contractor under certain management or professional service contracts or any other arrangement that conveys special legal entitlements, including an arrangement that conveys priority rights to the use or capacity of the property financed with the proceeds of the Bonds, for beneficial use of the property financed with the proceeds of the Bonds with proceeds of tax-exempt debt or an arrangement that conveys a special economic benefit). Use of property financed with proceeds of the Bonds by the federal government or a 501(c)(3) organization or with respect to solar facilities or a cell tower by a private entity are considered private business use;

2. **Private Loans of Bond Proceeds** – if any portion of the proceeds of the Bonds (including any investment earnings thereon) are to be loaned by the University;

3. **Naming Rights Agreements For Bond Financed Property** – if any portion of the property financed with proceeds of the Bonds will become subject to a naming rights agreement, other than a "brass plaque" dedication;

4. **Research Using Bond Financed Property** – if any portion of the property financed with proceeds of the Bonds has been or will be used for the conduct of research (as described in Rev. Proc. 2007-47) under the sponsorship of, or for the benefit of, any entity other than a State or local governmental unit, other than a qualified research contract described in Rev. Proc. 2007-47;

5. **Management Agreement or Service Agreement** – if any portion of the property financed with proceeds of the Bonds is to be used under a management contract (*e.g.*, food service, bookstore or parking management) or service contract, other than (i) a contract for services that are solely incidental to the primary function of financed projects, such as janitorial services or office equipment repair, or (ii) a qualified management contract described in Rev. Proc. 97-13 or successor Internal Revenue Service guidance applicable to proceeds of the Bonds (*n.b.*, a contract that results in the payment of a concession or similar fee to the University is not a qualified contract);

6. **Joint Ventures** – if any portion of the property financed with proceeds of the Bonds will be or has been used in any joint venture arrangement with any person other than a State or local governmental unit;

7. **Sinking Fund or Pledged Fund** – if the University, or any organization related to the University, identifies funds (other than mere preliminary earmarking) that are expected to be used to pay debt service on the Bonds or secure the payment of debt service on the Bonds, other than those funds or accounts described in the bond documents for the Bonds; or

8. **Unexpected Payments or Proceeds** – if the University receives funds that may have a sufficiently direct nexus to the Bonds or to the property financed with proceeds of the Bonds to conclude that the amounts would have been used for that governmental purpose if proceeds of the Bonds were not used to finance such property related to Bond-financed property or the Bonds, including, without limitation, charitable gifts, insurance payments and settlements of litigation relating to the property or other disputes.

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF A NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY REVENUE BOND, STEVENS INSTITUTE OF TECHNOLOGY ISSUE, 2020 SERIES B (FEDERALLY TAXABLE) IN A PRINCIPAL AMOUNT NOT TO EXCEED \$30,000,000 AND AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A BOND AGREEMENT AND RELATED INSTRUMENTS AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.**

**ADOPTED: JANUARY 28, 2020**

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

WHEREAS, The Trustees of the Stevens Institute of Technology (the "Private University") is a nonprofit corporation organized under the laws of the State; and

WHEREAS, the Act provides that the Authority shall have the power to borrow money and issue its bonds and provide for the rights of the holders of its bonds; and

WHEREAS, the Private University has requested that the Authority issue its Revenue Bond, Stevens Institute of Technology Issue, 2020 Series B (Federally Taxable) in a principal amount not to exceed \$30,000,000 (the "Bond"), and loan the proceeds of the Bond to the Private University (the "Loan") in order to finance capital improvements to the Private University's campus located in the municipality of Hoboken, County of Hudson, in the State (collectively, the "Project Facility"), to finance working capital, and to pay certain costs of the issuance of the Bond (collectively, the "Project"); and

WHEREAS, the Authority proposes to apply the proceeds of the Bond to make a loan to the Private University for the financing of the Project in accordance with the Bond Agreement by and among the Authority, PNC Bank, National Association (the "Purchaser"), and the Private University (the "Bond Agreement") providing, in part, for payments by the Private University sufficient to meet installments of interest and principal on the Bond; and

WHEREAS, in accordance with the purposes and objectives of Executive Order No. 26 (Whitman 1994) ("Executive Order No. 26"), the Authority hereby finds and determines that the issuance of the Bond involves certain circumstances under which a private placement is permissible as outlined in Executive Order No. 26, namely volatile market conditions in the context of the relatively small issue size, and that a direct purchase of the Bond is necessary for the Project due to the representations of the Private University that a competitive sale of the Bond is not in the best interest of the Authority and the Private University, and a direct purchase would be the most cost-effective means of financing the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AUTHORITY AS FOLLOWS:

Section 1. In order to assist in the financing of the Project, the Bond of the Authority is hereby authorized to be issued in a principal amount not to exceed \$30,000,000, designated as "New Jersey Educational Facilities Authority Revenue Bond, Stevens Institute of Technology Issue, 2020 Series B (Federally Taxable)" or such other designation as an Authorized Officer (as hereinafter defined) may determine, with an initial interest rate not to exceed 12% and a term not to exceed thirteen (13) years. The Bond shall be dated, shall bear interest at such a rate of interest, and shall be payable as to principal, interest and premium, if any, all as is specified therein. The Bond shall be issued in the form, shall mature, shall be subject to redemption prior to maturity and shall have such other details and provisions as are prescribed by the Bond Agreement.

Section 2. The Bond shall be a special and limited obligation of the Authority, payable solely out of the moneys derived pursuant to the Bond Agreement and all such moneys are hereby pledged to the payment of the Bond. The payment of the principal of, premium, if any, and interest on the Bond shall be secured by a pledge and assignment of revenues and certain rights of the Authority as provided in the Bond Agreement. Neither the members of the Authority nor any person executing the Bond issued pursuant to this resolution and the Act shall be liable personally on the Bond by reason of the issuance thereof. The Bond shall not be in any way a debt or liability of the State or any political subdivision other than the Authority, whether legal, moral or otherwise.

Section 3. The Bond Agreement and all instruments attached as exhibits thereto, in substantially the form attached hereto, are hereby approved. The Chair, Vice Chair, Executive Director, Deputy Executive Director, Director of Project Management, Director of Compliance Management, Director of Finance, Secretary, Assistant Treasurer or any Assistant Secretary and any other person authorized by resolution of the Authority, and any of such officers designated by resolution as "acting" or "interim" (the "Authorized Officers"), are hereby authorized to execute, acknowledge and deliver the Bond Agreement and all instruments attached as exhibits thereto with any changes, insertions and omissions as may be approved by any of the Authorized Officers, with the advice of bond counsel and the Attorney General of the State, and the Secretary, any Assistant Secretary or any other Authorized Officer of the Authority are hereby authorized to affix the official common seal of the Authority on the Bond Agreement and all instruments attached as exhibits thereto and attest the same. The execution of the Bond Agreement shall be conclusive evidence of any approval required by this Section 3.

Section 4. The Bond is hereby authorized to be sold to the Purchaser in accordance with the Bond Agreement and Executive Order No. 26.

Section 5. The Authorized Officers are hereby designated to be the authorized representatives of the Authority, charged by this resolution with the responsibility for issuing the



Bond and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution, the Bond Agreement and the issuance of the Bond.

Section 6. In case any one or more of the provisions of this resolution, the Bond Agreement or the Bond issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution or the Bond Agreement and the Bond shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

Section 7. All prior resolutions of the Authority or portions thereof that are inconsistent herewith are hereby repealed.

Section 8. This resolution shall take effect in accordance with the Act.

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

**AYE:** Joshua Hodes  
Ridgeley Hutchinson  
Louis Rodriguez  
Elizabeth Maher Muoio (represented by Ryan Feeney)  
Zakiya Smith Ellis

**NAY:** None

**ABSTAIN:** None

**ABSENT:** None

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

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BOND AGREEMENT

By and Among

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY,

PNC BANK, NATIONAL ASSOCIATION

and

THE TRUSTEES OF THE STEVENS INSTITUTE OF TECHNOLOGY

Dated: [CLOSING DATE]

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**ARTICLE I**  
**Background, Representations and Findings**

Section 1.1 Background. THIS BOND AGREEMENT dated [CLOSING DATE], by and among the NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY (the “Authority”), a body corporate and politic with corporate succession, constituting a political subdivision of the State of New Jersey (the “State”), PNC BANK, NATIONAL ASSOCIATION, a national banking association (the “Purchaser”) and THE TRUSTEES OF THE STEVENS INSTITUTE OF TECHNOLOGY, a nonprofit corporation organized under the laws of the State constituting a “private institution of higher education” under the Act, defined below (the “Borrower”).

WHEREAS, the Authority was created as a public body corporate and politic of the State pursuant to the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes as enacted by Chapter 271 of the Laws of 1967, as amended and supplemented), N.J.S.A. 18A:72A-1 *et seq.* (the “Act”); and

WHEREAS, the Authority is authorized pursuant to the Act to make loans to private colleges and universities in the State to finance educational projects of private colleges and universities in the State; and

WHEREAS, the Borrower has requested that the Authority issue its Revenue Bond, Stevens Institute of Technology Issue, 2020 Series B (Federally Taxable) in the principal amount of \$[BOND AMOUNT] (the “Bond”) and loan the proceeds of the Bond to the Borrower (the “Loan”) in order to finance capital improvements to the Borrower’s campus located in the municipality of Hoboken, County of Hudson, in the State (collectively, the “Project Facility”), to finance working capital, and to pay certain costs of the issuance of the Bond (collectively, the “Project”); and

WHEREAS, the Authority has by resolution, duly adopted in accordance with the Act authorized the issuance of the Bond and the sale thereof to the Purchaser for the purpose of making the Loan to finance the Project; and

WHEREAS, the execution and delivery of this Bond Agreement have been duly authorized by the parties and all conditions, acts and things necessary and required by the Constitution or statutes of the State or otherwise to exist, to have happened, or to have been performed precedent to or in the execution and delivery of this Bond Agreement do exist, have happened and have been performed.

NOW THEREFORE, in consideration of the premises and the mutual covenants and representations herein, and intending to be legally bound the parties hereto hereby mutually agree as follows:

Section 1.2 Definitions.

In this Bond Agreement the defined terms in the foregoing recitals shall have the meanings set forth therein. In addition, the following terms shall have the following meanings unless a different meaning clearly appears from the context:

“Addendum” shall have the meaning ascribed to such term in Section 1.3 hereof;

“Advance” shall mean each payment of the purchase price of the Bond pursuant to Section 2.4 hereof;

“Article” shall mean a specified article hereof, unless otherwise indicated;

“Anti-Terrorism Laws” shall have the meaning ascribed to such term in Section 4.16 hereof;

“Annual Administrative Fee” shall mean the annual fee for the general administrative services of the Authority including without limitation, the cost of attendance at Authority events, in an amount equal to 1/10 of 1% of the outstanding aggregate principal amount of each series of Bonds with a maximum annual fee of \$85,000;

“Authorized Authority Representative” shall mean any individual or individuals duly authorized by the Authority to act on its behalf;

“Authorized Borrower Representative” shall mean any individual or individuals duly authorized by the Borrower to act on its behalf;

“Bankruptcy” shall mean proceedings pursuant to federal or state insolvency law in which the Borrower is the named debtor;

“Bond” shall mean the \$[BOND AMOUNT] principal amount Revenue Bond, Stevens Institute of Technology Issue, 2020 Series B (Federally Taxable) in the form attached to the Omnibus Certificate of the Authority and made a part of the Record of Proceedings;

“Bond Agreement” shall mean this Bond Agreement;

“Bond Counsel” shall mean the law firm of McManimon, Scotland & Baumann, LLC, Roseland, New Jersey or an attorney or firm of attorneys of nationally recognized standing on the subject of municipal bonds;

“Bond Proceeds” shall mean the amount, including any accrued interest, paid to the Authority or its agents by the Purchaser pursuant to this Bond Agreement as the purchase price of the Bond, and interest income earned thereon, if any;

“Business Day” shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in Pittsburgh, Pennsylvania;

“Certification of Beneficial Owners” shall have the meaning ascribed to such term in Section 1.3(p) hereof;

“Change in Law” shall have the meaning ascribed to such term in Section 4.6 hereof;

“Communication” shall have the meaning ascribed to such term in Section 6.18 hereof;

“Compliance Authority” shall have the meaning ascribed to such term in Section 4.16 hereof;

“Cost” shall include all expenses as may be necessary or incident to the Project, including certain costs of issuance incurred in connection with the Bond;

“Counsel for the Purchaser” shall mean the law firm of Ballard Spahr LLP, Cherry Hill, New Jersey;

“Covered Entity” shall have the meaning ascribed to such term in Section 4.16 hereof;

“Default” shall have the meaning ascribed to such term in Section 1.3(f) hereof;

“Default Rate” shall have the meaning ascribed to such term in the Bond;

“Demand Deposit Account” shall have the meaning ascribed to such term in Section 3.2 hereof;

“Environmental Laws” shall mean all provisions of laws, statutes, ordinances, rules, regulations, permits, licenses, judgments, writs, injunctions, decrees, orders, awards and standards promulgated by any governmental authority concerning health, safety and protection of, or regulation of the discharge of substances into, the environment;

“ERISA” shall have the meaning ascribed to such term in Section 1.3(j) hereof;

“Event of Default” shall mean any event of default as defined in Article V;

“Financial Statements” shall mean (a) with respect to an entity that is not a natural person, consolidated and, if required by the Purchaser in its sole discretion, consolidating balance sheets statements of income and cash flows for the year, month or quarter together with year-to-date figures and comparative figures for the corresponding periods of the prior year, prepared in accordance with GAAP, consistently applied from period to period; and (b) with respect to natural persons, means personal financial statements and federal income tax returns;



“Fitch” shall mean Fitch Ratings, a corporation organized and existing under the laws of the State of New York, and its successors and assigns;

“GAAP” shall mean generally accepted accounting principles in effect from time to time;

“Governmental Authority” shall mean any nation or government, any state, city, locality, municipality or political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any government authority, agency, department, board, commission or instrumentality, including, without limitation, the United States Environmental Protection Agency (“USEPA”), the New Jersey Department of Environmental Protection (“NJDEP”) and all other federal, State, regional, county or local government authorities authorized or having jurisdiction to enforce Applicable Environmental Laws;

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms, refer to this Bond Agreement; the term “heretofore” shall mean before the date of execution of this Bond Agreement; and the term “hereafter” shall mean after the date of execution of this Bond Agreement;

“Indemnified Parties” shall mean the State, the Authority, the Purchaser, any person who “controls” the State or the Authority within the meaning of Section 15 of the Securities Act of 1933, as amended, and any member, officer, official, employee, agent or attorney of the Authority, the State or the Purchaser, and their respective successors and assigns;

“Initial Fee” shall mean the fee paid or payable to the Authority for its services in connection with the issuance of the Bonds, calculated at the rate of 1/5 of 1% of the aggregate principal amount of each series of Bonds with a maximum initial fee of \$125,000 payable by the Borrower on the closing date for the Bonds;

“Loan Documents” shall mean any or all of this Bond Agreement, the Note, and all documents and instruments executed in connection therewith and all amendments and modifications thereto;

“Moody’s” shall mean Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware and its successors and assigns;

“Negative Pledge Property” shall have the meaning ascribed to such term in Section 1.3(g) hereof;

“Note” shall mean the note executed by the Borrower in favor of the Authority evidencing the Loan;

“Obligations” shall mean the obligations of the Borrower created pursuant to the Loan Documents;

“Omnibus Certificate of the Authority” shall mean the certificate of the Authority which is made a part of the Record of Proceedings;

“Paragraph” shall mean a specified paragraph of a Section, unless otherwise indicated;

“Participant” have the meaning ascribed to such term in Section 6.15 hereof;

“Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as same may be amended from time to time, and corresponding provisions of future laws;

“Permitted Encumbrances” shall have the meaning ascribed to such term in Section 1.3(g) hereof;

“Person” or “Persons” shall mean any individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a governmental agency or any political subdivision thereof;

“Pricing Default” shall have the meaning ascribed to such term in Section 5.2 hereof;

“Record of Proceedings” shall mean the Loan Documents, certificates, affidavits, opinions and other documentation executed in connection with the sale of the Bond and the making of the Loan;

“Reportable Compliance Event” shall have the meaning ascribed to such term in Section 4.16 hereof;

“Requisition Form” shall mean the form of requisition required by Section 2.5 as a condition precedent to the disbursement of the any part of the purchase price of the Bond, in the form made part of the Record of Proceedings;

“Resolution” shall mean the resolution of the Authority dated January 28, 2020 authorizing the issuance and sale of the Bond and determining other matters in connection with the Project;

“Reserved Rights” shall mean the rights of the Authority to receive payments under and to enforce, pursuant to Article VI entitled “Events of Default and Remedies” and Sections 1.3(k), 1.5, 2.9, 2.10, 2.11, 3.1, 3.2, 3.4, 3.5, 3.8, 3.9, 4.1, 4.2, 4.5, 4.8, 4.11, 4.13, 4.14, 4.17, 5.3, 5.5, 6.1, and 6.8 hereof. These Reserved Rights have been assigned to the Purchaser herewith but are also held and retained by the Authority concurrently with the Purchaser;

“Sanctioned Country” shall have the meaning ascribed to such term in Section 4.16 hereof;

“Sanctioned Person” shall have the meaning ascribed to such term in Section 4.16 hereof;

“Standard & Poor’s” shall mean S&P Global Ratings, acting through Standard & Poor’s Financial Services LLC and its successors and assigns;

“Section” shall mean a specified section hereof, unless otherwise indicated; and

“Tuition” shall have the meaning ascribed to such term in Section 2.12 hereof.

Section 1.3 Borrower Representations. The Borrower hereby makes the following representations and warranties, which shall be true and correct on the date hereof except as otherwise set forth on the Addendum attached hereto and incorporated herein by reference (the “Addendum”):

(a) Existence, Power and Authority. If not a natural person, the Borrower is duly organized, validly existing and in good standing under the laws of the State of its incorporation or organization and has the power and authority to own and operate its assets and to conduct its business as now or proposed to be carried on, and is duly qualified, licensed and in good standing to do business in all jurisdictions where its ownership of property or the nature of its business requires such qualification or licensing. The Borrower is duly authorized to execute and deliver the Loan Documents, all necessary action to authorize the execution and delivery of the Loan Documents has been properly taken, and the Borrower is duly authorized to borrow under this Bond Agreement and to perform all of the other terms and provisions of the Loan Documents.

(b) Financial Statements. The Borrower has delivered or caused to be delivered to the Purchaser its most recent Financial Statements. The Financial Statements are true, complete and accurate in all material respects and fairly present the Borrower’s financial condition, assets and liabilities, whether accrued, absolute, contingent or otherwise and the results of the Borrower’s operations for the period specified therein. The Financial Statements have been prepared in accordance with GAAP consistently applied from period to period, subject in the case of interim statements to normal year-end adjustments and to any comments and notes acceptable to the Purchaser in its sole discretion.

(c) No Material Adverse Change. Since the date of the most recent Financial Statements, the Borrower has not suffered any damage, destruction or loss, and no event or condition has occurred or exists, which has resulted or would result in a material adverse change in its business, assets, operations, condition (financial or otherwise) or results of operation.

(e) Binding Obligations. The Borrower has full power and authority to enter into the transactions provided for in this Bond Agreement and has been duly authorized to do so by appropriate action of its Board of Trustees and the Loan Documents, when executed and delivered by the Borrower, will constitute the legal, valid and binding obligations of the Borrower enforceable in accordance with their terms.

(f) No Defaults or Violations. There does not exist any Default or Event of Default, or event, act or condition which, with the passage of time or the giving of notice, or both, would

constitute an Event of Default under this Bond Agreement (a “Default”), or any default or violation by the Borrower of or under any of the terms, conditions or obligations of: (i) its articles or certificate of incorporation, regulations and bylaws; or (ii) any law, ordinance, regulation, ruling, order, injunction, decree, condition or other requirement applicable to or imposed upon it by any law, the action of any court or any governmental authority or agency; and the consummation of this Bond Agreement and the transactions set forth herein will not result in any Event of Default or violation.

(g) Title to Assets. The Borrower has good and marketable title to those assets subject to the negative pledge identified in Section 4.4(e) hereof (the “Negative Pledge Property”), free and clear of all liens and encumbrances, except for (i) liens in favor of the Purchaser; (ii) current taxes and assessments not yet due and payable; (iii) assets disposed of by the Borrower in the ordinary course of business since the date of the most recent Financial Statements; (iv) any Lien in accordance with Section 4.4(e) hereof; (v) any liens on any of the Negative Pledge Property for taxes, assessments, levies, fees, water and sewer rents, and other governmental and similar charges, (1) which are not due and payable or are not delinquent, (2) the amount or validity of which are being contested in good faith and on which execution is stayed or (3) the existence of which will not subject any Negative Pledge Property to material loss or forfeiture; (vi) any lease which, in the judgment of the Borrower, is reasonably necessary or appropriate for or incidental to the proper and economical operation of such Negative Pledge Property, taking into account the nature and terms of the lease and the nature and purposes of the Negative Pledge Property subject thereto, (vii) easements, rights-of-way, restrictions, servitudes, and/or licenses, covenants running with the land and other minor defects, encumbrances, and irregularities in the title to any Negative Pledge Property which do not materially impair the use of such Negative Pledge Property for its intended purpose or materially and adversely affect the value thereof; (viii) such minor defects and irregularities of title as normally exist with respect to property similar in character to the Negative Pledge Property, and which do not materially adversely affect the value thereof; (ix) any lien or encumbrance created or incurred in the ordinary course of business which does not secure, directly or indirectly, the repayment of borrowed money, and which does not materially impair the value or the utility of the Negative Pledge Property subject to such lien or encumbrance; and (x) those liens or encumbrances, if any, specified on the Addendum (collectively, “Permitted Encumbrances”).

(h) Litigation. There are no actions, suits, proceedings or governmental investigations pending or, to the knowledge of the Borrower, threatened against the Borrower, wherein an unfavorable decision, ruling or finding would result in a material adverse change in its business, assets, operations, condition (financial or otherwise) or results of operations and there is no basis known to the Borrower for any action, suit, proceeding or investigation wherein an unfavorable decision, ruling or finding would result in such a material adverse change. There is no pending or threatened litigation against the Borrower which has not been otherwise previously disclosed to the Purchaser and the Authority.

(i) Tax Returns. The Borrower has filed all returns and reports that are required to be filed by it, subject to any permissible filing extensions, in connection with any federal, state or local tax, duty or charge levied, assessed or imposed upon it or its property or withheld by it, including

income, unemployment, social security and similar taxes, and all of such taxes have been either paid or adequate reserves or other provision has been made therefor.

(j) Employee Benefit Plans. Except as otherwise disclosed on the Addendum, each employee benefit plan as to which the Borrower may have any liability complies in all material respects with all applicable provisions of the Employee Retirement Income Security Act of 1974 (as amended from time to time, "ERISA"), including minimum funding requirements, and (i) no Prohibited Transaction (as defined under ERISA) has occurred with respect to any such plan; (ii) no Reportable Event (as defined under Section 4043 of ERISA) has occurred with respect to any such plan which would cause the Pension Benefit Guaranty Corporation to institute proceedings under Section 4042 of ERISA; (iii) the Borrower has not withdrawn from any such plan or initiated steps to do so; and (iv) no steps have been taken to terminate any such plan.

(k) Environmental Matters. The Borrower is in compliance, in all material respects, with all Environmental Laws, including, without limitation, all Environmental Laws in jurisdictions in which the Borrower owns or operates a facility or site, or holds any interest in real property. No litigation or proceeding arising under, relating to or in connection with any Environmental Law is pending or, to the best of the Borrower's knowledge, threatened against the Borrower, any real property in which the Borrower holds an interest or any past or present operation of the Borrower. No release, threatened release or disposal of hazardous waste, solid waste or other wastes is occurring, or to the best of the Borrower's knowledge has occurred, on, under or to any real property in which the Borrower holds any interest or performs or has performed any of its operations, in violation of any Environmental Law. As used in this Section, "litigation or proceeding" means any demand, claim notice, suit, suit in equity, action, administrative action, investigation or inquiry whether brought by a governmental authority or other person.

(l) Intellectual Property. The Borrower owns or is licensed to use all patents, patent rights, trademarks, trade names, service marks, copyrights, intellectual property, technology, know-how and processes necessary for the conduct of its business as currently conducted that are material to the condition (financial or otherwise), business or operations of the Borrower.

(m) Regulatory Matters. No Bond Proceeds will be used for "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time in effect or for any purpose which violates the provisions of the Regulations of such Board of Governors.

(n) Solvency. As of the date hereof and after giving effect to the transactions contemplated by the Loan Documents, (i) the aggregate value of the Borrower's assets will exceed its liabilities (including contingent, subordinated, unmatured and unliquidated liabilities); (ii) the Borrower will have sufficient cash flow to enable it to pay its debts as they become due; and (iii) the Borrower will not have unreasonably small capital for the business in which it is engaged.

(o) Disclosure. None of the Loan Documents contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary in order to make the statements contained in this Bond Agreement or the Loan Documents not misleading. There is no fact known to the Borrower which materially adversely affects or, so far as the Borrower can now foresee, might materially adversely affect the business, assets, operations, condition (financial or otherwise) or results of operation of the Borrower and which has not otherwise been fully set forth in this Bond Agreement or in the Loan Documents.

(p) Beneficial Owners. If the Borrower is or was required to execute and deliver to the Purchaser a Certification of Beneficial Owner(s) (individually and collectively, as updated from time to time, the "Certification of Beneficial Owners"), the information in the Certification of Beneficial Owners, as updated from time to time in accordance with this Bond Agreement, is true, complete and correct as of the date thereof, as of the date hereof and as of the date any such update is delivered to the Purchaser. The Borrower acknowledges and agrees that the Certification of Beneficial Owners is a Loan Document.

(q) The Borrower represents that the indebtedness evidenced by the Note is being incurred by the Borrower solely for the purpose and in furtherance of nonprofit charitable activity, and not for personal, family or household purposes.

(r) The Borrower hereby represents that it has been represented by competent counsel of its choice, or has knowingly waived its right to use and retain counsel, in the negotiation and execution of this Bond Agreement and the other Loan Documents; that it has read and fully understood the terms hereof; that the Borrower and any retained counsel have been afforded an opportunity to review, negotiate and modify the terms of this Bond Agreement and the other Loan Documents; and that it intends to be bound hereby. In accordance with the foregoing, the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Bond Agreement or any other Loan Document.

Section 1.4 Authority Representations and Covenants. The Authority hereby represents and covenants that:

(a) The Authority is a body corporate and politic with corporate succession, constituting a political subdivision of the State, duly organized, established and existing under the laws of the State, particularly the Act. The Authority is authorized to issue the Bond in accordance with the Act and to use the proceeds thereof to make the Loan to the Borrower.

(b) The Authority has complied with the provisions of the Act and has full power and authority pursuant to the Act to consummate all transactions contemplated to be performed by the Authority by this Bond Agreement, the Bond, and any and all agreements relating thereto and to perform its obligations thereunder and to issue, sell and deliver the Bond to the holders as provided herein. The Authority has duly authorized the execution, delivery and due performance of this Bond

Agreement and the Bond, and the Authority has duly authorized the taking of any and all action as may be required on the part of the Authority pursuant to the express provisions of this Bond Agreement to perform, give effect to and consummate the transactions contemplated by this Bond Agreement and all approvals necessary in connection with the foregoing have been received.

(c) When the Bond is issued, transferred and delivered in accordance with the provisions of this Bond Agreement, the Bond will have been duly authorized, executed, issued and delivered and will constitute the valid special and limited obligation of the Authority payable solely from the revenues and other monies derived by the Authority from this Bond Agreement, and nothing in the Bond or this Bond Agreement shall be construed as assigning or pledging therefor any other funds or assets of the Authority. THE STATE IS NOT OBLIGATED TO PAY, AND NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE STATE IS PLEDGED TO THE PAYMENT OF, THE PRINCIPAL OR REDEMPTION PRICE, IF ANY, OF OR INTEREST ON THE BOND. THE BOND IS NOT A DEBT OR LIABILITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE AUTHORITY. THE BOND IS A SPECIAL AND LIMITED OBLIGATION OF THE AUTHORITY, PAYABLE SOLELY OUT OF THE REVENUES OR OTHER RECEIPTS, FUNDS OR MONEYS OF THE AUTHORITY PLEDGED HEREUNDER AND FROM ANY AMOUNTS OTHERWISE AVAILABLE HEREUNDER FOR THE PAYMENT OF THE BOND. THE BOND DOES NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE AUTHORITY. THE AUTHORITY HAS NO TAXING POWER.

The Act provides that neither the members of the Authority nor any person executing bonds for the Authority shall be liable personally on said bonds by reason of the issuance thereof.

(d) The execution and delivery of this Bond Agreement, the Bond and any and all other Loan Documents to which the Authority is a party, and compliance with the provisions thereof, will not conflict with or constitute on the part of the Authority a violation of the Constitution of the State or the Act or a violation, breach of or default under its By-Laws or any statute, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Authority is a party or by which the Authority is bound, or to the knowledge of the Authority, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Authority or any of its activities or properties, and to the knowledge of the Authority, all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required to be obtained by the Authority for the consummation of the transactions contemplated thereby have been obtained. No authority or proceedings for the issuance of the Bond or documents executed in connection therewith have been repealed, revoked, rescinded or superseded.

(e) To the knowledge of the Authority, as of this date, there is no action, suit or proceeding, at law or in equity, pending or threatened against the Authority to restrain or enjoin the issuance or sale of the Bond or in any way contesting the validity or affecting the power of the Authority with respect to the issuance and sale of the Bond or the documents or instruments executed

by the Authority in connection therewith or the existence of the Authority or the right or power of the Authority to finance the Project, nor to the Authority's knowledge, any basis therefor.

(f) The Authority, to its knowledge, has never defaulted and is not now in default with respect to any bonds, notes or other obligations that it has issued.

(g) Any certificate signed by an Authorized Authority Representative shall be deemed a representation and warranty by the Authority to the respective parties as to the statements made therein.

(h) The Authority makes no representation as to (i) the financial position or business condition of the Borrower or (ii) the correctness, completeness or accuracy of any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made by the Borrower in connection with the sale or transfer of the Bond, the execution and delivery of this Bond Agreement or the consummation of the transactions contemplated hereby.

(i) The Authority agrees that it will cooperate with the Borrower in connection with the Borrower's obligation to cause all documents, statements, memoranda or other instruments to be registered, filed or recorded in such manner and at such places as may be required by law fully to protect the security of the Purchaser and the right, title and interest of the Purchaser in and to any moneys or securities held hereunder or any part thereof (including any refilings, continuation statements or such other documents as may be required).

Section 1.5 Purchaser Representations. The Purchaser hereby represents as follows:

(a) It has made an independent investigation and evaluation of the financial position and business condition of the Borrower and the value of the Project Facility or has caused such investigation and evaluation of the Borrower and the Project Facility to be made by persons it deems competent to do so. All information relating to the business and affairs of the Borrower that the Purchaser has requested from the Borrower or the Authority in connection with the transactions referred to herein has been provided to the Purchaser. The Purchaser hereby expressly waives the right to receive such information from the Authority and relieves the Authority and its agents, representatives and attorneys of any liability for failure to provide such information or for the inclusion in such information or in any of the documents, representations or certifications to be provided by the Borrower under this Bond Agreement of any untrue fact or for the failure therein to include any fact.

(b) It is purchasing the Bond for its own account, with the purpose of investment and not with the intention of distribution or resale thereof. The Bond will not be sold unless registered in accordance with the rules and regulations of the Securities and Exchange Commission or the Authority is furnished with an opinion of counsel or a "No Action" letter from the Securities and Exchange Commission, that such registration is not required.



(c) It has taken all action necessary to be taken by it prior to the date of this Bond Agreement to authorize the execution, delivery and performance of this Bond Agreement.

(d) This Bond Agreement is the legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms.

(e) It has complied with the requirements of N.J.S.A. 52:32-58 and certifies that it is not identified on the list of persons engaging in investment activities in Iran.

## ARTICLE II

### The Financing

Section 2.1 The Financing. The Purchaser has agreed with the Authority to purchase the Bond, and the Authority has agreed to make the Loan to the Borrower. To accomplish this financing, the following acts will occur simultaneously and concurrently with the execution and delivery of this Bond Agreement:

- (a) The Authority will sell, issue and deliver the Bond to the Purchaser.
- (b) The Purchaser will pay the purchase price of the Bond in accordance with the terms of Section 2.4 hereof.
- (c) The Borrower will execute and deliver to the Authority the Note and the other Loan Documents.

Section 2.2 Effectiveness of Bond and Note. So long as there are no defaults in the performance by the Borrower of any of the terms, covenants and conditions of the Loan Documents, the Bond will be outstanding and will control the interest rate and debt service payments due the Purchaser. If there is such a default, the provisions of Article VI and the Loan Documents will govern. When the obligations of the Authority pursuant to the Bond have been released and canceled pursuant to Article VI, the Note will remain fully effective and will control the interest rate and debt service payments due the Purchaser.

Section 2.3 The Bond. Subject to the terms and conditions and upon the basis of the representations hereinafter set forth, the Authority hereby agrees to sell the Bond to the Purchaser, and the Purchaser hereby agrees to purchase the Bond from the Authority at the purchase price of \$[BOND AMOUNT].

The Bond will be delivered in registered form. Payment for the Bond by the Purchaser and delivery thereof by the Authority shall be made at the offices of the Authority in Princeton, New Jersey or at such other place in the State as the Authority and Purchaser mutually agree.

The offering of the Bond has not been registered under the Securities Act of 1933, as amended, and this Bond Agreement has not been qualified under the Trust Indenture Act of 1939, as amended. The Bond may not be offered or sold by the Purchaser in contravention of said acts.

Section 2.4 Bond Proceeds. The purchase price of the Bonds will be paid by the Purchaser as set forth in this Section. The Bond shall be a "draw-down bond," in that the Purchaser will purchase the principal amount of the Bond in installments, at par, equal to the amounts approved for requisition as described in Section 2.5 below. The Borrower agrees that the sums so requisitioned will be used

for the Costs of the Project.

During the period from the date of the Bond to and including the Conversion Date, as defined in the Bond, Advances may be made (but may not re-advanced after repayment), subject to the terms and conditions of the Bond and this Agreement. In no event shall the aggregate unpaid principal amount of Advances exceed the face amount of the Bond.

Section 2.5 Payment of Purchase Price of Bond; Requisition. The Authority irrevocably authorizes and directs the Purchaser to make Advances of the purchase price of the Bond to pay Costs of the Project, or to reimburse the Borrower for any Cost of the Project paid by it upon requisition by the Borrower. Pursuant to this Bond Agreement, the Purchaser shall make such Advances directly to or at the direction of the Borrower without any act by the Authority, upon compliance by the Borrower with the requirements of this Bond Agreement.

(a) The Borrower agrees as a condition precedent to an Advance to comply with the terms of this Bond Agreement and to furnish the Purchaser with a Requisition Form signed by an Authorized Borrower Representative stating with respect to each payment made: (i) the requisition number; (ii) the name and address of the Person to whom payment is to be made by the Purchaser or, if the payment is to be made to the Borrower for a reimbursable advance, the name, address and a copy of the invoice of the Person to whom such advance was made together with proof of payment by the Borrower; (iii) the amount to be paid; (iv) that each obligation for which payment is sought is a proper charge under the terms of this Bond Agreement, is unpaid or unreimbursed, and has not been the basis of any previously paid requisition; and (v) that no uncured Event of Default has occurred under this Bond Agreement.

(b) Upon the written request of the Authority, the Purchaser shall furnish the Authority with a record of the requisitions and Advances.

(c) As a further condition precedent to the Purchaser making any subsequent Advance, the Purchaser shall have received all fees owing in respect of the Loan.

(d) The Purchaser shall not be required to make an Advance more than once each calendar month

Section 2.6 Intentionally Omitted.

Section 2.7 Bond Mutilated, Destroyed, Stolen or Lost. In case the Bond shall become mutilated, or be destroyed, stolen or lost, the Authority shall, upon request of the registered owner, execute and thereupon the Authority shall deliver a new Bond of like tenor and of the same principal amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond upon surrender and cancellation of such mutilated Bond, or in lieu of and in substitution for the Bond destroyed, stolen or lost, on the condition that the Purchaser shall certify to the Authority that the registered owner has (a) filed with the Purchaser evidence satisfactory to the

Purchaser that such Bond has been destroyed, stolen or lost and proof of ownership thereof, (b) furnished the Purchaser and the Authority with indemnity satisfactory to the Purchaser and the Authority, (c) complied with such other reasonable regulations as the Purchaser may prescribe and (d) agreed to pay such fees and expenses as the Authority and the Purchaser may require in connection therewith.

Section 2.8 Paid Bond. The Purchaser shall notify the Authority promptly in writing upon the maturity or full prepayment of the Bond.

Section 2.9 Immunity of Authority. In the exercise of the powers of the Authority and its members, officers, employees or agents under this Bond Agreement or any other Loan Document and including without limitation the application of moneys, the investment of funds, if any, the assignment or other disposition of funds hereunder in the Event of Default by the Borrower, neither the Authority nor its members, officers, employees or agents shall be accountable to the Purchaser or the Borrower for any action taken or omitted by it or them in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred. The Authority and its members, officers, employees and agents shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it and they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

Section 2.10 Neither the Authority Nor the Purchaser Responsible for Insurance, Taxes, Acts of the Authority or Application of Moneys Applied in Accordance with this Bond Agreement. Neither the Authority nor the Purchaser shall be under any obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the Borrower, or to report, or make or file claims or proof of loss for, any loss or damage insured against or which may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made. Neither the Authority nor the Purchaser shall have responsibility in respect of the sufficiency of the security provided by this Bond Agreement. Neither the Authority nor the Purchaser shall be under any obligation to ensure that any duties herein imposed upon any party other than itself, or any covenants herein contained on the part of any party other than itself to be performed, shall be done or performed, and neither the Authority nor the Purchaser shall be under any liability for failure to see that any such duties or covenants are so done or performed.

Neither the Authority nor the Purchaser shall be liable or responsible because of the failure of the Authority or of any of its members, officers, employees, attorneys or agents to make any collections or deposits or because of the loss of any moneys arising through the insolvency or the act or default or omission of any other depository in which such moneys shall have been deposited under the provisions of this Bond Agreement. Neither the Authority nor the Purchaser shall be responsible for the application of any of the proceeds of the Bond or any other moneys deposited with it and paid out, withdrawn or transferred hereunder if such application, payment, withdrawal or transfer shall be made in accordance with the provisions of this Bond Agreement.

The immunities and exemptions from liability of the Authority and the Purchaser hereunder shall extend to their respective directors, members, attorneys, officers, employees and agents.

Section 2.11 The Authority and the Purchaser May Rely on Certificates. The Authority and the Purchaser shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith and in accordance with the terms of this Bond Agreement, upon any resolution, order, notice request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document that it shall in good faith believe to be genuine and to have been adopted or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Bond Agreement, or upon the written opinion of any attorney, engineer, accountant or other expert believed by it to be qualified in relation to the subject matter, and neither the Authority nor the Purchaser shall be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

Section 2.12 Security. This Bond Agreement and the Obligations constitute a general obligation of the Borrower, such payments to be made from any moneys of the Borrower legally available therefor. As security for such general obligation, the Borrower grants the Purchaser a pledge of and lien on the price of or payment for academic instruction at the Borrower (the "Tuition"). The Authority may issue additional bonds on behalf of the Borrower secured by a pledge of and lien on Tuition on a parity basis with the pledge of and lien on Tuition hereunder. Additionally, as a special accommodation to the Borrower by the Authority, the Borrower may secure additional indebtedness incurred by the Borrower by a pledge of and lien on Tuition on a parity basis with the pledge of and lien on Tuition hereunder upon receiving the written consent of the Authority (which consent shall not be unreasonably withheld). When considering the reasonableness of the Borrower's request to issue such parity debt that is not Authority debt, the Authority will evaluate the level of Tuition to ensure that it is adequate to cover annual debt service obligations of the Borrower on debt secured and proposed to be secured with the parity lien. To assist the Authority with its review, at the time the Borrower seeks consent of the Authority, the Borrower will deliver a certificate of the Borrower evidencing that the level of Tuition to *pro forma* debt service is adequate, taking into account all outstanding indebtedness secured on a parity basis with the pledge of and lien on Tuition hereunder and the proposed indebtedness to be incurred. In order to determine the adequacy of the level of Tuition to *pro forma* debt service, the Authority shall be entitled to rely conclusively on the certificate of a financial consultant reasonably acceptable to the Authority and the Borrower and in form and substance satisfactory to the Authority. The Tuition revenues shall be based on the most recent fiscal year preceding the date of delivery of the certificate for which audited financial statements of the Borrower are available. This Section 2.12 shall in no way be construed as a limitation in any manner on the Borrower's ability to incur additional indebtedness other than as it relates to providing information to support the Authority's consent for additional indebtedness to be issued on a parity basis with the pledge of and lien on Tuition hereunder.

## ARTICLE III

### The Loan

Section 3.1 The Loan. The Authority agrees, upon the terms and subject to the conditions hereinafter set forth, to make the Loan to the Borrower for the purposes set forth in the recitals hereinabove.

Section 3.2 Payment of Loan. The Loan shall be evidenced by the Note. The principal amount of the Bond shall equal the principal payments drawn under the Bond. The Loan to be repaid by the Borrower will be an amount equal to the principal or applicable redemption price of and interest on, the Bond. The Loan shall be repayable by, or on behalf of, the Borrower in installments which, as to amounts and due dates, correspond to the payments of the principal or applicable redemption price of, and interest on, and late fees, if any, provided by, the Bond. Without limiting the foregoing, the Borrower expressly acknowledges that the following terms of the Bond are applicable to the repayment of the Note:

(a) Each payment thereunder shall be applied first in payment of accrued and unpaid interest and the balance to the payment of unpaid principal. Subsequent to the occurrence of an Event of Default, the Purchaser may apply any payments it receives to principal, interest, fees or expenses as determined by the Purchaser in its sole discretion.

(b) The Bond is subject to redemption prior to maturity in whole or in part in the following manner: if the Note is prepaid, in whole or in part, or is accelerated in accordance with this Bond Agreement, then the Bond shall be redeemed in whole or in part or accelerated, and all payments of principal shall be applied to reduce the principal installments due pursuant to the Bond in inverse order of maturity.

(c) If any payment of principal or interest is not received by the Purchaser within fifteen (15) days of its due date, a late charge equal to the lesser of five percent (5%) of such overdue amount or \$100.00 (the "Late Charge") shall be payable hereunder. Such 15-day period shall not be construed in any way to extend the due date of any such payment. Upon maturity, whether by acceleration, demand or otherwise, and at the Purchaser's option upon the occurrence of any Event of Default and during the continuance thereof, amounts outstanding under the Bond shall bear interest at the Default Rate. The Default Rate shall continue to apply whether or not judgment shall be entered on the Bond. Both the Late Charge and the Default Rate are imposed as liquidated damages for the purpose of defraying the Purchaser's expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, the Purchaser's exercise of any rights and remedies hereunder, under the other Loan Documents or under applicable law, and any fees and expenses of any agents or attorneys which the Purchaser may employ. In addition, the Default Rate reflects the increased credit risk to the Purchaser of carrying a loan that is in default. The Borrower agrees that the Late Charge and Default Rate are reasonable forecasts of just compensation for anticipated and actual harm

incurred by the Purchaser, and that the actual harm incurred by the Purchaser cannot be estimated with certainty and without difficulty.

The Borrower hereby authorizes the Purchaser (but the Purchaser is not obligated ) to debit any Demand Deposit Account (the “Demand Deposit Account”), which shall be maintained by the Borrower with the Purchaser for so long as any obligations remain hereunder outstanding, on any date on which payment of interest, principal and/or any fees, expenses and/or charges are due under the Loan, in an amount equal to the amount of such payment. Inadequate funds in the Demand Deposit Account or the failure of the Purchaser to debit the Demand Deposit Account shall not relieve the Borrower from its obligation to pay said amounts due hereunder.

Section 3.3 Incorporation of Terms. The other Loan Documents shall be made subject to all the terms and conditions contained in this Bond Agreement to the same extent and effect as if this Bond Agreement were fully set forth in and made a part of the other Loan Documents. This Bond Agreement is made subject to all the conditions, stipulations, agreements and covenants contained in the other Loan Documents to the same extent and effect as if the other Loan Documents were fully set forth herein and made a part hereof. Notwithstanding any of the foregoing, if any provisions in the other Loan Documents are inconsistent with this Bond Agreement, the Loan Documents that provide the greatest protection to the Authority and the Purchaser shall control.

Section 3.4 No Defense or Set-Off. The obligations of the Borrower to make or cause to be made payment of the Loan shall be absolute and unconditional without defense or set-off by reason of any default by the Authority or the Purchaser under this Bond Agreement or under any other agreement between the Borrower and the Authority or the Purchaser or for any other reason, failure to complete the Project, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project Facility, commercial frustration of purpose, or failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Bond Agreement, it being the intention of the parties that the payments required of the Borrower hereunder will be paid in full when due without any delay or diminution whatsoever. Repayments of the Loan and additional sums required to be paid by or on behalf of the Borrower hereunder shall be received by the Authority or the Purchaser as net sums and the Borrower agrees to pay or cause to be paid all charges against or which might diminish such net sums.

Section 3.5 Assignment of Authority’s Rights. As security for the payment of the Bond the Authority has, simultaneously herewith, endorsed the Note to the order of the Purchaser and has assigned to the Purchaser all the Authority’s rights under this Bond Agreement (except the Reserved Rights, which are retained jointly with the Purchaser). The Authority retains the right, jointly and severally with the Purchaser, to specifically enforce the provisions contained in the Loan Documents. The Borrower consents to such assignment and agrees to make or cause to be made payment of the Loan under Section 3.2 directly to the Purchaser without defense or set-off by reason of any dispute between or among the Borrower, the Authority and/or the Purchaser, including, without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the

Project Facility, commercial frustration of purpose, failure of the Authority or Purchaser to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Bond Agreement or any of the other Loan Documents, or the Purchaser not performing its duties pursuant to the terms of this Bond Agreement. The Borrower agrees that the Purchaser may exercise all rights granted to the Authority hereunder, subject to the Reserved Rights.

Section 3.6 Opinion of Counsel for Borrower. As a condition precedent to the issuance of the Bond, the Authority and the Purchaser shall have received the opinion of counsel for the Borrower to the Authority and the Purchaser and satisfactory in form and substance to Bond Counsel and Counsel for the Purchaser:

(a) confirming certain representations and warranties of the Borrower set forth herein as reasonably requested by Bond Counsel and Counsel for the Purchaser; and

(b) to the effect that (i) the Loan Documents have been duly executed and delivered by the Borrower and constitute the legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, except to the extent that the enforceability of such documents may be limited by Bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and (ii) such other matters as Bond Counsel or Counsel for the Purchaser may reasonably require.

Section 3.7 Opinion of Bond Counsel. As a condition precedent to the issuance of the Bond, the Authority and the Purchaser shall have received the opinion of Bond Counsel to the effect that:

(a) interest income on the Bond or gain from the sale thereof is not includable as gross income under the State Gross Income Tax Act (P.L. 1976, Chapter 47);

(b) the offering or sale of the Bond is not required to be registered under the Securities Act of 1933, as amended, or under the rules and regulations promulgated thereunder; and

(c) the Bond has been duly authorized and issued under the provisions of the Resolution and the Act and constitutes a valid, binding special and limited obligation of the Authority and is enforceable in accordance with its terms.

Section 3.8 Opinion of Counsel for the Purchaser. As a condition precedent to the issuance of the Bond, the Authority shall have received an opinion of Counsel for the Purchaser, dated the date of the Loan, addressed to the Authority and reasonably satisfactory in form and substance to Bond Counsel that the Purchaser has duly executed and delivered this Bond Agreement, which is a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms.

Section 3.9 Loan and Other Documents.. As a condition precedent to the issuance of the Bond, the Authority and the Purchaser shall have received:



- (a) the Loan Documents duly executed by all parties thereto;
- (b) certificates, in form and substance acceptable to the Authority and the Purchaser evidencing the insurance required to be maintained by this Bond Agreement; and
- (c) all other documents required by the Authority and the Purchaser.

Any certificate signed by an Authorized Borrower Representative and delivered to the Authority and the Purchaser shall be deemed a representation or warranty by the Borrower to the Authority or the Purchaser, as the case may be, as to the statements made therein.

Section 3.10 Payments Adjusted for Non-Business Days. The Following Business Day Convention shall be used with respect to the Loan to adjust any relevant date if that date would otherwise fall on a day that is not a Business Day. For the purposes herein, the term Following Business Day Convention shall mean that an adjustment will be made if any relevant date would otherwise fall on a day that is not a Business Day so that the date will be the first following day that is a Business Day.

Section 3.11 Redemption of the Bond. The Bond is subject to redemption prior to maturity in whole or in part in the following manner: if the Note is prepaid, in whole or in part, or is accelerated in accordance herewith, then the Bond shall be redeemed in whole or in part or accelerated, and all payments of principal shall be applied to reduce the principal installments due pursuant to the Bond in inverse order of maturity. Any prepayment penalty or premium due on the Note pursuant hereto shall be deemed to be a redemption premium to be paid to the holder of the Bond.

## ARTICLE IV

### Covenants and Representations of Borrower

The Borrower covenants, represents and agrees, so long as this Bond Agreement shall remain in effect, provided that any representations are made as of the date hereof, as follows:

#### Section 4.1 Public Purpose Covenants and Representations of the Borrower.

(a) Inducement. The availability of financial assistance from the Authority as provided for herein has been an important inducement to the Borrower to undertake the Project and to locate the Project Facility in the State.

(b) No Untrue Statements. The Borrower covenants that the representations, statements and warranties of the Borrower set forth in this Bond Agreement or any other Loan Document (i) are true, correct and complete, (ii) do not contain any untrue statement of a material fact, and (iii) do not omit to state a material fact necessary to make the statements contained herein or therein not misleading or incomplete. The Borrower understands that all such statements, representations and warranties have been relied upon as an inducement by the Authority to issue the Bond and as an inducement to the Purchaser to purchase the Bond.

(c) Maintain Existence; Assets. The Borrower shall maintain its existence as a private institution of higher education under State law.

(d) Operate Project Facility. The Borrower shall operate or cause the Project Facility to be operated as an authorized educational facilities project for a purpose and use as provided for under the Act until the expiration or earlier termination of this Bond Agreement.

(e) Additional Information. Until payment of the Bond shall have occurred the Borrower shall promptly, from time to time, deliver to the Authority and the Purchaser such information and materials relating to the Project and the Borrower as the Authority and/or the Purchaser, as the case may be, may reasonably request.

(f) Prevailing Wage. In connection with the Project Facility, the Borrower hereby acknowledges that the provisions of N.J.S.A. 18A:72A-5.1 through 5.4 relating to payment of the prevailing wage rate determined by the Commissioner of Labor and Workforce Development pursuant to the Prevailing Wage Act (N.J.S.A. 34:11-56.25 *et seq.*) apply to the construction and rehabilitation undertaken in connection with the Authority's assistance in financing the Project Facility and covenants to comply with such provisions.

(g) Performance in United States. In accordance with L. 2005, c. 92, the Borrower covenants and agrees that all services performed under this Bond Agreement by the Borrower shall be performed within the United States of America.

Section 4.2 Insurance. (a) The Borrower shall maintain such insurance on its properties and assets, including, without limitation, the Project Facility, with responsible insurance companies, against such casualties and in such amounts as is from time to time reasonably required by the Purchaser, and at minimum a general commercial liability insurance providing coverage of at least \$1,000,000 with respect to bodily injury to any one person, \$1,000,000 with respect to bodily injury to two or more persons in any one accident and \$1,000,000 with respect to property damage resulting from any one occurrence. The insurance policies shall name the Authority and Purchaser as additional insureds. The property insurance policies, which may include coverage under a builder's risk policy during any period or periods of construction, shall be on a full replacement cost basis of the value of the Project Facility.

(b) If the Borrower fails to pay the premiums on any such insurance, the Purchaser and the Authority shall have the right (but shall be under no duty) to pay such premiums for the Borrower's account. The Borrower shall repay to the Purchaser or the Authority, as applicable, any sums that the Purchaser or the Authority shall have so paid, together with interest thereon at the Default Rate. Prior to expiration of any such policy, the Borrower shall furnish the Authority and the Purchaser with evidence satisfactory to the Authority and the Purchaser that the policy or certificates has been renewed or replaced in compliance with this Bond Agreement.

(c) The Borrower shall (i) deliver to the Purchaser, upon the request of the Purchaser, a detailed list of insurance then in effect, stating (1) the names of the insurance companies, (2) the amounts and rates of the insurance and (3) the dates of expiration thereof and the properties and risks covered thereby; (ii) within fifteen (15) days after notice from the Purchaser, obtain such additional insurance as the Purchaser may reasonably request; and (iii) provide to the Purchaser and the Authority copies of all insurance policies.

Section 4.3 Additional Affirmative Covenants. The Borrower agrees that from the date of execution of this Bond Agreement until all Obligations have been paid in full and any commitments of the Purchaser to the Borrower have been terminated, the Borrower will:

(a) Books and Records. Maintain books and records in accordance with GAAP and give representatives of the Purchaser access thereto at all reasonable times, and upon reasonable notice, including permission to examine, copy and make abstracts from any of such books and records and such other information as the Purchaser may from time to time reasonably request, and the Borrower will make available to the Purchaser for examination at all reasonable times and upon reasonable notice copies of any reports, statements and returns which the Borrower may make to or file with any federal, state or local governmental department, bureau or agency.

(b) Financial Reporting. Deliver or cause to be delivered to the Purchaser (i) the Financial Statements, reports and certifications, if any, set forth on the Addendum and (ii) such other information about Borrower's financial condition, properties and operations as and when reasonable requested by the Purchaser, from time to time.

(c) Payment of Taxes and Other Charges. Pay and discharge when due all indebtedness and all taxes, assessments, charges, levies and other liabilities imposed upon the Borrower, its income, profits, property or business, except those which currently are being contested in good faith by appropriate proceedings.

(d) Maintenance of Existence, Operation and Assets. Do all things necessary to (i) maintain, renew and keep in full force and effect its organizational existence and all rights, permits and franchises necessary to enable it to continue its business as currently conducted; (ii) continue in operation in substantially the same manner as at present; and (iii) keep its properties in good operating condition and repair.

(e) Compliance with Laws. Comply in all material respects with all laws applicable to the Borrower and to the operation of its business (including without limitation any statute, ordinance, rule or regulation relating to employment practices, pension benefits or environmental, occupational and health standards and controls), except where any such compliance may be contested in good faith.

(f) Rate Covenants. The Borrower covenants and agrees impose the Tuition, fees, rentals and other charges sufficient at all times to generate revenues that, together with other legally available funds of the Borrower, will be sufficient to pay the cost of operating and maintaining its facilities and to pay all amounts required under the Loan Documents and any other outstanding indebtedness of the Borrower.

(g) Additional Reports. Provide prompt written notice to the Purchaser of the occurrence of any of the following (together with a description of the action which the Borrower proposes to take with respect thereto): (i) any Event of Default; (ii) any litigation filed by or against the Borrower which, if adversely determined, would result in a material adverse change in the business, assets, operations, condition (financial or otherwise) or results of operation of the Borrower; (iii) any event which would result in a material adverse change in the business, assets, operations, condition (financial or otherwise) or results of operation of the Borrower or the Project Facility or (iv) a change in the composition of its current executive management at the level of President or Chief Financial Officer.

(h) Certification of Beneficial Owners and Other Additional Information. Provide: (i) such information and documentation as may reasonably be requested by the Purchaser from time to time for purposes of compliance by the Purchaser with applicable laws (including without limitation the USA PATRIOT Act and other “know your customer” and anti-money laundering rules and regulations), and any policy or procedure implemented by the Purchaser to comply therewith; and (ii) if the Borrower is or was required to deliver a Certification of Beneficial Owners to the Purchaser, (a) confirmation of the accuracy of the information set forth in the most recent Certification of Beneficial Owners provided to the Purchaser, as and when requested by the Purchaser; and (b) a new Certification of Beneficial Owners in form and substance acceptable to the Purchaser when the

individual(s) identified as a controlling party and/or a direct or indirect individual owner on the most recent Certification of Beneficial Owners provided to the Purchaser have changed.

(i) Uniform Commercial Code. If revisions to Article 9 of the Uniform Commercial Code are enacted by the State Legislature or by any other jurisdiction whose laws govern the perfection and enforceability of any security for the Loan, the Borrower covenants and agrees to cooperate with the Purchaser in taking all steps necessary to perfect and maintain the priority and enforceability of the security for the Loan.

Section 4.4 Additional Negative Covenants. The Borrower covenants and agrees that from the date of this Bond Agreement until all the Bonds have been paid in full and any commitments of the Purchaser to the Borrower have been terminated, except as set forth in the Addendum, the Borrower will not, without the Purchaser's prior written consent:

(a) Liens and Encumbrances. Except as provided in Sections 1.3(g) and 4.4(e), create, assume, incur or permit to exist any mortgage, pledge, encumbrance, security interest, Lien or charge of any kind on the Negative Pledge Property, except Permitted Encumbrances.

(b) Merger or Transfer of Assets. Liquidate or dissolve, or merge or consolidate with or into any person, firm, corporation or other entity, or sell, lease, transfer or otherwise dispose of all or a substantial part of its property, assets, operations or business, whether now owned or hereafter acquired.

(c) Change in Business, Management or Ownership. Make or permit any change in (i) its form of organization, including a division into two or more entities; or (ii) the nature of its business as carried on as of the date hereof.

(d) Acquisitions. Make acquisitions of all or substantially all of the property or assets of any person, firm, corporation or other entity that results in a material adverse change in the business, assets, operations, condition (financial or otherwise) or results of operation of the financial condition of the Borrower.

(e) Negative Pledge. Pledge or create or suffer to be created or exist upon that portion of its real property constituting (i) the Gateway Academic Center, (ii) the Wesley J. Howe Center, (iii) the Lawrence T. Babbio, Jr. Center for Business and Technology Management and (iv) the Student Housing and University Center, any additional Liens that secure any indebtedness for money borrowed by the Borrower in an aggregate amount greater than \$10,000,000, unless there is provision made, in each instance, to secure the Loan equally and ratably with such indebtedness by such Lien.

For purposes of this Section 4.4, "Lien" shall mean any mortgage of, security interest in or pledge of property.

Section 4.5 Concerning the Project Facility. The Borrower shall operate or cause the Project Facility to be operated as an authorized educational facility for a purpose and use as provided for under the Act until the expiration or earlier termination of this Bond Agreement. The Project is of a character included within the definition of “project” in the Act.

Section 4.6 Increased Costs. On written demand, together with written evidence of the justification therefor, the Borrower agrees to pay the Purchaser all direct costs incurred, any losses suffered or payments made by the Purchaser as a result of any Change in Law imposing any reserve, deposit, allocation of capital or similar requirement (including without limitation, Regulation D of the Board of Governors of the Federal Reserve System) on the Purchaser, its holding company or any of their respective assets relative to the Loan. “Change in Law” means the occurrence, after the date hereof, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty; (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any governmental authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Purchaser for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued. The rights of the Purchaser to demand increased costs or compensation pursuant to this Section 4.6 shall be subject to the Purchaser taking similar action against similarly situated obligors in comparable transactions.

Section 4.7 Filing of Other Documents. The parties hereto shall execute, at the request of the Borrower, and the Borrower shall file, and hereby authorizes the Purchaser (at the Borrower’s expense) to prepare, execute, if necessary, and file financing statements, continuation statements, notices and such other documents necessary to perfect all security interests created pursuant to the terms of this Bond Agreement and the other Loan Documents and to preserve and protect the rights of the Purchaser in the granting by the Authority of certain rights of the Authority, pursuant to this Bond Agreement and the Authority shall have no responsibilities for such filings whatsoever, other than executing the documents requested by the Borrower.

Section 4.8 Indemnification. (a) The Borrower agrees to and does hereby indemnify and hold harmless the Indemnified Parties against any and all losses, claims, damages or liabilities (including all costs, expenses and reasonable counsel fees incurred in investigating or defending such claim) suffered by any of the Indemnified Parties and caused by, relating to, arising out of, resulting from, or in any way connected with (i) the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing or sale of the Project Facility or any part thereof; or (ii) any untrue statement of a material fact contained in information provided by the Borrower with respect to the transactions contemplated hereby; or (iii) any omission of a material fact necessary to be stated therein in order to make such statement not misleading or incomplete; or (iv)

the acceptance or administration by the Authority or the Purchaser of their respective duties under this Bond Agreement; or (v) the Loan and/or the Bond transaction. In case any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Borrower, such Indemnified Party shall promptly notify the Borrower in writing, and except where the Borrower is the claimant the Borrower shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party, the payment of all costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the Borrower's expense in any such action and to participate in the defense thereof if, in the opinion of the Indemnified Party, a conflict of interest could arise out of the representation of the parties by the same counsel. The Borrower shall not be liable for any settlement of any such action effected without Borrower's consent, but if settled with the consent of the Borrower, or if there is a final judgment for the claimant on any such action, the Borrower agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(b) The Borrower agrees that it is responsible for any Break Funding Indemnification, as defined in the Bond.

(c) Notwithstanding anything in this Bond Agreement to the contrary which may limit recourse to the Borrower or may otherwise purport to limit the Borrower's liability, the provisions of this Section shall control the Borrower's obligations and shall survive repayment of the Bond.

(d) Notwithstanding the foregoing, the Borrower shall not be obligated to indemnify an Indemnified Party for losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of such Indemnified Party.

Section 4.9 Brokerage Fee. The Authority shall not be liable to any person for any brokerage fee, finder's fee, or loan servicing fee in connection with the Loan and the Borrower shall hold the Authority harmless from any such fees or claims. The Authority represents that it has not incurred an obligation to pay any such fee.

Section 4.10 Costs and Expenses. All expenses in connection with the preparation, execution, delivery, recording and filing of this Bond Agreement and other Loan Documents and in connection with the preparation, issuance and delivery of the Bond, including, but not limited to, the Initial Fee and any other Authority fees, the fees and expenses of Bond Counsel, the fees and expenses of the Purchaser and the fees and expenses of Counsel for the Purchaser shall be paid directly by the Borrower. The Borrower shall also pay throughout the term of the Bond the Annual Administrative Fee and the Authority's expenses, if any, and the Purchaser's annual and special fees and expenses, if any, under this Bond Agreement and the Note including, but not limited to, reasonable attorneys' fees and all costs of issuing, marketing, collecting payment on and redeeming the Bond hereunder and thereunder, and any costs and expenses of the Purchaser in connection with any approval, consent or waiver under, or modification of, any such document. The Borrower shall pay on demand all reasonable expenses of the Purchaser in connection with the preparation,

administration, default, collection, waiver or amendment of any Loan Document terms, or in connection with the Purchaser's exercise, preservation or enforcement of any of its rights, remedies or options hereunder or any other Loan Document, including, without limitation, fees of outside legal counsel or accounting, consulting, brokerage or other similar professional fees or expenses, and any fees or expenses associated with travel or other costs relating to any appraisals or examinations (including field examinations) conducted in connection with the Loan or the Project, and the amount of all such expenses shall, until paid, bear interest at the rate applicable to principal hereunder (including the Default Rate).

Section 4.11 Notice and Certification with Respect to Bankruptcy Proceedings. The Borrower shall promptly notify the Purchaser and the Authority in writing of the occurrence of any of the following events and shall keep the Purchaser and the Authority informed of the status of any petition in Bankruptcy filed (or Bankruptcy or similar proceeding otherwise commenced) against the Borrower: (i) application by the Borrower for or consent by it to, the appointment of a receiver, trustee, liquidator or custodian or the like of such party or of its property, or (ii) the fact that it is generally not paying its debts as they become due, or (iii) general assignment by the Borrower for the benefit of creditors, or (iv) adjudication of the Borrower, as insolvent or the entry of an order for relief under the United States Bankruptcy Code, or (v) commencement by the Borrower of a voluntary case under the United States Bankruptcy Code or filing by it of a voluntary petition or answer seeking its reorganization, an arrangement with creditors of the Borrower, an order for relief or seeking to take advantage of any insolvency law or filing by the Borrower of an answer admitting the material allegations of an insolvency proceeding, or action by the Borrower for the purpose of effecting any of the foregoing, or (vi) if without the application, approval or consent of the Borrower, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to Bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of such party an order for relief or an adjudication in Bankruptcy, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower or of all or any substantial part of its respective assets, or other relief in respect thereof under any Bankruptcy or insolvency law.

Section 4.12 Intentionally Omitted.

Section 4.13 Notice of Default. The Borrower further agrees to notify the Authority and the Purchaser as soon as possible, but in any event within five (5) days after the occurrence of any Event of Default as specified in this Bond Agreement, which notice shall also specify the Event of Default and set forth in detail what action the Borrower proposes to take with respect thereto.

Section 4.14 Use of Proceeds. No portion of the proceeds of the Loan shall be used, in whole or in part, for the purpose of purchasing or carrying any "margin stock," as such term is defined in Regulation U of the Board of Governors of the Federal Reserve System.

Section 4.15 Consent to Authority's Use of Photographs and Videos. The Borrower agrees that, upon reasonable notice and coordination with the Borrower, the Authority may use photographs



or videos taken on the Borrower's campus (whether taken by the Authority or other person) in the Authority's newsletters, reports or other publications or materials (including PowerPoint presentations) in connection with the Authority's operations.

Section 4.16 Anti-Money Laundering/International Trade Law Compliance. The Borrower represents and warrants, as of the date of this Bond Agreement, the date of each Advance, the date of any renewal, extension or modification of the Loan, and at all times until the Loan has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (b) the proceeds of the Loan will not be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (c) the funds used to repay the Loan are not derived from any unlawful activity; and (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any Anti-Terrorism Laws. Borrower covenants and agrees that it shall immediately notify the Purchaser in writing upon the occurrence of a Reportable Compliance Event.

As used herein: "Anti-Terrorism Laws" means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; "Compliance Authority" means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; "Covered Entity" means the Borrower, its affiliates and subsidiaries, all guarantors, pledgors of collateral, all owners of the foregoing, and all brokers or other agents of the Borrower acting in any capacity in connection with the Loan; "Reportable Compliance Event" means that any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; "Sanctioned Country" means a country subject to a sanctions program maintained by any Compliance Authority; and "Sanctioned Person" means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

## ARTICLE V

### Events of Default and Remedies.

Section 5.1 Events of Default. The occurrence of any of the following events will be deemed to be an “Event of Default” under this Bond Agreement: (a) the nonpayment of any principal, interest or other indebtedness under the Note when due; (b) the Borrower shall default in the performance of the covenants and agreements described in Sections 4.3(f) and 4.3(g) of this Bond Agreement and such default continues for a period of thirty (30) days; (c) the occurrence of any event of default under or contained in any Loan Document or any other document now or in the future evidencing or securing any debt of the Borrower to the Purchaser that is secured by a parity lien on Tuition; (d) the filing by or against the Borrower of any proceeding in Bankruptcy, receivership, insolvency, reorganization, liquidation, conservatorship or similar proceeding (and, in the case of any such proceeding instituted against the Borrower, such proceeding is not dismissed or stayed within thirty (30) days of the commencement thereof, provided that the Purchaser shall not be obligated to advance additional funds hereunder during such period); (e) any assignment by the Borrower for the benefit of creditors, or any levy, garnishment, attachment or similar proceeding is instituted against any property of the Borrower held by or deposited with the Purchaser; (f) the commencement of any foreclosure or forfeiture proceeding, execution or attachment against any collateral securing the obligations of the Borrower to the Purchaser; (g) the entry of a final judgment against the Borrower in excess of \$[250,000] and the failure of the Borrower to discharge the judgment within thirty (30) days of the entry thereof; (h) {Intentionally Omitted}; (i) the Borrower ceases doing business as a going concern; (j) any representation or warranty made by the Borrower to the Purchaser in any Loan Document, is false, erroneous or misleading in any material respect when made; (k) the Borrower claims in writing that this Bond Agreement or any of the other Loan Documents is not valid or binding on it; (l) the Borrower repudiates its obligations under this Bond Agreement or any of the other Loan Documents; (m) any Financial Statement, representation, warranty or certificate made or furnished by the Borrower to the Purchaser in connection with this Bond Agreement shall be false, incorrect or incomplete in any material respect when made; or (n) the reduction in the long-term rating of the Borrower’s outstanding public bond indebtedness below an investment grade (i.e., below Baa3 by Moody’s or below BBB- by Fitch, or, if applicable, below BBB- by Standard & Poor’s.

Section 5.2 Purchaser’s Remedies. Upon the occurrence of an Event of Default described in subsections (b), (c) and (n) of Section 5.1 (collectively, a “Pricing Default”): (a) the Purchaser shall be under no further obligation to make Advances, and (b) the Bond will bear interest at the Default Rate from the date of the occurrence of such Pricing Default.

Upon the occurrence of an Event of Default described in subsections (a) and (d) through (m) of Section 5.1: (i) the Purchaser shall be under no further obligation to make Advances; (ii) if an Event of Default specified in clause (d) or (e) above shall occur, the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder shall be immediately due and payable without demand or notice of any kind; (iii) if any Event of Default

specified in subsections (a) and (d) through (m) shall occur, the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder, at the Purchaser's option and without demand or notice of any kind, may be accelerated and become immediately due and payable; (iv) at the Purchaser's option, the Bond will bear interest at the Default Rate from the date of the occurrence of the Event of Default; and (v) the Purchaser may exercise from time to time any of the rights and remedies available under the Loan Documents or under applicable law.

The Authority agrees that the Purchaser, subject to the provisions of this Bond Agreement reserving the Reserved Rights to the Authority and respecting actions by the Purchaser in its name or where necessary to validly assert its rights, as assignee of the Authority, (but not in the name of the Authority) may enforce all rights of the Authority and all obligations of the Borrower under and pursuant to this Bond Agreement whether or not the Authority is in default hereunder.

Section 5.3 Additional Remedies. In addition to the above remedies, if the Borrower commits a breach, or threatens to commit a breach of this Bond Agreement or of any other Loan Document, the Authority and the Purchaser shall have the right and remedy, without posting bond or other security, to have the provisions of this Bond Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Authority and that money damages will not provide an adequate remedy therefor.

Notwithstanding anything in this Bond Agreement or in any of the other Loan Documents to the contrary, the Purchaser shall not have the right to waive an Event of Default under any of the Loan Documents that arises out of a violation of a Reserved Right without the prior written consent of the Authority, which it shall give in its sole and complete discretion. Notwithstanding anything herein or in any other Loan Document to the contrary, nothing herein shall affect the Authority's unconditional right to specifically enforce its Reserved Rights.

Section 5.4 No Remedy Exclusive. No remedy herein conferred or reserved to the Authority or the Purchaser is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Bond Agreement or now or hereafter existing under any other agreements at law or in equity or by statute. No delay or omission to exercise any right or power occurring 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. In order to entitle the Authority or the Purchaser to exercise any remedy reserved to either of them in this Article, it shall not be necessary to give notice, other than such notice as may be required in this Article.

Section 5.5 Agreement to Pay Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Bond Agreement and either the Authority or the Purchaser shall require and employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Borrower herein contained, the Borrower agrees that it will on demand

therefor pay to the Authority and the Purchaser the reasonable fees of such attorneys and such other expenses so incurred by the Authority or the Purchaser or both whether or not suit be brought.

In the event of a judgment on the Note, the Borrower agrees to pay to the holder of the Note on demand all costs and expenses incurred by the holder in satisfying such judgment, including without limitation, reasonable fees and expenses of the holder's counsel; it being expressly understood that such agreement by the Borrower to pay all post-judgment costs and expenses of the holder is absolute and unconditional and (a) shall survive (and not merge into) the entry of a judgment for amounts owing hereunder and (b) shall not be limited regardless of whether the Note is secured or unsecured, and regardless of whether the holder exercises any available rights or remedies against any collateral pledged as security for the Note.

Section 5.6 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Bond Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 5.7 Payment of Loan on Event of Default; Suit Therefor.

(a) The Borrower covenants that, in case it shall fail to pay or cause to be paid any sum payable by or on behalf of the Borrower under Section 3.2 as and when the same shall become due and payable whether at maturity or by acceleration or otherwise, then, the Borrower will pay to the Purchaser the whole amount of the Loan that then shall have become due and payable under this Bond Agreement; and, in addition thereto, such further amount as shall be sufficient to cover the reasonable costs and expenses of collection, including reasonable compensation to the Purchaser, its agents and counsel, and any reasonable expenses or liabilities incurred by the Authority or the Purchaser. In case the Borrower shall fail forthwith to pay such amounts upon such demand, the Purchaser shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable.

(b) In case there shall be pending proceedings for the Bankruptcy or for the reorganization of the Borrower under the federal Bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the benefit of the creditors or the property of the Borrower, the Purchaser and the Authority, as applicable, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of the Loan, including interest owing and unpaid in respect thereof, and any other amount owed by the Borrower hereunder, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Purchaser or the Authority allowed in such judicial proceedings relative to the Borrower, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims,

and to distribute the same after the deduction of its charges and expenses. Any receiver, assignee or trustee in Bankruptcy or reorganization is hereby authorized to make such payments to the Authority or the Purchaser, and to pay to the Authority or the Purchaser any amount due it for reasonable compensation and expenses, including counsel fees incurred by it up to the date of such distribution.

## ARTICLE VI

### Miscellaneous

Section 6.1 Limitation of Liability of Authority. In the event of any default by the Authority hereunder, the liability of the Authority to the Borrower shall be enforceable only out of its interest in the Project and under this Bond Agreement and there shall be no other recourse for damages by the Borrower against the Authority, its officers, members, agents, counsel and employees, or any of the property now or hereafter owned by it or them.

Section 6.2 Notices. Notice hereunder shall be effective upon receipt and shall be given by personal service or by certified or registered mail, return receipt requested, to:

The Authority -

New Jersey Educational Facilities Authority  
103 College Road East  
Princeton, New Jersey 08540  
Attention: Executive Director

with a copy to:

McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue  
2<sup>nd</sup> Floor  
Roseland, New Jersey 07068  
Attention: John V. Cavaliere, Esq.

The Borrower -

Stevens Institute of Technology  
5 Marine View Plaza  
Hoboken, New Jersey 07030  
Attention: Louis J. Mayer, Chief Financial Officer

With a copy to:

Stevens Institute of Technology  
One Castle Point on Hudson, 13<sup>th</sup> Floor  
Hoboken, New Jersey 07030  
Attention: Kathy L. Schulz, General Counsel

The Purchaser -

PNC Bank, National Association  
1600 Market Street, 21<sup>st</sup> Floor  
Philadelphia, Pennsylvania 19103  
Attention: Stephanie Gianakos

with a copy to:

Ballard Spahr LLP  
210 Lake Drive East, Suite 200  
Cherry Hill, NJ 08002-1163  
Attention: Holly V. Horsley, Esq.

Section 6.3 Severability. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable, it shall be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof, all of which shall be liberally construed in order to effect the provisions of this Bond Agreement.

Section 6.4 Applicable Law. This Bond Agreement shall be deemed to be a contract made in the State and governed by State law (without regard to the State's conflicts of laws principles).

**THE BORROWER AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS BOND AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN THE COURTS OF THE STATE LOCATED IN THE COUNTY OF MERCER AND CONSENTS TO THE JURISDICTION OF SUCH COURT OR SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON THE BORROWER BY MAIL AT THE ADDRESS SET FORTH HEREIN. THE BORROWER HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT FORUM.**

Section 6.5 Assignment. Except as otherwise permitted herein, the Borrower shall not assign this Bond Agreement or any interest of the Borrower herein, either in whole or in part, without the prior written consent of the Purchaser and the Authority, which consent may be withheld in either party's sole and absolute discretion. This Bond Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns, and the terms "Authority," "Borrower," and "Purchaser" shall, where the context requires, include the respective permitted successors and assigns of such persons.

Section 6.6 Amendments. This Bond Agreement may not be amended except by an instrument in writing signed by the Borrower, the Purchaser, and the Authority.

Section 6.7 Term of Agreement. This Bond Agreement and the respective obligations of the parties hereto shall be in full force and effect from the date hereof until (a) the principal or redemption price of, and all interest on, the Bond shall have been paid and (b) payment in full of the fees, charges and expenses of the Purchaser and the Authority in accordance herewith. Notwithstanding the foregoing, the indemnification provisions of Section 4.8 hereof shall survive the termination of this Bond Agreement.

Section 6.8 No Warranty of Condition or Suitability by Authority. The Authority makes no warranty, either express or implied, as to the condition of the Project Facility or any part thereof or that they will be suitable for the Borrower's purposes or needs. The Borrower acknowledges and agrees that the Authority is not a dealer in property of such kind, and that the Authority has not made, and does not hereby make, any representation or warranty or covenant with respect to the merchantability, fitness for a particular purpose, condition or suitability of the Project Facility in any respect or in connection with or for the purposes and uses of the Borrower or its tenants.

Section 6.9 Right of Set-Off. In addition to all liens upon and rights of set-off against the Borrower's money, securities or other property given to the Purchaser by law, the Purchaser shall have, with respect to the Borrower's obligations to the Purchaser under this Bond Agreement and the other Loan Documents and to the extent permitted by law, a contractual possessory security interest in and a contractual right of set-off against, and the Borrower hereby grants the Purchaser a security interest in, and hereby assigns, conveys, delivers, pledges and transfers to the Purchaser, all of the Borrower's right, title and interest in and to, all of the Borrower's deposits, moneys, securities and other property now or hereafter in the possession of or on deposit with, or in transit to, the Purchaser or any other direct or indirect subsidiary of The PNC Financial Services Group, Inc., whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, and trust accounts. Every such security interest and right of set-off may be exercised without demand upon or notice to the Borrower. Every such right of set-off shall be deemed to have been exercised immediately upon the occurrence of an Event of Default not constituting a Pricing Default hereunder without any action of the Purchaser, although the Purchaser may enter such set-off on its books and records at a later time.

Section 6.10 Headings. The captions or headings in this Bond Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any provision hereof.

Section 6.11 Further Assurances and Corrective Instruments. The Authority and the Borrower hereby agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further acts, instruments, conveyances, transfers and assurances, as the Purchaser reasonably deems necessary or advisable for the implementation,



correction, confirmation or perfection of this Bond Agreement and any rights of the Authority hereunder.

Section 6.12 Jury Trial Waiver. THE BORROWER, THE AUTHORITY, AND THE PURCHASER MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS BOND AGREEMENT OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF THE AUTHORITY OR THE PURCHASER RELATING TO THE ADMINISTRATION OF THE LOAN OR ENFORCEMENT OF THE LOAN DOCUMENTS, AND AGREE THAT THE PARTIES WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, THE BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE BORROWER CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE AUTHORITY OR THE PURCHASER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE AUTHORITY OR THE PURCHASER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR THE PURCHASER TO ACCEPT THE BOND AND THE NOTE AND FOR THE AUTHORITY TO MAKE THE LOAN.

Section 6.13 Intentionally Omitted.

Section 6.14 Right to Sell Bond to Third Party. Subject to the provisions of Section 1.5(b) hereof, the Purchaser shall have the right at any time or from time to time, and, subject to the succeeding sentence, without the Borrower's consent, and with the prior written notice to the Borrower, to assign all or any portion of its rights and obligations hereunder to one or more Purchasers or other financial institutions (each, an "Assignee"), and the Borrower agrees that it shall execute, or cause to be executed, such documents, including without limitation amendments to this Bond Agreement and to any other documents, instruments, and agreements executed in connection herewith as the Purchaser shall deem necessary to effect the foregoing. The Borrower's consent to the foregoing shall be required until the amounts under the Bond have been fully drawn down. In addition, at the request of the Purchaser and any such Assignee, the Borrower shall issue one or more new promissory notes, as applicable, to any such Assignee and, if the Purchaser has retained any of its rights and obligations hereunder following such assignment, then to the Purchaser, which new promissory notes shall be issued in replacement of, but not in discharge of, the liability evidenced by the Note and shall reflect the amount of the respective commitments and loans held by such Assignee and the Purchaser after giving effect to such assignment. Upon the execution and delivery of

appropriate assignment documentation, amendments and any other documentation required by the Purchaser in connection with such assignment, and the payment by Assignee of the purchase price agreed to by the Purchaser and such Assignee, such Assignee shall be a party to the Loan Documents and shall have all of the rights and obligations of the Purchaser thereunder (and under any and all other guaranties, documents, instruments, and agreements executed in connection therewith) to the extent that such rights and obligations have been assigned by the Purchaser pursuant to the assignment documentation between the Purchaser and such Assignee, and the Purchaser shall be released from its obligations hereunder and thereunder to a corresponding extent. The Purchaser may furnish any information concerning the Borrower in its possession from time to time to prospective Assignees, provided that the Purchaser shall require any such prospective Assignees to agree in writing to maintain the confidentiality of such information. All costs and expenses of any nature incurred by the Borrower or otherwise in connection any transfer or assignment pursuant to the terms of this Section 6.14, including, but not limited to the fees and expenses of Counsel for the Borrower, shall be paid directly by the Purchaser.

Section 6.15 Right to Sell a Portion of the Bond to a Prospective Participant. The Purchaser shall have the unrestricted right at any time and from time to time, and without the consent of or notice to the Borrower to grant to one or more Purchasers or other financial institutions (each, a “Participant”) participating interests in the Bond. In the event of any such grant by the Purchaser of a participating interest to a Participant, whether or not upon notice to the Borrower, the Purchaser shall remain responsible for the performance of its obligations hereunder and the Borrower shall continue to deal solely and directly with the Purchaser in connection with the Purchaser’s rights and obligations hereunder. The Purchaser may furnish any information concerning the Borrower in its possession from time to time to prospective Participants, provided that the Purchaser shall require any such prospective Participant to agree in writing to maintain the confidentiality of such information.

Section 6.16 Integration Clause; Survival of Representations, Warranties and Modifications. This Bond Agreement and the other Loan Documents are intended by the parties as the final, complete, and exclusive statement of the transactions evidenced by this Bond Agreement and the other Loan Documents. All prior or contemporaneous promises, agreements, and understandings, whether oral or written, are deemed to be superseded by this Bond Agreement and the other Loan Documents, and no party is relying on any promise, agreement or understanding not set forth in this Bond Agreement and the other Loan Documents. All warranties, representations and covenants imposed or made herein, or in the other Loan Documents shall survive the execution and delivery of this Bond Agreement and the other Loan Documents. No delay or omission of the Purchaser or the Authority in exercising or enforcing any of the Purchaser’s and the Authority’s rights and remedies hereunder shall constitute a waiver thereof; nor shall any single or partial exercise by the Purchaser or the Authority of any right hereunder preclude any other or further exercise thereof or the exercise of any other right; and no waiver by the Purchaser or the Authority of any default or Event of Default shall operate as a waiver of any other default or Event of Default. No term or provision of this Bond Agreement, or any other Loan Document shall be waived, altered or modified except with the prior written consent of the Purchaser (and the Authority with respect to rights hereunder that have been specifically reserved by the Authority), which consent makes explicit reference hereto or thereto.

Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Purchaser, the Authority and any Borrower at any time (whether before, during or after the effective date or terms of this Bond Agreement), shall be construed in any particular as a waiver, modification or limitation of any of the Purchaser's and the Authority's rights and remedies under this Bond Agreement, or the other Loan Documents nor shall anything in this Bond Agreement, or in the other Loan Documents be construed as a waiver, modification or limitation of any of the Purchaser's and the Authority's rights and remedies, not only under the provisions of this Bond Agreement or the other Loan Documents but also of any such other agreement or transaction.

Section 6.17 Usury Limitation. If, at any time, the rate of interest, together with all amounts that constitute interest and that are reserved, charged or taken by the Purchaser or the Authority as compensation for fees, services or expenses incidental to the making, negotiating or collection of the Loan, shall be deemed by any competent court of law, governmental agency or tribunal to exceed the maximum rate of interest permitted to be charged under the Note under applicable law, then, during such time as such rate of interest would be deemed excessive, that portion of each sum paid attributable to that portion of such interest rate that exceeds the maximum rate of interest so permitted shall be deemed a voluntary prepayment of principal. As used herein, the term "applicable law" shall mean the law in effect as of the date hereof; provided, however, that in the event there is a change in the law which results in a higher permissible rate of interest, then this Bond Agreement shall be governed by such new law as of its effective date.

Section 6.18. Counterparts; Electronic Signatures and Records. This Bond Agreement and any other Loan Document may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Notwithstanding any other provision herein, the Borrower agrees that this Bond Agreement, the other Loan Documents, any amendments thereto, and any other information, notice, signature card, agreement or authorization related thereto (each, a "Communication") may, at the Purchaser's option, be in the form of an electronic record. Any Communication may, at the Purchaser's option, be signed or executed using electronic signatures. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Purchaser of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format) for transmission, delivery and/or retention.

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Bond Agreement to be executed and delivered as of the date first written above.

ATTEST

NEW JERSEY EDUCATIONAL  
FACILITIES AUTHORITY

\_\_\_\_\_  
Steven Nelson  
Assistant Secretary

By: \_\_\_\_\_  
Eric D. Brophy, Esq.  
Executive Director

THE TRUSTEES OF THE STEVENS  
INSTITUTE OF TECHNOLOGY

By: \_\_\_\_\_  
Louis J. Mayer, Ed.D.  
Vice President for Finance  
And Treasurer

PNC BANK, NATIONAL ASSOCIATION,  
as Purchaser

By: \_\_\_\_\_  
Stephanie Gianakos  
Senior Vice President

## ADDENDUM

**ADDENDUM** to that certain Bond Agreement dated [CLOSING DATE] by and among New Jersey Educational Facilities Authority, PNC Bank, National Association and The Trustees of the Stevens Institute of Technology. Capitalized terms used in this Addendum and not otherwise defined shall have the meanings given them in the Bond Agreement. Section numbers below refer to the sections of the Bond Agreement.

**3.6 Title to Assets.** Describe additional liens and encumbrances below:

- a. All collateral and security documents entered into in connection with the 2017 Series A Bonds

[CONFIRM THERE IS NOTHING ELSE]

**3.9 Employee Benefit Matters.**

[TO COME]

**3.10 Environmental Matters.** Describe pending or threatened litigation or proceeding arising under, relating to or in connection with any Environmental Law below:

NONE

**4.2 Financial Reporting Requirements.**

1. **Borrower's Financial Reporting.**

(a) **Interim Financial Statements.** Within sixty (60) days after the end of the second fiscal quarter and ninety (90) days after the end of the fourth fiscal quarter, the Borrower's unaudited, internally prepared Financial Statements for such period, in reasonable detail, certified by an authorized officer of the Borrower and prepared on a consolidated and consolidating basis in accordance with GAAP, consistently applied from period to period.

(b) **Annual Financial Statements.** Within one hundred eighty (180) days after the end of each fiscal year, the Borrower's annual Financial Statements. The Financial Statements will be prepared on a consolidated and consolidating basis in accordance with GAAP by an independent certified public accountant selected by the Borrower and satisfactory to the Purchaser. Audited Financial Statements shall contain the unqualified opinion of an independent certified public

accountant and all accountant examinations shall have been made in accordance with GAAP consistently applied from period to period.

(c) **Tuition and Enrollment Statistics.** Annually, on or before the date of submission of the annual Financial Statements delivered pursuant to the paragraph (b) above, the Borrower's tuition and enrollment statistics for each of the prior two academic semesters, in form and substance satisfactory to the Purchaser.

(d) **Budget Report.** Within thirty (30) days after the adoption by the Borrower, the Borrower's capital expenditure budget for such year, in form and substance satisfactory to the Purchaser.

(e) **Annual Compliance Certificate.** Simultaneously with the delivery of the Financial Statements referred to in subsection 1(b) above, a certification from the Borrower's Chief Financial Officer or other authorized representative of the Borrower acceptable to the Purchaser as to whether an Event of Default has occurred under the Loan Documents.

(f) **Other Information.** Borrower shall provide such other reports and such other information as may be reasonably requested by the Purchaser, as soon as practicable.



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# Request for Proposals: Taxable Direct Purchase

## The Trustees of the Stevens Institute of Technology

January 10, 2020

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**STEVENS**  
INSTITUTE of TECHNOLOGY

INTEGRITY. INNOVATION. INSIGHT.



Two Tower Center Blvd  
East Brunswick, NJ 08816

### Primary Contacts

**Jeffrey T. Hutchinson**  
PNC – Public Finance  
SVP & Managing Director  
215-585-1115  
jeffrey.hutchinson@pnc.com

**Grace Anselmo**  
PNC – Public Finance  
AVP & Relationship Manager  
215-585-1074  
grace.anselmo@pnc.com

**Stephanie Gianakos**  
PNC Bank, N.A.  
SVP & Credit Products Specialist  
215-585-1161  
stephanie.gianakos@pnc.com

**Catherine Doane**  
PNC Bank, N.A.  
Credit Products Underwriter  
215-585-3817  
catherine.doane@pnc.com

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**COVER LETTER**

January 10, 2020

Louis Mayer  
Chief Financial Officer  
Stevens Institute of Technology

Elizabeth Shelton  
AVP for Investments and Treasury Operations  
Stevens Institute of Technology

Dear Mr. Mayer and Ms. Shelton:

On behalf of PNC Bank, N.A. ("PNC Bank"), and our parent, The PNC Financial Services Group, Inc. ("PNC"), we are pleased to present the following financing opportunity for the consideration of The Trustees of the Stevens Institute of Technology ("Stevens"). PNC Bank is proposing to provide Stevens with up to \$27,000,000 in credit commitments, in the form of a taxable direct purchase credit facility, described herein as the "Credit Facility". The proceeds of the Credit Facility will be used to fund a portion of the University's new Student Housing/University Center Project, (the "Project"). The combination of our extensive higher education sector underwriting experience, technical expertise, longstanding service provider to Stevens, and local presence differentiates PNC and makes us a desirable candidate to serve as a banking partner. In addition to the attached Preliminary Summary of Terms and Conditions ("Preliminary Term Sheet"), we highlight the following key strengths:

**RELATIONSHIP WITH STEVENS** PNC and Stevens have shared a long tenured partnership inclusive of treasury and cash management solutions, deposits and short term investments, credit products, and philanthropic synergies. PNC highly values the depth of our collaboration with Stevens and looks forward to many more years of working together.

**FLEXIBLE CREDIT STRUCTURING** Our proposal provides for structuring alternatives to a vanilla fixed rate loan that Stevens may find helpful. First, to provide for prepayment flexibility, which may prove valuable as a result of higher than anticipated fundraising, acceleration of trusts bequeathed to Stevens, or favorable interest rate markets to refinance, PNC has priced a **par call option** that allows for the early redemption of the Note on or after **July 1, 2025**. Additionally, to resist against negative arbitrage of the Construction Fund, PNC offers an option that allows for the drawdown of Note proceeds over the initial 24-months, indexed to LIBOR, but inclusive of a set fixed rate conversion 24-months from the Closing Date.

**AGGRESSIVE PRICING LEVELS** PNC Bank has proposed spread levels comparable to those that could be achieved through a taxable issuance in the capital markets, with greater flexibility and focus on the capital structuring goals of Stevens, of which we have become intimately familiar through our existing relationship.

This letter and the Preliminary Term Sheet merely constitute a statement of suggested terms for the Credit Facility, do not contain all matters upon which agreement must be reached in order for the transactions contemplated hereby to be consummated and, therefore, do not constitute a binding commitment or offer to lend with respect to these transactions. A binding commitment with respect to the Credit Facility will result only from execution and delivery by all of the parties of a commitment letter or a definitive agreement relating to the Credit Facility, and will be subject to the conditions contained therein. We may terminate discussions regarding the proposed Credit Facility at any time.

We truly value our relationship with Stevens and appreciate the partnership we have established. Accordingly, we are pleased to have this opportunity to share our qualifications and proposal.

We would welcome an opportunity to meet with you to review our proposal and answer any questions you may have.

Sincerely,



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**Grace Anselmo**  
Assistant Vice President  
PNC Bank – Public Finance Group

CC: Brian Hayes, The Yuba Group, LLC

**Preliminary Summary of Terms and Conditions  
January 10, 2020  
TAXABLE DIRECT PURCHASE**

This Preliminary Term Sheet is not a commitment or an offer to lend and does not create any obligation on the part of the Bank or any affiliate thereof to extend any commitment to the Issuer unless and until a formal commitment letter is issued and has been executed, delivered and accepted. This outline is only a brief description of the principal terms of suggested facilities and is intended for discussion purposes only.

This Preliminary Term Sheet is delivered to you on the understanding that any of the terms of substance hereunder shall not be disclosed, directly or indirectly, to any other person except your officers, agents and advisors who are directly involved in the consideration of this matter unless required to do so by applicable law or prior written consent has been given by the Bank.

**I. PARTIES**

**BORROWER:** The Trustees of the Stevens Institute of Technology ("Borrower" or the "University").

**BANK:** PNC Bank, National Association ("PNC" or the "Bank").

**II. FACILITY, SECURITY AND FINANCING DOCUMENTS**

**FACILITY:** Taxable Direct Purchase Facility (the "Credit Facility").

**PURPOSE:** The proceeds of the Credit Facility shall be used to fund a portion of the University's new Student Housing/University Center Project, (the "Project").

**FACILITY SIZE:** Up to \$27,000,000.

**COMMITMENT TERM:** 11.5 years from closing.

**AMORTIZATION:** Fully amortizing over the Commitment Term, to align with the schedule provided in the RFP.

**DRAWDOWN**

**PERIOD OPTION:** At the option of the Borrower, the Par Amount of the Credit Facility may be drawn down during the Drawdown Period. The Drawdown Period is the period from the Closing Date to and including the second anniversary thereof (the "Drawdown End Date"). On the close of business on the Drawdown End Date, the Bank's obligation to fund under the Credit Facility shall terminate. Standard Break Funding Indemnification as mutually agreed by the parties shall apply to undrawn proceeds.

**SECURITY:** The Credit Facility will be secured by a general obligation of the University, payable from all legally available funds as well as a lien on tuition which is on parity with the lien on tuition securing the University's Series 2017A Bonds. Included is a negative pledge on certain campus real estate.

**FINANCING**

**DOCUMENTATION:** The Credit Facility will be provided by the Bank in accordance with and subject to the provisions of a Bond Agreement (the "Bond Agreement") between the Bank and the Borrower including mutually agreed upon conditions precedent to closing, representations and warranties, indemnities, covenants, events of default and remedies. The Bond Agreement and Note are herein collectively referred to as the "Financing Documents."

**III. INTEREST RATES AND OTHER KEY PROVISIONS**

The Borrower has the option to elect one of the following structures:

- **Option 1:** Variable Rate Drawdown Option converted to a Fixed Rate after 24-months
- **Option 2:** Fully Funded Traditional Fixed Rate

**VARIABLE DRAWDOWN WITH A FIXED RATE**

**CONVERSION:** If the Borrower chooses the Drawdown Option, the Credit Facility shall bear interest at a per annum rate of interest equal to:

<b>Par Call Option Feature</b>	<b>Index</b>	<b>Spread</b>
None	Daily LIBOR	100 bps
On or after July 1, 2025	Daily LIBOR	118.5 bps

Upon completion of the Drawdown Period, the Credit Facility shall convert to a fixed rate (the "Initial Fixed Rate") as determined on the Closing Date (or such earlier date on which the Borrower and the Bank enter into a fixed rate lock agreement, such date referred to herein as the "Fixed Rate Determination Date").

Please note that the Initial Fixed Rate set forth below are indicative rates as of August 12, 2019 and will adjust based upon movements in the market.

<b>Par Call Option Feature</b>	<b>Index</b>	<b>All-In Fixed Rate</b>
None	Bank's Cost of Funds*	2.407%
On or after July 1, 2025	Bank's Cost of Funds*	2.592%

\*Bank's Cost of Funds is closely approximated to the interpolated LIBOR Swap Curve.

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**FULLY FUNDED AT  
CLOSE OPTION  
FIXED RATE:**

The Credit Facility shall initially bear interest at a fixed rate (the "Initial Fixed Rate") as determined on the closing date (or such earlier date on which the Borrower and the Bank enter into a fixed rate lock agreement, such date referred to herein as the "Fixed Rate Determination Date").

Please note that the Initial Fixed Rate set forth below are indicative rates as of August 12, 2019 and will adjust based upon movements in the market and are based off of Bank's cost of funds, which is approximated to the LIBOR swap curve. The actual Fixed Rate will be determined on the Fixed Rate Determination Date.

<b>Par Call Option Feature</b>	<b>Index</b>	<b>All-In Fixed Rate</b>
None	Bank's Cost of Funds	2.407%
On or after July 1, 2025	Bank's Cost of Funds	2.592%

The Credit Facility shall bear interest at the above interest rates above so long as no Event of Default has occurred.

**COMPUTATION  
BASIS:**

Computations of the Variable Interest Rate shall be calculated on a 30/360 basis and actual days elapsed.

**INTEREST RATE  
PROTECTION:**

The Borrower may, at its option, enter into and maintain an interest rate protection agreement (the "Hedge Agreement") which conforms to ISDA standards and has terms and is with a counterparty satisfactory to the Bank, as shall result in effectively enabling the Borrower to protect itself against fluctuations in interest rates with respect to all or any tranche of the principal amount of the Credit Facility. In the case where the Bank is the counterparty to the Hedge Agreement, all obligations of the Borrower to the Bank arising pursuant thereto shall be secured by the Security as defined above. In the case where the Bank is not the counterparty, such Hedge Agreement shall be unsecured. Any Hedge Agreement will be cross defaulted with the Credit Facility.

Fixing the debt with an interest rate hedge may present many advantages when compared to traditional fixed rate loans. Swaps allow the Borrower to fix a portion of the debt, while leaving the remaining debt variable. A swap may be terminated at any time prior to maturity, where the Borrower pays or receives a termination payment depending on the prevailing market rates at termination. The interest rate hedge may be terminated or amended while leaving the underlying debt in place.

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**DEFAULT RATE:** PNC Base Rate plus 3.0%.

The PNC Base Rate equals the greatest of (i) the PNC Prime Rate; (ii) the Federal Funds Open Rate plus 0.5%; (iii) the Daily LIBOR Rate plus 1.00%; and (iv) 7%.

#### **IV. OTHER FEES AND EXPENSES**

**COSTS/EXPENSES:** All expenses incurred by the Bank, including recording of UCC filings and other security interests, if applicable, and audit and reasonable legal fees (inside and outside), and any other expenses in reference to structuring, documenting, closing (as limited by the cap in Section VI), or enforcing the Financing Documents, if applicable, shall be for the account of the Borrower and payable at closing and otherwise on demand.

#### **V. INCREASED COSTS AND CAPITAL ADEQUACY; TAXES**

The Borrower shall pay the Bank under customary yield protection provisions such additional amounts as will compensate the Bank and its holding company in the event that either of them are or become subject to legal, capital or reserve requirements (including without limitation those arising under the Dodd-Frank Wall Street Reform and Consumer Protection Act or Basel III, or any rules, guidelines or directives issued at any time in connection therewith) or taxes (except for taxes on overall net income) which in any case increase the cost or reduce the yield to the Bank or its holding company.

#### **VI. DOCUMENTATION**

Documentation will include the Bond Agreement prepared by Bond Counsel. The Bond Agreement will include, but not be limited to, the terms and conditions outlined herein as well as provisions that are customary and standard with respect to conditions precedent, representations and warranties, indemnities, covenants, events of default and remedies. The Bank intends to utilize Ballard Spahr LLP. Legal fees are capped at \$40,000.

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## **VII. FINANCIAL/NEGATIVE COVENANTS AND FINANCIAL REPORTING**

### **FINANCIAL/NEGATIVE**

**COVENANTS:** Affirmative and negative covenants, including financial covenants, will be specified by the Bank for inclusion in the Bond Documents. Covenants are expected to include but may not be limited to (a) limitation on sale of all or substantially all assets; (b) limitation on additional liens and leases with regard to the negative pledge on property; (c) prohibition on change in business; (d) prohibition on change of control; and (e) limitations on mergers and acquisitions.

### **FINANCIAL REPORTING:**

The Bond Agreement may include, among others, the following reporting requirements:

1. Annual audited GAAP-based consolidated and consolidating financial statements of the Borrower due within 180 days of fiscal year-end.
2. Semi-Annual unaudited financial statements of the Borrower in a form comparable to (1) stated above due within 60 days of each quarter end, except 90 days for the 4<sup>th</sup> quarter.
3. Annual Compliance Certificate within 180 days of year end;
4. Annual Tuition and Enrollment Statistics;
5. Such other financial information as reasonably requested by the Bank.

## **VIII. CONDITIONS PRECEDENT TO CLOSING**

The Bond Agreement shall include conditions precedent customary for transactions of this nature, including but not limited to drafting of Financing Documentation.

## **IX. EVENTS OF DEFAULT**

The Bond Agreement shall include events of default customary for transactions of this nature, in each case with appropriate thresholds to be agreed, including, without limitation: payment default, covenant defaults, breach of representations, cross defaults to senior debt secured by parity lien on tuition, invalidity or repudiation of any Financing Document or any material provision thereof, judgment default, bankruptcy or insolvency, and downgrade of the Borrower's public debt rating below BBB-/Baa3.

## **X. CHOICE OF LAW / JURY TRIAL**

**GOVERNING LAW:** The Bond Agreement, and any other documents to which the Bank shall become a party will be governed by the laws of the State of New Jersey; provided that the obligations of the Borrower will be governed by the laws of the state of the jurisdiction of the Borrower.

**JURY TRIAL:** To the extent permitted by law, the parties to the Bond Agreement agree to waive a jury trial in any proceeding including the Bank.



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## **XI. OTHER PROVISIONS**

**PREPAYMENT**            The Borrower can prepay the Credit Facility at any time without penalty, subject to the payment of the Bank's make whole fee.

**ASSIGNMENTS:**        While the Bank is providing the Credit Facility for its own account without a present intent to transfer them, the Bank reserves the right in its sole discretion to assign, sell, pledge or participate interests in the Credit Facility without the consent of the Borrower, subject to mutual agreement to limitations.

**ADDITIONAL TERMS:** The terms and conditions contained in this proposal are not intended to be comprehensive. The definitive Financing Documents may include additional terms and conditions required by the Bank, subject to mutual agreement of the parties, which are not included herein.

**NO ADVISORY OR FIDUCIARY ROLE:**    The Borrower acknowledges and agrees that: (i) the Bank has not assumed any advisory or fiduciary responsibility to the Borrower with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Bank or any of its affiliates has provided other services or is currently providing other services to the Borrower on other matters); (ii) the only obligations the Bank has to the Borrower with respect to the transaction contemplated hereby are expressly set forth in this term sheet; and (iii) the Borrower has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

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**AGREEMENT BY THE BORROWER:**

The Borrower hereby desires to engage the Bank in the origination of the Credit Facility pursuant to the terms and conditions stated herein.

Recognizing that this Term Sheet is non-binding on the Bank until a commitment is issued, please evidence your interest in proceeding on the foregoing terms and conditions by signing and returning a copy of the document to the Bank on or prior to January 30, 2020 at which point the Bank will continue with due diligence and credit underwriting for the foregoing transaction.

ACCEPTED AND AGREED TO:

THE TRUSTEES OF THE STEVENS INSTITUTE OF  
TECHNOLOGY

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

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

## STANDARD DISCLOSURE

PNC, PNC Bank, ACHIEVEMENT, PINACLE, Working Cash, ActivePay, Global Trade Excellence, Vested Interest, Midland Loan Services, Enterprise1, CMBS Investor Insight, Portfolio Investor Insight, Borrower Insight, Shared Servicing, PNC Riverarch Capital, and PNC Erievue Capital are registered marks of The PNC Financial Services Group, Inc. ("PNC"). PNC Retirement Solutions is a service mark of PNC.

Bank deposit, treasury management and lending products and services, and investment and wealth management and fiduciary services, are provided by PNC Bank, National Association ("PNC Bank"), a wholly-owned subsidiary of PNC and Member FDIC. Certain fiduciary and agency services are provided by PNC Delaware Trust Company. Foreign exchange and derivative products (including commodity derivatives) are obligations of PNC Bank. Equipment financing and leasing products are provided by PNC Equipment Finance, LLC, a wholly-owned subsidiary of PNC Bank. Energy financing is provided by PNC Energy Capital LLC, a wholly-owned subsidiary of PNC Equipment Finance, LLC. Aircraft financing is provided by PNC Aviation Finance, a division of PNC Equipment Finance, LLC. Asset-based lending is provided by PNC Business Credit, a division of PNC Bank and PNC Financial Services UK Ltd. (an indirect wholly-owned subsidiary of PNC Bank) in the United Kingdom. Specialty finance products are provided by Steel City Capital Funding, a division of PNC Bank. Merchant services are provided by PNC Merchant Services Company. Direct equity investing and mezzanine financing are conducted by PNC Capital Finance, LLC through its PNC Riverarch Capital, PNC Mezzanine Capital and PNC Erievue Capital divisions. Investment banking and capital markets activities are conducted by PNC through its subsidiaries PNC Bank, PNC Capital Markets LLC, Harris Williams LLC, Harris Williams & Co Ltd. and Solebury Capital LLC. Services such as public finance investment banking services, securities underwriting, and securities sales and trading are provided by PNC Capital Markets LLC. Merger and acquisition advisory and related services are provided by Harris Williams LLC and Harris Williams & Co. Ltd. Equity capital markets advisory and related services are provided by Solebury Capital LLC. PNC Capital Markets LLC, Harris Williams LLC and Solebury Capital LLC are registered broker-dealers and members of FINRA and SIPC, and Harris Williams & Co. Ltd is authorized and regulated by Financial Services Authority (FRN No. 540892). Harris Williams & Co is the trade name under which Harris Williams LLC and Harris Williams & Co. Ltd. conduct business. Retail brokerage services and managed account advisory services are offered by PNC Investments LLC, a registered broker-dealer and a registered investment adviser and member of FINRA and SIPC. Annuities and other insurance products are offered through PNC Insurance Services, LLC. PNC Bank is not registered as a municipal advisor under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act"). Investment management and related products and services provided to a "municipal entity" or "obligated person" regarding "proceeds of municipal securities" (as such terms are defined in the Act) will be provided by PNC Capital Advisors, LLC, a wholly-owned subsidiary of PNC Bank. PNC Bank and certain of its affiliates including PNC TC, LLC, an SEC registered investment advisor wholly-owned by PNC Bank, do business as PNC Real Estate. PNC Real Estate provides commercial real estate financing and related services. Through its Tax Credit Capital segment, PNC Real Estate provides lending services, equity investments and equity investment services relating to low income housing tax credit ("LIHTC") and preservation investments. PNC TC, LLC provides investment advisory services to funds sponsored by PNC Real Estate for LIHTC and preservation investments. Registration with the SEC does not imply a certain level of skill or training. This material does not constitute an offer to sell or a solicitation of an offer to buy any investment product. Risks of each fund are described in the funds' private placement memorandum or other offering documents.

**Important Investor Information: Securities and insurance products are:  
Not FDIC Insured • Not Bank Guaranteed • Not A Deposit  
Not Insured By Any Federal Government Agency • May Lose Value**

In Canada, PNC Bank Canada Branch, the Canadian branch of PNC Bank, provides bank deposit, treasury management, lending (including asset-based lending through its Business Credit division) and leasing and lending products and services (through its Equipment Finance division). Deposits with PNC Bank Canada Branch are not insured by the Canada Deposit Insurance Corporation. Deposits with PNC Bank Canada Branch are not insured by the Federal Deposit Insurance Corporation, nor are they guaranteed by the United States Government or any agency thereof. In the event of the failure of PNC Bank, deposits with PNC Bank Canada Branch would be treated as unsecured general liabilities, and creditors would be considered general creditors of PNC Bank.

Lending and leasing products and services, as well as certain other banking products and services, require credit approval.

PNC does not provide legal, tax or accounting advice unless, with respect to tax advice, PNC Bank has entered into a written tax services agreement. PNC does not provide investment advice to PNC Retirement Solutions and Vested Interest plan sponsors or participants.

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This proposal was prepared for general information purposes only and is not intended as legal, tax or accounting advice or as recommendations to engage in any specific transaction, including with respect to any securities of PNC, and do not purport to be comprehensive. Under no circumstances should any information contained in this proposal be used or considered as an offer or commitment, or a solicitation of an offer or commitment, to participate in any particular transaction or strategy. Any reliance upon any such information is solely and exclusively at your own risk. Please consult your own counsel, accountant or other advisor regarding your specific situation. Neither PNC Bank nor any other subsidiary of The PNC Financial Services Group, Inc. will be responsible for any consequences of reliance upon any opinion or statement contained here, or any omission. Results vary by organization and we cannot guarantee a particular level of results for your organization.

PNC is a registered mark of The PNC Financial Services Group, Inc. ("PNC").



**THE STATE OF NEW JERSEY IS NOT OBLIGATED TO PAY, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW JERSEY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE, IF ANY, OF OR THE INTEREST ON THIS BOND. THIS BOND IS NOT A DEBT OR LIABILITY OF THE STATE OF NEW JERSEY OR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE AUTHORITY. THIS BOND IS A SPECIAL AND LIMITED OBLIGATION OF THE AUTHORITY, PAYABLE SOLELY OUT OF THE REVENUES OR OTHER RECEIPTS, FUNDS OR MONEYS OF THE AUTHORITY PLEDGED UNDER THE BOND AGREEMENT FOR THE PAYMENT OF THIS BOND. THIS BOND DOES NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE AUTHORITY. THE AUTHORITY HAS NO TAXING POWER.**

**NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
REVENUE BOND  
STEVENS INSTITUTE OF TECHNOLOGY ISSUE,  
2020 SERIES B (FEDERALLY TAXABLE)**

**DATED DATE:**  
[CLOSING DATE]

**MATURITY DATE:**  
July 1, 2031

**INTEREST RATE:**  
(As described below)

**NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY** (herein called the “Authority”), a public body corporate and politic constituting an instrumentality of the State of New Jersey (the “State”), acknowledges itself indebted and for value received hereby promises to pay, or cause to be paid, in any coin or currency of the United States of America that at the time of payment is legal tender for the payment of public and private debts, to **PNC BANK, NATIONAL ASSOCIATION** (the “Purchaser”) the principal sum of up to [\_\_\_\_\_] and 00/100 DOLLARS (\$[BOND AMOUNT].00) as follows:

The principal amount outstanding hereunder shall be equal to the principal payments of the purchase price of this Bond as described in Section 2.4 of the Bond Agreement dated the Dated Date (the “Bond Agreement”) by and among the Authority, the Purchaser and The Trustees of the Stevens Institute of Technology (the “Borrower”) that have not been repaid.

Interest Rate.

(a) Prior to the Conversion Date, principal amounts outstanding under this Bond will bear interest at a rate per annum (the “Floating Rate”) which is at all times equal to sum of (A) the Daily LIBOR Rate (as defined below) plus (B) [\_\_\_\_\_] basis points ([\_\_\_\_\_]%).

(b) From and after the Conversion Date, principal amounts outstanding under this Bond will bear interest for the remaining term of this Bond at a rate per annum (“Fixed Rate”) that is at all times equal to [\_\_\_\_\_]%.

Payments.

(a) Prior to the Conversion Date, interest only shall be due and payable on January 1 and July 1 of each year, commencing on July 1, 2020, and continuing on each January 1 and July 1 thereafter until the Conversion Date, when all accrued interest shall be due and payable.

(b) Commencing on the January 1 or July 1 following the Conversion Date, and continuing on each January 1 and July 1 thereafter, installments of interest and principal in the amounts set forth in Schedule A hereto, each of which shall be due and payable until the Maturity Date (as defined below), at which time a final installment shall be payable in an amount equal to the remaining outstanding principal balance and accrued interest hereunder.

Certain Definitions. Capitalized terms used in this Bond and not otherwise defined herein, unless the context clearly requires otherwise, shall have the same meanings as set forth in the Bond Agreement. In addition, the following terms shall have the meanings specified below:

“Alternate Rate” shall mean the Base Rate.

“Base Rate” shall mean the highest of (A) the Prime Rate, and (B) the sum of the Overnight Bank Funding Rate plus 50 basis points (0.50%), and (C) the sum of the Daily LIBOR Rate plus 100 basis points (1.00%), so long as a Daily LIBOR Rate is offered, ascertainable and not unlawful. If and when the Base Rate (or any component thereof) changes, the rate of interest with respect to any amounts hereunder to which the Base Rate applies will change automatically without notice to the Borrower, effective on the date of any such change.

“Business Day” shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial banks are authorized or required by law to be closed for business in Pittsburgh, Pennsylvania.

“Conversion Date” shall mean the earlier to occur of (a) February [\_\_\_], 2022, or such later date as may be designated by the Purchaser by written notice from the Purchaser to the Borrower, or (b) the date when the Purchaser receives written notice from the Borrower (which notice shall be irrevocable) informing the Purchaser that the Borrower does not intend to request further Advances and acknowledging that the Purchaser shall have no obligation to make further payments of the purchase price of this Bond in order to fund such Advances.

“Daily LIBOR Rate” shall mean, for any day, the rate per annum determined by the Purchaser by dividing (A) the Published Rate by (B) a number equal to 1.00 minus the percentage prescribed by the Federal Reserve for determining the maximum reserve requirements with respect to any eurocurrency fundings by banks on such day; provided, however, if the Daily LIBOR Rate determined as provided above would be less than zero, then such rate shall be deemed to be zero. The rate of interest will be adjusted automatically as of each Business Day based on changes in the Daily LIBOR Rate without notice to the Borrower.

“Default Rate” shall mean the Base Rate plus 3%.

“Maximum Rate” shall mean the maximum rate of interest allowed by applicable law.

“Overnight Bank Funding Rate” shall mean, for any day, the rate comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York (“NYFRB”), as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by the NYFRB (or by such other recognized electronic source (such as Bloomberg) selected by the Purchaser for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Purchaser at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to the Borrower.

“Prime Rate” shall mean the rate publicly announced by the Purchaser from time to time as its prime rate. The Prime Rate is determined from time to time by the Purchaser as a means of pricing some loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index, and does not necessarily reflect the lowest rate of interest actually charged by the Purchaser to any particular class or category of customers.

“Published Rate” shall mean the rate of interest published each Business Day in the Wall Street Journal “Money Rates” listing under the caption “London Interbank Offered Rates” for a one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the eurodollar rate for a one month period as published in another publication selected by the Purchaser).

Interest Calculation; Maximum Rate. Interest will be calculated based on the actual number of days that principal is outstanding over a year of three hundred sixty (360) days. In no event will the rate of interest hereunder exceed the Maximum Rate. Regardless of any other provision of this Bond or the other Loan Documents, if for any reason the effective interest rate should exceed the Maximum Rate, the effective interest rate shall be deemed reduced to, and shall be, the Maximum Rate, and (i) the amount which would be excessive interest shall be deemed applied to the reduction of the principal balance of this Bond and not to the payment of interest, and (ii) if this Bond has been or is thereby paid in full, the excess shall be returned to the party paying same, such application to the principal balance of this Bond or the refunding of such excess to be a complete settlement and acquittance thereof.

Alternate LIBOR Rate Provisions. If the applicable interest rate is based on the Daily LIBOR Rate and the Purchaser determines (which determination shall be final and conclusive) that, by reason of circumstances affecting the eurodollar market generally, deposits in dollars (in the applicable amounts) are not being offered to banks in the eurodollar market for the selected term, or adequate means do not exist for ascertaining the Daily LIBOR Rate, then the Purchaser shall give notice thereof to the Borrower. Thereafter, until the Purchaser notifies the Borrower that the

circumstances giving rise to such suspension no longer exist, the interest rate for all amounts outstanding under this Bond shall be equal to the Alternate Rate.

In addition, if the applicable interest rate is based on the Daily LIBOR Rate and, after the date of this Bond, the Purchaser shall determine (which determination shall be final and conclusive) that any enactment, promulgation or adoption of or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by a governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Purchaser with any guideline, request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for the Purchaser to make or maintain or fund loans based on the Daily LIBOR Rate, the Purchaser shall notify the Borrower. Thereafter, until the Purchaser notifies the Borrower that the circumstances giving rise to such determination no longer apply, the interest rate on all amounts outstanding under this Bond shall be the Alternate Rate.

Other Payment Terms. If any payment under this Bond shall become due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing interest in connection with such payment. In the Bond Agreement, the Borrower has authorized the Purchaser to charge the Demand Deposit Account for any payment when due under this Bond or any other Loan Document. Payments received will be applied to charges, fees and expenses (including attorneys' fees), accrued interest and principal in any order the Purchaser may choose, in its sole discretion. Any amortization schedule provided to Borrower is only an estimate, and is superseded by the terms of this Bond regarding the accrual and payment of interest.

Late Payments; Default Rate. If any payment of principal, interest or other amount coming due pursuant to the provisions of this Bond is not made within fifteen (15) calendar days of the date due and payable, a late charge equal to the lesser of 5% of the amount of such payment or \$100.00 (the "Late Charge") shall be due and payable to the Purchaser. Such fifteen (15) day period shall not be construed in any way to extend the due date of any such payment. Upon maturity, whether by acceleration, demand or otherwise, and at the Purchaser's option upon the occurrence of any Event of Default and during the continuance thereof, amounts outstanding under this Bond shall bear interest at the Default Rate. The Default Rate shall continue to apply whether or not judgment shall be entered on this Bond. Both the Late Charge and the Default Rate are imposed as liquidated damages for the purpose of defraying the Purchaser's expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, the Purchaser's exercise of any rights and remedies hereunder, under the other Loan Documents or under applicable law, and any fees and expenses of any agents or attorneys which the Purchaser may employ. In addition, the Default Rate reflects the increased credit risk to the Purchaser of holding a bond that is in default. The Authority agrees that the Late Charge and Default Rate are reasonable forecasts of just compensation for anticipated and actual harm incurred by the Purchaser, and that the actual harm incurred by the Purchaser cannot be estimated with certainty and without difficulty.

Redemption. The Authority shall have the right (which right may be exercised by the Borrower) to redeem any amounts outstanding hereunder at any time and from time to time, in whole or in part. This Bond is also subject to redemption prior to maturity in whole or in part in the following



manner: if the Note is prepaid, in whole or in part, or is accelerated in accordance with the Bond Agreement, then this Bond shall be redeemed in whole or in part or accelerated. All redemptions hereunder are subject to payment of any break funding indemnification amounts owing pursuant to the paragraph entitled "Break Funding Indemnification" below.

Any partial redemption hereunder shall be accompanied by the payment of all accrued and unpaid interest on this Bond and all other fees, expenses and other sums due and owing, if any, and be applied in inverse order of maturity and shall be applied first to fees, costs, expenses or charges under the Bond Documents, then to the payment of accrued interest and the balance to principal hereunder.

[Break Funding Indemnification. The Borrower shall indemnify the Purchaser against any liabilities, losses or expenses (including, without limitation, loss of margin, any loss or expense sustained or incurred in liquidating or employing deposits from third parties, and any loss or expense incurred in connection with funds acquired to effect, fund or maintain any advance (or any part thereof) bearing interest at a fixed rate) which the Purchaser sustains or incurs as a consequence of either (i) the failure to make a payment on the due date thereof, (ii) the Borrower's revocation (expressly, by later inconsistent notices or otherwise) in whole or in part of any notice given to Purchaser to request, convert, renew or prepay any advance bearing interest at a fixed rate, or (iii) the payment or prepayment (whether voluntary, after acceleration of the maturity of this Bond or otherwise) or conversion of any Advance bearing interest at a fixed rate on a day other than the regularly scheduled due date therefor. A notice as to any amounts payable pursuant to this paragraph given to the Borrower by the Purchaser shall, in the absence of manifest error, be conclusive and shall be payable upon demand. Such payment shall be due ten (10) Business Days after the Purchaser gives notice to the Borrower of the amount thereof, setting forth in reasonable detail the basis for the calculation thereof. The Borrower's indemnification obligations hereunder shall survive the payment in full of the advances and all other amounts payable hereunder.]

All sums due hereunder shall be paid solely from the revenues or other moneys derived from the Loan (as defined in the hereinafter defined Bond Agreement) made with respect to the Project hereinafter referred to or any other revenues pledged therefor under the Bond Agreement. This Bond, as to principal, interest and premium, if any, when due, will be payable by debit to the Demand Deposit Account as provided in the Bond Agreement, or if applicable, at the offices of the Purchaser at 1600 Market Street, 21<sup>st</sup> Floor, Philadelphia, Pennsylvania 19103.

This Bond is the duly authorized bond designated as the New Jersey Educational Facilities Authority Revenue Bond, Stevens Institute of Technology Issue, 2020 Series B (Federally Taxable) issued in the principal amount of up to \$[BOND AMOUNT] (this "Bond"). This Bond has been issued under and by virtue of the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes, as amended and supplemented) (the "Act"), and by virtue of a resolution adopted by the Authority on January 28, 2020 (the "Resolution"). This Bond is secured under the Bond Agreement and the other Loan Documents, for the purpose of financing the Project.

THIS BOND IS BEING ISSUED AS A DRAW-DOWN BOND, IN THAT THE PURCHASER WILL PURCHASE THE PRINCIPAL AMOUNT OF THIS BOND IN

INSTALLMENTS, AT PAR, IN ACCORDANCE WITH THE TERMS OF AND AS REQUIRED BY SECTION 2.4 OF THE BOND AGREEMENT. ACCORDINGLY, THE PRINCIPAL AMOUNT OF THIS BOND WHICH HAS BEEN PURCHASED BY PURCHASER AND IS OUTSTANDING AT ANY GIVEN TIME MAY BE LESS THAN THAT MAXIMUM PRINCIPAL AMOUNT OF THIS BOND AS SET FORTH ON THE FACE OF THE THIS BOND. UPON EACH PURCHASE OF A PORTION OF THE PRINCIPAL AMOUNT OF THIS BOND IN ACCORDANCE WITH THE TERMS OF SECTION 2.4 OF THE BOND AGREEMENT, THE PURCHASER WILL NOTE ON A PRINCIPAL LOG IN THE SAME FORM AS SCHEDULE B HERETO THE PRINCIPAL AMOUNT OF THIS BOND SO PURCHASED, THE DATE OF SUCH PURCHASE AND THE TOTAL PRINCIPAL AMOUNT OF THIS BOND THEN OUTSTANDING. THE RECORDS MAINTAINED BY THE PURCHASER IN SUCH REGARD WILL BE CONCLUSIVE EVIDENCE OF THE PRINCIPAL AMOUNT OF THIS BOND WHICH HAS BEEN PURCHASED AND IS OUTSTANDING ABSENT MANIFEST ERROR.

Reference is hereby made to the Resolution and the Bond Agreement, copies of which are on file at the office of the Authority for a description of the provisions, among others, with respect to the terms upon which this Bond is issued, the nature and extent of the security for this Bond, the rights, duties and obligations of the Authority, the Borrower and the Purchaser, and the modification or amendment of the Bond Agreement and the Resolution, to all of which the holder of this Bond hereto assents by acceptance of this Bond.

This Bond is a special and limited obligation of the Authority payable from the revenues derived by the Authority from the Borrower under the Bond Agreement, and neither the State nor any political subdivision thereof, other than the Authority, shall be obligated to pay the principal of or interest on this Bond except from the revenues pledged therefor under the Bond Agreement, and neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or interest on this Bond. The Authority has no taxing power.

No recourse shall be had for the payment of the principal of or interest on this Bond against any member or other officer of the Authority or any person executing this Bond, all such liability, if any, being hereby expressly waived and released by every holder or registered owner of this Bond by the acceptance hereof and as a part of the consideration hereof, as provided in the Resolution.

It is hereby certified, recited and declared by the Authority that all acts, conditions and things required by the Constitution and statutes of the State and the Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this Bond in order to make it the legal, valid and binding, special and limited obligations of the Authority in accordance with its terms, exist, have happened and have been performed in regular and due time, form and manner as required by law, and that the issuance of this Bond, together with all other indebtedness of the Authority, does not exceed or violate any constitutional, statutory or other limitation upon the amount of the bonded indebtedness prescribed by law for the Authority.

**{THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK}**

IN WITNESS WHEREOF, New Jersey Educational Facilities Authority has caused this bond to be executed in its name by the manual or facsimile signature of its Chair, Vice Chair or Executive Director and its official common seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual or facsimile signature of its Executive Director, Secretary or any Assistant Secretary, all as of the Dated Date.

NEW JERSEY EDUCATIONAL  
FACILITIES AUTHORITY

{SEAL}

ATTEST:

By: \_\_\_\_\_  
Eric D. Brophy, Esq.  
Executive Director

\_\_\_\_\_  
Steven Nelson  
Assistant Secretary

**SCHEDULE A**

**Principal and Interest Payments**



**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY REVENUE BONDS, STOCKTON UNIVERSITY ISSUE, SERIES 2020 A IN A PRINCIPAL AMOUNT NOT TO EXCEED \$7,000,000 AND AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A BOND AGREEMENT AND RELATED INSTRUMENTS AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.**

**ADOPTED: JANUARY 28, 2020**

WHEREAS, the New Jersey Educational Facilities Authority (the "Authority") is a body corporate and politic with corporate succession, constituting a political subdivision of the State of New Jersey (the "State"), created and established by the New Jersey Educational Facilities Authority Law, being Chapter 72A of Title 18A of the New Jersey Statutes as enacted by Chapter 271 of the Laws of 1967, as amended and supplemented (the "Act"); and

WHEREAS, Stockton University (the "Public University") is a public institution of higher education of the State; and

WHEREAS, the Act provides that the Authority shall have the power to borrow money and issue its bonds and to provide for the rights of the holders of its bonds; and

WHEREAS, as an inducement to the Public University to finance the acquisition by the Public University of certain property located in the municipality of Galloway, County of Atlantic, in the State (the "Project Facility") and to pay certain costs of the issuance of the hereinafter referred to Bonds (collectively, the "Project"), the Authority proposes to issue its Revenue Bonds, Stockton University Issue, in a principal amount not to exceed \$7,000,000 (the "Bonds") and to secure the Bonds by a pledge of moneys to be received by the Authority and the assignment of certain rights of the Authority with respect to the Project, which pledge and assignment are hereby declared to further secure the payment of the principal of and interest on the Bonds; and

WHEREAS, the repayment of the Bonds will be secured by a Lease and Agreement by and between the Authority and the Public University (the "Lease Agreement"), pursuant to which the Authority will lease the Leased Facilities (as defined in the Lease Agreement) to the Public University; and

WHEREAS, in connection with the financing of the Project, the Authority will enter into a Bond Agreement (the "Bond Agreement") with TD Bank, N.A. (the "Bank"), which will be the purchaser of and escrow agent in connection with, the Bonds; and

WHEREAS, in accordance with the purposes and objectives of Executive Order No. 26 (Whitman 1994) ("Executive Order No. 26"), the Authority hereby finds and determines that the issuance of the Bonds involves certain circumstances under which a private placement is permissible as outlined in Executive Order No. 26, namely volatile market conditions in the

context of the relatively small issue size, and that a direct purchase of the Bonds is necessary for the Project due to the representations of the Public University that a competitive sale of the Bonds is not in the best interest of the Authority and the Public University, and a direct purchase would be the most cost-effective means of financing the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AUTHORITY AS FOLLOWS:

Section 1. In order to assist in the financing of the Project, the Bonds of the Authority are hereby authorized to be issued in a principal amount not to exceed \$7,000,000, designated as "New Jersey Educational Facilities Authority Revenue Bonds, Stockton University Issue, Series 2020 A" or such other designation as an Authorized Officer (as hereinafter defined) may determine, with an initial interest rate not to exceed 5.00% and a term not to exceed sixteen (16) years. The Bonds shall be dated, shall bear interest at such a rate of interest, and shall be payable as to principal, interest and premium, if any, all as is specified therein. The Bonds shall be issued in the form, shall mature, shall be subject to redemption prior to maturity and shall have such other details and provisions as are prescribed by the Bond Agreement.

Section 2. The Bonds shall be special and limited obligations of the Authority, payable solely out of the moneys derived pursuant to the Bond Agreement and all such moneys are hereby pledged to the payment of the Bonds. The payment of the principal of, premium, if any, and interest on the Bonds shall be secured by a pledge and assignment of revenues and certain rights of the Authority as provided in the Lease Agreement and the Bond Agreement. Neither the members of the Authority nor any person executing the Bonds issued pursuant to this resolution and the Act shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be in any way a debt or liability of the State or any political subdivision other than the Authority, whether legal, moral or otherwise.

Section 3. The Bond Agreement and all instruments attached as exhibits thereto, in substantially the form attached hereto, are hereby approved. The Chair, Vice Chair, Executive Director, Deputy Executive Director, Director of Project Management, Director of Compliance Management, Director of Finance, Secretary or any Assistant Secretary and any other person authorized by resolution of the Authority, and any of such officers designated by resolution as "acting" or "interim" (the "Authorized Officers"), are hereby authorized to execute, acknowledge and deliver the Bond Agreement and all instruments attached as exhibits thereto with any changes, insertions and omissions as may be approved by any of the Authorized Officers, with the advice of bond counsel and the Attorney General of the State, and the Secretary, any Assistant Secretary or any other Authorized Officer of the Authority are hereby authorized to affix the official common seal of the Authority on the Bond Agreement and all instruments attached as exhibits thereto and attest the same. The execution of the Bond Agreement shall be conclusive evidence of any approval required by this Section 3.

Section 4. The Lease Agreement and all instruments attached as exhibits thereto, in substantially the form attached hereto, are hereby approved. The Authorized Officers are hereby



authorized to execute, acknowledge and deliver the Lease Agreement and all instruments attached as exhibits thereto with any changes, insertions and omissions as may be approved by any of the Authorized Officers, and the Secretary, any Assistant Secretary or any other Authorized Officer of the Authority are hereby authorized to affix the official common seal of the Authority on the Lease Agreement and all instruments attached as exhibits thereto and attest the same. The execution of the Lease Agreement shall be conclusive evidence of any approval required by this Section 4.

Section 5. The Bank is hereby appointed Escrow Agent under the terms of the Bond Agreement.

Section 6. The Bonds are hereby authorized to be sold to the Bank in accordance with the Bond Agreement and Executive Order No. 26.

Section 7. The Authorized Officers are hereby designated to be the authorized representatives of the Authority, charged by this resolution with the responsibility for issuing the Bonds and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution, the Lease Agreement, the Bond Agreement and the issuance of the Bonds.

Section 8. In case any one or more of the provisions of this resolution, the Lease Agreement, the Bond Agreement or the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution or the Lease Agreement, the Bond Agreement and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

Section 9. All prior resolutions of the Authority or portions thereof that are inconsistent herewith are hereby repealed.

Section 10. This resolution shall take effect in accordance with the Act.

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

**AYE:** Joshua Hodes  
Ridgeley Hutchinson  
Louis Rodriguez  
Elizabeth Maher Muoio (represented by Ryan Feeney)  
Zakiya Smith Ellis

**NAY:** None

**ABSTAIN:** None

**ABSENT:** None

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



**Bank**

America's Most Convenient Bank®

Cynthia A. Colucci  
Vice President  
Middle Market Lending

TD Bank, N.A.  
1068 Stelton Road  
Piscataway, NJ 08854  
T: 732 529-3512 F: 732 529-3545  
cynthia.colucci@td.com

September 23, 2019

Janney Montgomery Scott LLC  
Attention: Mary Jane Darby, Managing Director  
Email: mjdarby@janney.com

Ref: **REQUEST FOR PROPOSAL FOR DIRECT PLACEMENT LOAN TO STOCKTON UNIVERSITY / RESPONSE TO RFP DATED SEPTEMBER 9, 2019**

Dear Mary Jane:

TD Bank, N.A. (the "Bank") is pleased to provide its response to the above-referenced Request for Proposal for Direct Placement Loan in an amount up to \$7 million for Stockton University.

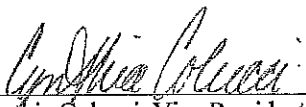
The attached Summary of Terms and Conditions remains subject to credit approval by the Bank and does not represent a commitment to lend. In the event that TD Bank should be selected as the credit provider, we anticipate being able to provide a firm commitment within a three-week time period from selection.

Thank you for this opportunity to consider the financing requirements of Stockton University. We remain at your disposal for any questions you or the University may have.

Sincerely,

TD BANK, N.A.

By:

  
Cynthia Colucci, Vice President



**Bank**

America's Most Convenient Bank®

**SUMMARY OF TERMS AND CONDITIONS FOR DIRECT PURCHASE OF AUTHORITY BONDS OR TAXABLE LOAN FOR STOCKTON UNIVERSITY IN RESPONSE TO REQUEST FOR PROPOSAL DATED SEPTEMBER 9, 2019**

This preliminary term sheet merely constitutes a statement of suggested terms for discussion with respect to the transaction contemplated hereby, does not contain all matters upon which agreement must be reached in order for the transaction contemplated hereby to be consummated and, therefore, does not constitute a binding proposal or commitment with respect to the transaction. The Borrower agrees that this Summary of Terms and Conditions is for its confidential use only and will not be disclosed, without prior written consent, to any person other than its accountants, attorneys, or other advisors.

**Stockton University**  
**Proposed Facility: Direct Purchase of Tax-Exempt Authority Bond or Taxable Loan up to \$7,000,000**  
**September 23, 2019**

- Borrower:** Stockton University (the "University" or "Stockton")
- Issuer:** Atlantic County Improvement Authority (the "Authority") or another governmental authority to be determined.
- Lender/Purchaser:** TD Bank, N.A.
- Amount:** Up to \$7,000,000.
- Facility / Purpose:** Tax-exempt Bond or Taxable Loan (the "Loan").  
  
Proceeds shall be used to: 1) finance the purchase of a student residence hall property currently leased by the University located at 421 Chris Gaupp Drive, Galloway, NJ, and 2) payment of costs of issuance.
- Term:** Fifteen (15) years from closing.
- Interest rate:** Fixed for Fifteen (15) years at a tax-exempt or taxable rate.  
  
*For indication purposes, as of today, the tax-exempt rate would be 2.27% and the taxable rate would be 2.79%.*
- Collateral:** Unsecured General Obligation of the University on a parity basis with all outstanding General Obligation indebtedness of the University.
- Fees:** All expenses, including the Bank's legal fees shall be borne by the Borrower.  
  
Proposed legal counsel for the Bank is John Bitar of Windels Marx Lane & Mittendorf. Legal costs for Bank counsel are estimated at \$18,000, which assumes no unforeseen circumstances and no protracted negotiations.
- Repayment:** Repayment shall be based on a twenty-five (25) year amortization.  
  
Interest shall be payable semi-annually on January 1 and July 1 of each year and calculated on the basis of actual number of days divided by 360 and commencing on July 1, 2020.

Principal shall be payable annually on July 1 of each year, commencing on July 1, 2020.

All payments to the Bank to be automatically charged against the University's account to be maintained at TD Bank.

**Prepayment  
Premium:**

The Bond or Loan may be prepaid in whole or in part upon thirty (30) days prior written notice to the Bank. In the event of any prepayment of the Bond or Loan, whether by voluntary prepayment, acceleration or otherwise, the Borrower shall, at the option of the Bank, pay a fixed rate prepayment charge equal to the greater of (i) 1% of the principal balance being prepaid multiplied by the "Remaining Term," as hereinafter defined, in years or (ii) a "Break Funding Fee" in an amount computed as follows:

The current cost of funds, specifically the "US Dollar ICE Swap Rate" as hereinafter defined (the "Current Rate"), shall be subtracted from US Dollar ICE Swap Rate on the day that the above stated interest rate was fixed (the "Original Rate"). If the result is zero or a negative number, there shall be no Break Funding Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the amount being prepaid times the number of days in the "Remaining Term" divided by 360.

Break Funding Fee = [Amount Being Prepaid x (Original Rate - Current Rate) x Days in the Remaining Term/360 days] + any accrued interest due.

"Remaining Term" as used herein shall mean the remaining term of the Bond or Loan.

"US Dollar ICE Swap Rate" as used herein shall mean the US Dollar Swap Rate as determined by the Intercontinental Exchange Benchmark Administration ("ICE" or the successor thereto if ICE is no longer making a US Dollar Swap Rate available) with a maturity closest to the "Remaining Term" as published on the ICE website or another recognized electronic source two (2) Business Days prior to the determination date.

**Increased Costs,  
Capital Adequacy, Taxes:**

If a change in laws, rules, guidelines, accounting principles or regulations (or interpretation, implementation or administration) shall occur or be implemented and shall increase the cost to the Bank or its participants (if any) of issuing or maintaining the credit facility or decrease the return to the Bank or any of its participants' capital, or on the capital of the holding company of any participant, the Bank may increase the interest rate or demand payment within 10 business days of such amount as is necessary to compensate it or such participant for such increased costs or decreased return. In addition, customary provisions providing for all payments to the Bank to be made free and clear of taxes.

**Margin Rate Factor:**

If the Maximum Marginal Statutory Rate decreases for any period during which the tax-exempt Bond is outstanding then, within forty-five (45) days of any written notice from time to time by the Bank, the University shall promptly pay directly to the Bank additional amounts sufficient to compensate the Bank for such reduction. Such notice shall contain the written statement of the Bank as to any such additional amount or amounts (including calculations thereof in reasonable detail) and shall, in the absence of manifest error, be conclusive and binding on the University.

**Representations  
& Warranties:**

Appropriate for facilities of this type, size and purpose including, but not limited to, organization and authority, no material adverse change, qualification, financial statements, litigation, title to properties, insurance, enforceability, no events of default, government consent, taxes, environmental matters and full disclosure.

**General Conditions:**

- Documentation in form and substance satisfactory to the Bank must be executed and delivered containing representations, warranties, covenants, indemnities, conditions to lending, events of default and other provisions as are appropriate in the Bank's opinion and specified by the Bank.
- Subject to the approval of the Authority and tax-exempt opinion by legal counsel.
- The Bank complies with the US Patriot Act of 2001 (the "Act"), including, but not limited to; those sections relating to customer identification, monitoring and reporting of suspicious activities, and the prevention of money laundering. This Act mandates that we verify certain information about the borrower and any guarantor while processing the Direct Purchase request.

**Events of Default:**

- Reduction in the long-term rating of the University's outstanding public bond indebtedness below an investment grade (i.e., below Baa3 by Moody's or below BBB- by Fitch, or, if applicable, below BBB- by S&P).
- Consistent with standard default provisions, including but not limited to the following:
  - Default in the due payment of principal or interest;
  - Bankruptcy, insolvency; receivership
  - Breach of Representations or Warranties
  - Violation of covenant(s)

**Financial  
Reporting:**

- Furnish to the Bank, within 180 days after the end of each fiscal year end of the University, a financial statement of the University's profit and loss for such fiscal year and a balance sheet as of the end of such fiscal year with a cash flow statement, all in reasonable detail according to GAAP and audited by an independent certified public account acceptable to the Bank.
- Furnish to the Bank, within 180 days after the end of each fiscal year of the Borrower, such statistical Continuing Disclosure data that the Borrower is currently filing on EMMA.
- Other information concerning the financial or business affairs of the University as may be reasonably requested by the Bank from time to time.

**Governing Law:**

New Jersey

**LEASE AND AGREEMENT**  
**BY AND BETWEEN**  
**NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY**  
**AND**  
**STOCKTON UNIVERSITY**  
**DATED**  
**[CLOSING DATE]**

**RELATING TO THE SERIES 2016 A PROJECT AND**  
**THE SERIES 2020 A PROJECT**

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## LEASE AND AGREEMENT

### NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY TO STOCKTON UNIVERSITY

THIS LEASE AND AGREEMENT (THIS "AGREEMENT") IS MADE ON [CLOSING DATE], BY AND BETWEEN THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY (THE "AUTHORITY") AND STOCKTON UNIVERSITY ("STOCKTON").

#### WITNESSETH

WHEREAS, the Authority has heretofore issued on behalf of Stockton, *inter alia*, its Revenue Bonds, Richard Stockton State College Issue, Series 1993 F (the "Series 1993 F Bonds"), its Revenue Bonds, The Richard Stockton College of New Jersey Issue, Series 2005 C (the "Series 2005 C Bonds"), its Revenue Bonds, The Richard Stockton College of New Jersey Issue, Series 2006 F (the "Series 2006 F Bonds"), its Revenue Bonds, The Richard Stockton College of New Jersey Issue, Series 2007 G (the "Series 2007 G Bonds"), its Revenue Bonds, The Richard Stockton College of New Jersey Issue, Series 2008 A (the "Series 2008 A Bonds") and its Revenue and Refunding Bonds, Stockton University Issue, Series 2016 A (the "Series 2016 A Bonds"); and

WHEREAS, Stockton has determined it is necessary and advisable to undertake a project (the "Series 2020 Project" or the "Project") consisting of the acquisition by Stockton of certain property located in the municipality of Galloway, County of Atlantic, in the State of New Jersey (the "State") and to pay certain costs of the issuance of the Series 2020 Bonds (as hereinafter defined) as presented, submitted and approved by Stockton's Board of Trustees; and

WHEREAS, pursuant to a bond resolution duly adopted on January 28, 2020 (the "Resolution") the Authority has determined that it is necessary and in keeping with its authorized purposes to issue a series of bonds to be designated "New Jersey Educational Facilities Authority Revenue Bonds, Stockton University Issue, Series 2020 A" in an amount not to exceed \$7,000,000 (the "Series 2020 Bonds") for the purpose of providing funds to finance the Series 2020 Project pursuant to the terms of a Bond Agreement dated [CLOSING DATE] (the "Bond Agreement"), by and between the Authority and TD Bank, N.A. (including its successors and/or assigns, the "Purchaser"); and

WHEREAS, the repayment of the Series 2020 Bonds will be secured by this Agreement pursuant to which the Authority will lease the Leased Facilities (as hereinafter defined) to Stockton; and

WHEREAS, in order to provide for the financing of the Series 2020 Project, it is necessary and desirable to enter into this Agreement relating to the Leased Facilities, which Stockton has conveyed or caused to be conveyed title in fee simple absolute to the Authority; and

WHEREAS, the Leased Facilities do not include any portion of the Project Facilities (as hereinafter defined); and

WHEREAS, the Authority desires to let the Leased Facilities to Stockton and provide for the financing of the Series 2020 Project in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the rents, covenants and agreements herein reserved, mentioned and contained on the part of Stockton, its successors and assigns, to be paid, kept and performed, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Authority by these presents does lease, demise and let the Leased Facilities to Stockton, and Stockton does hereby consent to said leasing and hereby takes the Leased Facilities upon and subject to the conditions hereinafter expressed.

## ARTICLE I

### DEFINITIONS

**SECTION 1.01. Definitions.** The words and terms used in this Agreement shall be defined as in the recitals hereto or have the same meanings as set forth in the Resolution or the Bond Agreement, and unless the context shall otherwise require, the following words and terms, as used in this Agreement shall mean:

**“Additional Lease Payments”** means the payments so designated and required to be made by Stockton pursuant to Section 4.05 hereof;

**“Annual Administrative Fee”** means the annual fee for the general administrative services of the Authority including without limitation, the cost of attendance at Authority events, in an amount equal to 1/10 of 1% of the outstanding aggregate principal amount of each series of Series 2020 Bonds with a maximum Annual Administrative Fee of \$85,000 per series of Series 2020 Bonds to commence on the closing date for the Series 2020 Bonds;

**“Applicable Environmental Laws”** means (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.* (“CERCLA”); (ii) the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.* (“RCRA”); (iii) the New Jersey Industrial Site Recovery Act, as amended, N.J.S.A. 13:1K-6 *et seq.* (“ISRA”); (iv) the New Jersey Spill Compensation and Control Act, as amended, N.J.S.A. 58:10-23.11b *et seq.* (“Spill Act”); (v) the New Jersey Underground Storage of Hazardous Substances Act, as amended, N.J.S.A. 58:10A-21 *et seq.* (“UST”); (vi) the New Jersey Solid Waste Management Act, as amended, N.J.S.A. 13:1E-1 *et seq.*; (vii) the New Jersey Toxic Catastrophe Prevention Act, as amended, N.J.S.A. 13:1K-19 *et seq.*; (viii) the New Jersey Water Pollution Control Act, as amended, N.J.S.A. 58:10A-1 *et seq.*; (ix) the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*; (x) the New Jersey Air Pollution Control Act, as amended, N.J.S.A. 26:2C-1 *et seq.*; and (xi) any and all federal, regional, state, county and local laws, regulations, executive orders, rules, ordinances, codes, guidance, consent decrees, orders, judgments and directives pertaining to pollution or protection of the Environment (including laws, regulations and other requirements relating to Environmental Conditions and Releases or threatened Releases of Hazardous Substances into the Environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, Release, transport or handling of Hazardous Substances), as the same may be amended or supplemented from time to time. Any capitalized terms referred to in Section 5.10 hereof not otherwise defined herein which are defined in any Applicable Environmental Law shall have the meanings ascribed to such terms in said laws; provided, however, that if any of such laws are amended so as to broaden any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment;

**“Basic Lease Payments”** means an amount of money payable in accordance with this Agreement, as more fully provided for in Section 4.04 hereof;

**“Basic Lease Payment Date”** means with respect to a (i) Basic Lease Payment, January 1<sup>st</sup> and July 1<sup>st</sup> of each year, commencing July 1, 2020 or, if such date is not a Business Day, the Business Day next preceding such date, and (ii) prepayment or acceleration, the date of payment of the Purchase Option Price or Mandatory Purchase Price, as the case may be;

**“Bond Year”** means a period of twelve (12) consecutive months beginning on July 1 in any calendar year and ending on June 30 of the succeeding calendar year;

**“Business Day”** means any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions in the city or cities in which the principal office of the Purchaser is located and authorized by law or executive order to close;

**“Demand Deposit Account”** means the account established by Stockton with the Purchaser on or before the date hereof;

**“Environment”** means ambient air, surface water, groundwater, surface or subsurface soil or other geologic media, sediment and all plants and wildlife present therein or thereon;

**“Environmental Conditions”** means any environmental contamination or pollution or threatened contamination or pollution of, or the Release or threatened Release of Hazardous Substances into, the Environment;

**“Financing Documents”** means collectively, this Agreement, the Bond Agreement and the Resolution;

**“Governmental Authority”** means any nation or government, any state, city, locality, municipality or political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any government authority, agency, department, board, commission or instrumentality, including, without limitation, the United States Environmental Protection Agency (“USEPA”), the New Jersey Department of Environmental Protection (“NJDEP”) and all other federal, State, regional, county or local government authorities authorized or having jurisdiction to enforce Applicable Environmental Laws;

**“Hazardous Substances”** means and includes: (i) any “hazardous substance,” “pollutant” or “contaminant” as defined in Applicable Environmental Laws, including without limitation CERCLA and the Spill Act; (ii) any “hazardous waste” as such term is defined in Applicable Environmental Laws; (iii) any substance containing “petroleum,” as such term is defined in Section 9001(8) of RCRA, Section 6991 (8) of RCRA or in 40 C.F. R. Section 280.1; and (iv) any substance, material or waste which is defined, listed or regulated under any Applicable Environmental Laws or with respect to which any Governmental Authority with jurisdiction over Stockton requires special handling in its generation, handling, use, collection, storage, treatment, disposal or Release;

**“Initial Fee”** means the per series fee paid or payable to the Authority for its services in connection with the issuance of the Series 2020 Bonds, calculated at the rate of 1/5 of 1% of the aggregate principal amount of each series of the Series 2020 Bonds with a maximum initial fee of \$125,000 payable by Stockton on the closing date for the Series 2020 Bonds;

**“Leased Facilities”** means the site of certain educational facilities located on the property identified in **Exhibit A** of this Agreement, which do not include any portion of the Project Facilities, including any additions, improvements, modifications, substitutions and renewals thereof, and further includes other facilities and uses as are permitted by the Act and this Agreement;

**“Losses”** means all actions, suits, claims, liabilities, losses, damages, penalties, fines, fees, costs and expenses, including, without limitation, sampling, monitoring and remediation costs, natural resource damages, damages on account of personal injuries, death or property damages, attorneys', consultants' and engineering fees and disbursements, costs of defense and interest;

**“Mandatory Purchase Price”** shall have the meaning ascribed thereto in Section 4.07(c) hereof;

**“Payment Date”** means the dates on which the principal of and interest on the Series 2020 Bonds are required to be paid to the Purchaser as set forth in the form of the Series 2020 Bonds or the date of any redemption or acceleration of the Series 2020 Bonds;

**“Prior Project Facilities”** shall mean, collectively, the facilities financed or refinanced by the Series 2016 A Project;

**“Project Facilities”** means the educational facilities comprising (i) the Series 2020 A Project and (ii) the Prior Project Facilities, including any additions, improvements, modifications, substitutions and renewals thereof, and further includes other facilities and uses as are permitted by the Act and this Agreement;

**“Property Release”** shall have the meaning ascribed thereto in Section 2.05 hereof;

**“Purchase Option Price”** shall have the meaning ascribed thereto in Section 4.07(a) hereof;

**“Release”** means the intentional or unintentional spilling, leaking, disposing, discharging, emitting, depositing, injecting, leaching, escaping, release or threatened release, burial, pumping, pouring, emptying or dumping into the Environment;

**“Remediate” or “Remediation”** means (i) all investigations of Environmental Conditions of any kind or nature whatsoever, including site assessments, site investigations, remedial investigations, soil, groundwater, surface water, sediment sampling or monitoring, or (ii) actions of any kind or nature whatsoever taken to remove, abate or remediate Environmental Conditions, including the use, implementation, application, installation, operation or maintenance of removal actions, in-situ or ex-situ remediation technologies applied to surface or subsurface soils, encapsulation or stabilization of soils, excavation and off-site treatment or disposal of soils, systems for recovery and/or treatment of groundwater or free product, Engineering Controls or Institutional Controls (as such terms are defined under N.J.S.A. 58:10B-1 *et seq.*);

**“Redemption Premium”** shall have the meaning set forth in the Series 2020 Bonds;

“**Series 2016 A Agreement**” means the Lease and Agreement dated as of July 1, 2016 between the Authority and Stockton relating to the Series 2016 A Bonds, as the same may have been and may be amended or supplemented from time to time;

“**Series 1993 F Project**” means the capital project financed by the Series 1993 F Bonds and refinanced by the Series 2005 C Bonds and the Series 2008 A Bonds on behalf of Stockton, consisting generally of construction of an Arts and Sciences Building and an addition to the library, all as more fully described in **Exhibit B** attached hereto;

“**Series 2005 C Project**” means the capital project financed by the Series 2005 C Bonds and refinanced by the Series 2008 A Bonds on behalf of Stockton, consisting generally of various capital projects and renovations to the F-Wing Building, certain renovations to the J-Wing Building, certain interior renovations to the Housing I buildings, certain electrical power improvements at various campus facilities, and the acquisition and renovation of an office building located in the Township of Galloway, and as subsequently amended to include certain expenses to be incurred on the Housing V, Phase I project, all as more fully described in **Exhibit B** attached hereto;

“**Series 2006 F Project**” means the capital project financed by the Series 2006 F Bonds on behalf of Stockton, consisting generally of various capital projects including the acquisition, construction and equipping of Housing V – Phase I, including surface parking, energy conservation projects, land acquisitions, Holocaust Resource Center renovation, Alton Auditorium renovation, and electrical upgrades, and as subsequently amended to include certain expenses to be incurred on the Housing I and Housing V, Phase II projects and the replacement of roofs on academic buildings A through M, all as more fully described in **Exhibit B** attached hereto;

“**Series 2007 G Project**” means the capital project financed by the Series 2007 G Bonds on behalf of Stockton, consisting generally of various capital projects consisting of all or a portion of the renovation and/or construction of Student Housing V Phase II, safety and infrastructure improvements, heat pump replacement, Arts and Science Building exterior, fire safety upgrades and replacement, geothermal infrastructure, F-Wing rooftop units, Campus Center, College Walk, and site and roadway improvements, and as subsequently amended to include certain expenses incurred on the Unified Science Center, L Wing adaptation, Nacote Creek renovation, renovation of the atrium connecting C Wing and D Wing, renovation of G Wing, daycare center renovations and upgrades, campus signage, HVAC upgrades, deferred maintenance, a new swimming pool, athletic fields, parking facilities, computer system infrastructure, hardware and software, and the design and construction of a Unified Science Center for Stockton, all as more fully described in **Exhibit B** attached hereto;

“**Series 2008 A Project**” means (A) the capital project financed by the Series 2008 A Bonds on behalf of Stockton, consisting generally of construction, furnishing and equipping of a new Campus Center, the renovation of College Walk, various site and roadway improvements, and all or a portion of the cost of constructing, furnishing and equipping a new Unified Science Center, all as more fully described in **Exhibit B** attached hereto and (B) the refunding of the Series 1993 F Bonds and the Series 2005 C Bonds;



**“Series 2016 A Project”** means (i) the refunding of the Authority’s (A) Series 2006 F Bonds maturing on July 1 of the years 2017 through 2027, inclusive, and in 2031 and 2036, issued to finance the Series 2006 F Project, (B) Series 2007 G Bonds maturing on July 1 of the years 2017 through 2031, inclusive, and in 2034 and 2037, issued to finance the Series 2007 G Project, and (C) Series 2008 A Bonds maturing on July 1 of the years 2017 through 2018, inclusive, and in 2023, 2028 and 2038, issued to finance the Series 2008 A Project; and (ii) the financing of all or a portion of a capital project consisting of the construction of the New Unified Science Center, New Classroom Building and New Quadrangle Project, including the associated construction, backfill of vacated academic space and equipment on its campus in Galloway, New Jersey, all as more fully described in **Exhibit B** attached hereto;

**“Stockton”** means the public institution for higher education authorized and created pursuant to State law, the name of which is Stockton University; and

**“Tax Certificate”** means the Arbitrage and Tax Certificate executed by Stockton in connection with the issuance of the Series 2020 Bonds.

Words importing persons include firms, associations and corporations, and words importing the singular number include the plural number and vice versa.

**ARTICLE II**  
**THE PROJECT**

**SECTION 2.01. Payment of Costs.** It is hereby understood and agreed that the cost of the Project shall be paid in part from the proceeds of the Series 2020 Bonds issued by the Authority in connection with the Project in accordance with the Bond Agreement and other funds made available to the Authority for such purpose under the provisions of this Agreement or the Bond Agreement.

**SECTION 2.02. Use of the Leased Facilities and Project Facilities.** The Authority agrees that the Leased Facilities may be, and Stockton agrees that said Leased Facilities, shall be used by Stockton as educational facilities permitted under the Act and which, in the view of Stockton, are necessary, desirable and to the benefit and best interest of Stockton. Stockton further covenants and agrees, however, that at no time shall the Leased Facilities, or any part thereof, be used or be allowed to be used for sectarian instruction or as a place for religious worship.

Stockton also covenants and agrees, to the extent it is able, to enforce and require to be enforced, for the term of this Agreement, reasonable rules and regulations governing the use of the Leased Facilities and the Project Facilities and the operation thereof; that it will maintain and operate the Leased Facilities in an efficient and economical manner; that it will at all times maintain the same in good repair and in sound operating condition and will make all necessary repairs, renewals and replacements; and that it will comply with all valid acts, rules and regulations, orders and directions of any legislative, executive, administrative or judicial body, applicable to Stockton, the Leased Facilities and the Project Facilities.

Stockton covenants and agrees that it shall use and/or operate or cause the Project Facilities to be used for or operated as educational facilities constituting an authorized "Project" under the Act. Stockton's failure to comply with this covenant shall constitute an Event of Default under Article VII of this Agreement. During the term of this Agreement, the Authority reserves the right to request that Stockton, at its expense, deliver to the Authority the written opinion of nationally recognized bond counsel, acceptable to the Authority, to the effect that all or any portion of the Project Facilities are being used and/or operated as educational facilities constituting an authorized "Project" under the Act.

**SECTION 2.03. Cost of the Series 2020 Project.** Stockton represents and agrees that the proceeds of the sale of the Series 2020 Bonds to be issued by the Authority for the purpose of financing the Cost of the Series 2020 Project will be sufficient, together with investment earnings thereon and certain moneys to be made available for the Series 2020 Project by Stockton, to pay such Cost of the Series 2020 Project.

Stockton hereby agrees that it will provide the difference, if any, between the proceeds from the sale of the Series 2020 Bonds and the actual amount required for the Cost of the Series 2020 Project pursuant to the above paragraph.

“Cost” of the Series 2020 Project shall include, together with any other proper item of cost not specifically mentioned herein, including interest on the Series 2020 Bonds issued by the Authority to finance the Series 2020 Project, the Initial Fee, the cost of any administrative expenses of the Authority, legal fees, fees and expenses of the Purchaser, the Escrow Agent and other fiduciaries, depositories, and paying agents, the cost of issuance of the Series 2020 Bonds by the Authority and fees and expenses of financial advisors, legal counsels and consultants in connection therewith properly chargeable to the Series 2020 Project, the cost of insurance, if any, or other financing facility securing the payment of the Series 2020 Bonds, the cost of audits, the reimbursement of all moneys advanced or applied by the State, or any agency, instrumentality, commission or officer thereof, or otherwise, if required, for the payment of any item or items of cost of the Series 2020 Project, and all other expenses necessary or incidental to determining the feasibility or practicability of the Series 2020 Project, and such other expenses not specified herein as may be necessary or incident to the financing of the Series 2020 Project.

**SECTION 2.04. Intentionally Omitted.**

**SECTION 2.05. Modification of Leased Facilities.**

(a) Stockton may, at any time during the term of this Agreement, request that the Authority release all or a portion of the Leased Facilities from the terms of this Agreement (each, a “Property Release”). Subject to the provisions of this Section 2.05, the Authority, in consultation with Bond Counsel, may consider such request and may negotiate with Stockton regarding the terms and conditions of such proposed Property Release. Any such Property Release shall be at the sole discretion of the Authority, and the Authority may condition its approval upon such terms (in addition to the specific requirements set forth in this Section 2.05) as it may, in its sole discretion, deem appropriate.

(b) In all cases, Stockton shall certify to the Authority that (1) the portion of the Leased Facilities subject to the Property Release (the “Releasable Real Estate”) is not necessary for the construction or completion of any portion of the Leased Facilities, or for the continuing use of any of the remaining Leased Facilities, (2) the overall value and utility of the Leased Facilities will not be materially reduced by the release of the Releasable Real Estate, and (3) the Leased Facilities to be subject to this Agreement immediately following the Property Release (the “Resulting Real Estate”) shall, in their totality, constitute essential facilities of Stockton, and Stockton acknowledges and agrees that the full amount of Lease Payments payable under this Agreement shall remain payable by Stockton notwithstanding such Property Release. The above certification may take into account such additional real estate as Stockton may, with the consent of the Authority, choose to simultaneously add to the Leased Facilities, if deemed necessary and appropriate in order to offset, in whole or in part, the Property Release (such newly added real estate, the “Added Real Estate”).

(c) If at the time of the proposed Property Release any tax-exempt Authority bonds which financed or refinanced any costs of or relating to the Releasable Real Estate (the “Related Bonds”) shall remain unpaid (which for purposes of this paragraph includes Related Bonds that have been economically or legally defeased, but have not yet been actually paid to the trustee for such bonds or the bondholders), then in addition to the requirements contained in paragraph (b) above, there shall be delivered to the Authority and the trustee for such bonds or the holders of

such bonds where there is no trustee for such bonds, an Opinion of Bond Counsel to the effect that the Property Release and the addition of any Added Real Estate, if deemed necessary and appropriate, shall not, in and of itself, adversely affect the tax-exempt status of the Series 2020 Bonds or of any of the Related Bonds. If, in the Opinion of Bond Counsel, such Opinion of Bond Counsel cannot be issued without certain remedial actions having been taken (which may include, inter alia, the redemption and/or purchase of all or a portion of the Related Bonds, whether by the defeasance escrow, tender offer or otherwise), then the implementation of such remedial actions by Stockton shall be an additional condition to such Property Release.

(d) In order to effectuate any Property Release, the Authority and Stockton shall execute and deliver an amendment to this Agreement and shall cause such amendment (or an abstract thereof) to be recorded in the applicable real estate records. Stockton shall also obtain or cause to be obtained such consents (if any) as may be required by the terms of the Bond Agreement, and shall file or cause to be filed such notices as may be required by the terms of this Agreement. Upon completion of the above-referenced transactions, the "Leased Facilities" shall thereafter be deemed to refer to the Resulting Real Estate (including any Added Real Estate), and the Releasable Real Estate shall no longer constitute part of the "Leased Facilities." The Authority shall thereupon, at the request of Stockton, transfer all of its rights, title and interest in and to the Releasable Real Estate to the appropriate State entity by deed or deeds in form satisfactory to the Authority.

(e) Stockton agrees to bear all costs associated with any actual or proposed Property Release, including, but not limited to, all legal fees of the Authority, the Trustee and Bond Counsel. The Authority agrees that the scope of the Project may be modified, upon the mutual agreement of the Authority and Stockton, subsequent to the issuance of the Series 2020 Bonds.

(f) Notwithstanding provisions in the Agreement to the contrary, if the Series 2016 A Project is no longer subject to the terms of this Agreement, then Stockton may release Leased Facilities from the terms of the Agreement, provided the value of the Resulting Real Estate shall not be less than the principal amount of the Series 2020 Bonds outstanding as of the date of the release. Stockton shall certify to the Authority that (1) the Releasable Real Estate is not necessary for the construction or completion of any portion of the Leased Facilities, or for the continuing use of any of the remaining Leased Facilities, and (2) the full amount of Lease Payments payable under this Agreement shall remain payable by Stockton notwithstanding such Property Release. Stockton also shall provide an independent appraisal of the Resulting Real Estate reasonably acceptable to the Authority.

## ARTICLE III

### THE SERIES 2020 BONDS

**SECTION 3.01. Sale of the Series 2020 Bonds.** The Authority agrees to issue, sell and deliver the Series 2020 Bonds in accordance with the terms of the Bond Agreement. The proceeds of the Series 2020 Bonds shall be used to finance the Series 2020 Project, all as more fully provided for in the Bond Agreement.

## ARTICLE IV

### OBLIGATIONS OF STOCKTON, TERM AND LEASE PAYMENTS

**SECTION 4.01. Nature of the Obligation.** The obligations of Stockton under this Agreement shall be general obligations, payable from any legally available funds of Stockton.

**SECTION 4.02. The Leased Facilities.** In addition to the terms, covenants and agreements contained herein, Stockton agrees that it will take, accept and rent the Leased Facilities from the Authority subject to the following:

(a) all covenants, easements, encumbrances, subleases, licenses, defects of title, reservations, restrictions and conditions, if any, acceptable to an Authorized Officer of the Authority affecting the whole or any part of the Leased Facilities that exist at the time of closing of the Series 2020 Bonds; and

(b) all present and future federal, State, county or municipal laws, ordinances, regulations, orders, assessments and levies, if any, affecting all or any part of the Leased Facilities or the use thereof.

**SECTION 4.03. Term of Agreement.** The term of this Agreement shall continue until at least [ ] 1, 2035, unless the Authority and Stockton shall sooner terminate this Agreement by mutual consent; provided, however, that the end of said term shall not be advanced nor shall this Agreement be terminated so long as the Authority shall have outstanding and unpaid, without provision for such payment duly provided for, any of the Series 2020 Bonds issued for the purpose of providing moneys to pay the Cost of the Project or any obligations under any of the Financing Documents.

**SECTION 4.04. Basic Lease Payments.** Stockton agrees to pay the Basic Lease Payments for the use and occupancy of the Leased Facilities from any legally available funds of Stockton.

Stockton agrees to pay to the Purchaser from any legally available funds of Stockton "Basic Lease Payments" at the times and in the amounts sufficient to satisfy the payment obligations under the Series 2020 Bonds. Each payment shall be made in immediately available funds, and the Purchaser may debit Basic Lease Payments when due from the Demand Deposit Account. Stockton covenants and agrees that it will pay or cause the amount on deposit in the Demand Deposit Account to be sufficient to pay the Basic Lease Payments to the Purchaser at such times and in such amounts as to assure that the Authority will not be in default in the payment of the principal of, redemption price (if any) and interest on the Series 2020 Bonds.

**SECTION 4.05. Additional Lease Payments.**

In addition to Basic Lease Payments, Stockton shall also pay to the Authority and the Purchaser, as the case may be, "Additional Lease Payments," as follows:

(a) all taxes and assessments of any type or character charged to the Authority, Stockton or to the Purchaser affecting the amount available to the Authority or the Purchaser from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or Governmental Authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Purchaser and taxes based upon or measured by the net income of the Purchaser; provided, however, that Stockton shall have the right to protest any such taxes or assessments and to require the Authority or the Purchaser, at Stockton's expense, to protest and contest any such taxes or assessments levied upon them and that Stockton shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Authority or the Purchaser;

(b) all reasonable fees, charges, expenses and indemnities of the Authority and the Purchaser hereunder and under the Bond Agreement, as and when the same become due and payable;

(c) the reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Purchaser to prepare audits, financial statements, reports, opinions or provide such other services required under this Agreement or the Bond Agreement;

(d) the Initial Fee, the Annual Administrative Fee, and any other expenditures for insurance, fees and expenses of auditing and fees and expenses as required by the Bond Agreement or in connection with the Authority's performance thereunder and not otherwise paid or provided for by Stockton and all other expenditures reasonably and necessarily incurred by the Authority by reason of the ownership or the financing of the Series 2020 Project or the ownership and leasing of the Leased Facilities, including, without limitation, expenses incurred by the Authority to compel full and punctual performance of all of the provisions of this Agreement in accordance with the terms hereof; and

(e) all other reasonable and necessary fees and expenses attributable to the Series 2020 Bonds, this Agreement, including without limitation all payments required pursuant to the Tax Certificate and the Bond Agreement (including payments of all amounts required to be deposited in the Rebate Fund and any fees of the Authority in connection with any rebate calculations performed or caused to be performed by the Authority).

Such Additional Payments shall be billed to Stockton by the Authority and the Purchaser from time to time, together with a statement certifying that the amount billed has been incurred or paid for one or more of the above items. After such a demand, amounts so billed shall be paid by Stockton within thirty (30) days after receipt of the bill by Stockton. Payment of the Annual

Administrative Fee (or ratable portion thereof) shall be made in the Bond Year ending June 30, 2020 and in each Bond Year thereafter while the Series 2020 Bonds are outstanding.

Payments required to be made under this Section shall be made in legally available funds to the Purchaser unless otherwise directed in an agreement pursuant to which such payments are required.

**SECTION 4.06. Intentionally Omitted.**

**SECTION 4.07. Prepayment.**

(a) Stockton shall have the right, so long as all amounts which have become due hereunder have been paid, at any time or from time to time to prepay all or any part of the Basic Lease Payments, and the Authority agrees that the Purchaser shall accept such prepayments when the same are tendered. Any partial prepayment shall not affect the Authority's right, title and interest in and to the Leased Facilities, but shall be credited to the Basic Lease Payments due from Stockton as determined by an Authorized Officer of the Authority. Stockton is further hereby granted the option to prepay and purchase all of the Authority's right, title and interest in and to the Leased Facilities in whole, at the time set forth in Section 4.07(b) hereof, by paying to the Purchaser the "Purchase Option Price", which for any date of calculation shall be the sum of (i) the aggregate amount of unpaid principal of the Series 2020 Bonds to their redemption date under the terms of the Bond Agreement and as set forth in Stockton's notice to the Purchaser of such prepayment, (ii) any interest accrued on the Series 2020 Bonds from the last Payment Date thereof on which interest thereon was paid to the redemption date set forth in clause (i) above, (iii) the Redemption Premium set forth in the Series 2020 Bonds on the redemption date set forth in clause (i) above, and (iv) any costs of redemption or defeasance or other expenses incurred by any party to the Financing Documents in implementing such prepayment. The Purchase Option Price shall be deposited upon receipt by the Purchaser in the Optional Redemption Account (or in such other Purchaser escrow account as may be specified by Stockton) and, at the request of and as determined by Stockton, credited against payments due hereunder or used for the redemption or purchase of outstanding Bonds in the manner and subject to the terms and conditions set forth in the Bond Agreement. Notwithstanding any such prepayment, as long as any Series 2020 Bonds remain outstanding or any Additional Lease Payments required to be made hereunder remain unpaid, Stockton will not be relieved of its obligations hereunder.

(b) Said option may be exercised by Stockton at any time by giving written notice to the Purchaser and the Authority of the exercise of such option at least fifteen (15) days prior to the redemption date set forth in such notice.

(c) Stockton shall also have the right at any time or from time to time to prepay all or any part of the Basic Lease Payments from moneys derived from condemnation awards or the proceeds of hazard insurance relating to the Leased Facilities, and the Authority agrees that the Purchaser shall accept such prepayments when the same are tendered. Upon the acceleration of the Series 2020 Bonds, Stockton shall forthwith prepay and purchase all of the Leased Facilities by paying to the Purchaser, immediately upon receipt of notice of such acceleration, the "Mandatory Purchase Price," which for any date of calculation shall be calculated in the same manner as the Purchase Option Price set forth in subsection (a) above. The Mandatory Purchase



Price shall be deposited upon receipt by the Purchaser in the Special Redemption Account (or in such other Purchaser escrow account as may be specified by Stockton) and used for the redemption or purchase of outstanding Bonds in the manner and subject to the terms and conditions set forth in the Bond Agreement. Notwithstanding any such prepayment or surrender of Bonds, as long as any Bonds remain outstanding or any payments of Additional Lease Payments required to be made hereunder remain unpaid, Stockton shall not be relieved of its obligations hereunder.

**SECTION 4.08. Obligations Unconditional.**

The obligations of Stockton hereunder are absolute and unconditional, regardless of whether the Project Facilities (or any portion thereof) are completed or are available for occupancy by Stockton, and notwithstanding any other provision of this Agreement or the Bond Agreement. Until this Agreement is terminated and all payments hereunder are made, Stockton:

(a) will pay all amounts required hereunder without abatement, deduction or setoff except as otherwise expressly provided in this Agreement;

(b) will not suspend or discontinue any payments due hereunder for any reason whatsoever, including, without limitation, any right of setoff or counterclaim;

(c) will perform and observe all its other agreements contained in this Agreement; and

(d) except as provided herein, will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, damage, destruction or condemnation of the facilities financed with the proceeds of the Series 2020 Bonds or any part thereof, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State, or any political subdivision of either thereof or any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement. Nothing contained in this Section 4.08 shall be construed to release the Authority from the performance of any of the agreements on its part contained herein, and in the event the Authority should fail to perform any such agreement on its part, Stockton may institute such action against the Authority as Stockton may deem necessary to compel performance.

Notwithstanding the foregoing, the indemnification provisions set forth in Section 11.11(d) hereof shall survive any termination of this Agreement.

The rights of the Purchaser or any party or parties on behalf of whom the Purchaser is acting shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever, whether arising out of any breach of any duty or obligation of the Authority or the Purchaser owing to Stockton, or by reason of any other indebtedness or liability at any time owing by the Authority or the Purchaser to Stockton.

The obligations of Stockton to make payments required under this Agreement shall be absolute and unconditional without defense or set-off for any reason whatsoever, it being the intention of the parties that the payments required of Stockton under this Agreement will be paid

in full when due without any credit, delay or diminution whatsoever. Stockton hereby agrees that it will take all budgetary actions necessary to enable it to make all required payments under this Agreement.

## ARTICLE V

### COVENANTS CONCERNING LEASED FACILITIES

**SECTION 5.01. Liens and Encumbrances.** Stockton covenants and agrees that the Leased Facilities shall be free and clear of all liens and encumbrances that would materially affect the value or usefulness of the site of the Leased Facilities for the intended use thereof, and that it will not enter into any lease, licensing agreement or other arrangement with any other party in respect of the use and occupancy of all or any part of the Leased Facilities that would cause the interest on the Series 2020 Bonds to lose the exclusion from gross income for purposes of federal income taxation under Section 103 of the Code. The parties acknowledge that Stockton may, without violating the provisions of this Section 5.01, enter into (i) leases or contracts for the occupancy of student and/or faculty housing with individual occupants, (ii) leases or management agreements of a customary nature with third-party service providers in connection with the provision of utilities or services to Stockton, and (iii) subject to the covenants contained in Section 11.04 hereof, any other leases, licensing agreements or other arrangements with the prior written consent of an Authorized Officer of the Authority (which may be granted or withheld in his or her sole discretion).

**SECTION 5.02. Additions.** All buildings and improvements erected or constructed upon the demised premises and all buildings, improvements, fixtures, machinery and equipment installed or placed on the Leased Facilities by the Authority or Stockton shall be and become a part of the realty of the Leased Facilities. Any moveable equipment for the Leased Facilities paid for by the Authority, to the extent it does not become realty, shall nevertheless, be deemed to be a part of the Leased Facilities.

**SECTION 5.03. Repairs.** Stockton covenants that it shall at all times maintain, preserve and keep the Leased Facilities, with the appurtenances and every part and parcel thereof, in good repair, working order and condition.

**SECTION 5.04. Utilities.** Stockton agrees to pay, or cause to be paid, all charges for gas, electricity, light, water, sewer, heat or power, telephone or other communication service, or any other service used, rendered or supplied upon or in connection with the Leased Facilities during the term of this Agreement and to protect the Authority and save it harmless against any liability or damages on such account. At all times during the use and occupancy of the Leased Facilities, Stockton shall also at its sole cost and expense procure any and all necessary permits, licenses or other authorizations thereafter required for the lawful and proper installation, operation and maintenance of the Leased Facilities of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such services to and upon the Leased Facilities.

**SECTION 5.05. Insurance.** Stockton agrees, at the times specified, to procure and maintain, or cause to be procured and maintained by the Authority, to the extent reasonably obtainable, at the expense of Stockton, the following insurance with respect to the Leased Facilities:

(a) At all times, Special Form perils insurance, or current equivalent, with a deductible clause in an amount not to exceed one hundred thousand dollars (\$100,000) or such other deductible provisions as are approved in writing by an Authorized Officer of the Authority (the "Deductible Amount"), on the plant, structure, machinery, equipment and apparatus comprising the Leased Facilities, plus Boiler and Machinery coverage, and Flood Insurance if the Leased Facilities are located within a Special Flood Hazard Area, each with deductible clauses and coverage sub-limits acceptable to an Authorized Officer of the Authority. Coverage for Contingent Liability From Operation of Building Laws shall be included, and an Agreed Amount Endorsement shall be attached to the policy. The foregoing insurance shall be maintained as long as any of the obligations of the Authority issued with respect to the Project are outstanding and shall be in an amount not less than one hundred percent (100%) of the current estimated replacement value thereof, exclusive of excavations and foundations, or such other amount as may be approved in writing by an Authorized Officer of the Authority. The inclusion of the Leased Facilities under a blanket insurance policy or policies of Stockton insuring against the above hazards shall be a complete compliance with the provisions of this subparagraph. Any such policy shall provide that the insurance company shall give at least sixty (60) days' notice in writing to the Authority of the cancellation or non-renewal of the policy, except in the event of nonpayment of premiums, in which case ten (10) days' notice, or current industry standard notice, shall be furnished; provided, however, notwithstanding the foregoing, in the event that the insurance company is no longer required by law to provide such notices to the Authority, Stockton shall at all times give the Authority notice in writing within two (2) Business Days of receipt of notice from the insurer of any cancellation or non-renewal of the policy. In any event each such policy shall be in an amount sufficient to prevent Stockton and the Authority from becoming co-insurers under the applicable terms of such policy. In the event that Stockton is unable to procure insurance with a loss deductible clause of not exceeding the Deductible Amount, the deposit with the Purchaser on behalf of the Authority or the setting aside in a special fund of obligations of or guaranteed by the United States of America or moneys at least equal to the difference between the Deductible Amount and the amount deductible on such policy or policies shall be deemed to be a complete compliance with the provisions of this subparagraph establishing a maximum deductible amount of the Deductible Amount. In the event that any amount deposited pursuant to the preceding sentence is reduced as a result of a claim or claims, the Authority shall as promptly as practicable notify Stockton of the amount of the reduction and Stockton shall restore the deposit to the required amount within thirty (30) days of receiving such notice.

(b) At all times, workmen's compensation insurance, disability benefits insurance, and each other form of employee insurance which the Authority or Stockton is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees that the Authority or Stockton is required by law to provide;

(c) At all times, insurance protecting the Authority and Stockton against loss or Losses from liabilities imposed by law or assumed in any insured written contract and arising from bodily injury of persons or damage to the property of others caused by accident or occurrence, with limits of not less than one million dollars (\$1,000,000) combined single limit for bodily injury and property damage and \$3,000,000 in the aggregate. Stockton's coverage status under the New Jersey Tort Claims Act may in the sole judgment of an Authorized Officer

of the Authority, be deemed to be in compliance with the requirements of this subparagraph with respect to Stockton; and

(d) Fidelity insurance, in such amounts and under such terms as shall be determined by an Authorized Officer of the Authority with due regard to Stockton's funds and accounts.

In the event that the Authority shall re-enter the Leased Facilities, the Authority may, at its sole option, maintain business income insurance, or the current equivalent, on the Project Facilities, covering the loss of revenues attributable to the Leased Facilities by reason of necessary interruption, total or partial, in the use of the Leased Facilities, resulting from direct physical loss or damage thereto from causes customarily insured.

If any of such insurance provided for in paragraphs (a), (b) and (c) of this Section is under a blanket insurance policy or policies of Stockton, then Stockton shall deliver to the Authority in lieu of the original policy or policies a certificate thereof, and such delivery shall be a complete compliance with the provisions of this paragraph.

All insurance prescribed by this Section shall be procured from financially sound and reputable insurers qualified to do business in the State or insurers approved in writing by an Authorized Officer of the Authority. To the extent that any such insurance required by this Section is not obtainable on reasonable terms as determined by the Authority, the Authority may make exceptions to the required coverage or provide for reasonable substitutions of coverage. The policies shall be open to inspection by the Authority and the Purchaser at all reasonable times, and a list prepared as of June 30 of each year describing such policies shall be furnished by Stockton to the Authority within sixty (60) days after the beginning of each Bond Year, together with a certificate of an Authorized Officer of the Authority certifying that such insurance meets all the requirements of this Agreement. Neither the Purchaser nor the Escrow Agent shall have any responsibility with respect to any such insurance.

The proceeds of any casualty insurance payable to Stockton or the Authority not applied as provided in the preceding sentence (i) may be used by Stockton with written notification to the Authority to repair and replace the damaged portions of the Leased Facilities, (ii) may be deposited by the Authority with the Purchaser for payment into the Escrow Fund, as provided in the Bond Agreement, or (iii) if there is substantial damage to the Leased Facilities rendering such project, in the opinion of the Authority in consultation with Stockton, unsuitable for use for its intended purposes, deposited by the Authority, with the consent of Stockton, in the Escrow Fund to be applied to the redemption of the Series 2020 Bonds, in whole or in part, to the extent of such insurance proceeds. Such redemption shall be made on the earliest practicable date at the Mandatory Purchase Price, plus accrued interest to the redemption date.

Nothing in this Section shall be deemed to limit Stockton from obtaining insurance in excess of the requirements set forth herein.

**SECTION 5.06. Compliance with Laws and Regulations.** Stockton agrees that throughout the term of this Agreement, at Stockton's sole cost and expense, it will promptly comply with (or cause to be complied with) all laws and ordinances and the orders, rules, regulations and requirements of all federal, State and local governments and agencies and

departments thereof which are applicable to Stockton and the Leased Facilities, whether or not the same requires structural repairs and alterations, which may be applicable to the Leased Facilities, the fixtures or equipment thereof, or the sidewalks and curbs adjoining the Leased Facilities, or the use or manner of use of the Leased Facilities. Stockton will also observe and comply (or cause to be observed and complied with) with the requirements of all policies and arrangements of insurance at any time in force with respect to the Leased Facilities and the fixtures and equipment thereof.

**SECTION 5.07. Alterations and Additions to the Leased Facilities.** Stockton shall have the right at any time and from time to time during the term of this Agreement, with the approval of an Authorized Officer of the Authority, to make such changes, alterations and additions, structural or otherwise, to the Leased Facilities, and the fixtures and equipment thereof, now or hereafter on or at the Leased Facilities, as they shall deem necessary or desirable in connection with the use of the Leased Facilities. All such changes, alterations and additions when completed shall be of such a character as not to reduce or otherwise adversely affect the value of the Leased Facilities or the rental value thereof. Any Authorized Officer of the Authority may, on behalf of the Authority, consent to any such changes, alterations or additions upon receipt of such documentation and assurance from Stockton as such Authorized Officer deems appropriate. The cost of any such change, alteration or addition shall be promptly paid and discharged by Stockton, so that the Leased Facilities shall at all times be free of liens for labor and materials supplied to the Leased Facilities. All alterations, additions and improvements to the Leased Facilities shall be and become a part of the Leased Facilities and shall be owned by the Authority; *provided*, that, except as provided in the last sentence of Section 5.02 hereof, any moveable equipment and any communications fixtures (*e.g.*, cell towers) installed on or in the Leased Facilities shall not be deemed to become part of the Leased Facilities

**SECTION 5.08. Future Liens.** Stockton covenants to keep the Leased Facilities, and the fixtures and equipment constituting part thereof, at all times during the term of this Agreement, free and clear of mechanics' liens and other liens of like nature, and Stockton shall at all times duly protect the Authority against any and all attorney's fees, costs and expenses which may accrue, grow out of or be incurred by reason of or on account of any such liens or claims.

**SECTION 5.09. Covenants Against Waste.** Stockton covenants not to do or suffer or permit any waste or damage to the Leased Facilities or any building or improvement now or hereafter constituting the Leased Facilities or any fixture or equipment constituting part thereof.

**SECTION 5.10. Affirmative and Negative Environmental Covenants.**

(a) Stockton shall obtain all permits, licenses and other authorizations required under Applicable Environmental Laws with respect to the construction, use, occupancy and operation of the Leased Facilities.

(b) As of the date hereof, neither Stockton nor any of the Leased Facilities is in violation of any Applicable Environmental Law or subject to any existing, pending or, to the knowledge of Stockton (after due inquiry), threatened investigation or inquiry by any Governmental Authority pursuant to any Applicable Environmental Law.

(c) To the knowledge of Stockton after due inquiry, the activities, properties and assets of Stockton, including the Leased Facilities, are in substantial and material compliance with all terms and conditions of all required permits, licenses and authorizations, and are in substantial and material compliance with all limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in Applicable Environmental Laws. There are no past or present events, conditions, including without limitation Environmental Conditions, circumstances, activities, practices, incidents, actions or plans which may (i) interfere with or prevent continued substantial and material compliance on the part of Stockton with Applicable Environmental Laws; (ii) give rise to any liability on the part of Stockton under Applicable Environmental Laws; or (iii) otherwise form the basis of any claim, action, suit, proceeding, request or demand for information or investigation against Stockton based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of, or the Release or threatened Release into the Environment of, any Hazardous Substances. Stockton shall not cause or permit any of the Leased Facilities to be in violation of, nor shall Stockton by act or omission cause or permit any of the Leased Facilities to be subject to any Remediation obligations, under Applicable Environmental Law. Stockton shall promptly notify the Authority in writing of any existing, pending or, to the knowledge of Stockton (after due inquiry), threatened investigation or inquiry by any Governmental Authority pursuant to or under any Applicable Environmental Law relating to any of the Leased Facilities.

(d) Stockton covenants that it will not install or cause to be installed in on or at any of the Leased Facilities any materials containing any Hazardous Substances, including without limitation any asbestos containing materials, except in compliance with Applicable Environmental Laws. In the event any such materials are found to be present in, on or at any of the Leased Facilities (to the extent installed therein or permitted to be installed therein by Stockton), Stockton shall, promptly upon discovery and at its sole cost and expense, Remediate such materials in accordance with the requirements of law, including without limitation Applicable Environmental Laws, and shall have such Remediation performed by licensed and qualified environmental engineering firms, contractors and consultants.

(e) Stockton has taken all steps necessary (including without limitation all actions necessary to meet the "all appropriate inquiry" standard set forth in N.J.S.A. 58:10-23.11g, as amended) to determine, and has determined, that there are no Environmental Conditions on, at, under or emanating from any of the Leased Facilities except as disclosed in Schedule 5.10 hereof. The use which Stockton makes and intends to make of the Leased Facilities shall not result in the Release of any Hazardous Substance on, at, under or from any of the Leased Facilities.

(f) Stockton has not received any communication, written or oral, from any Governmental Authority, including without limitation the NJDEP or the USEPA, concerning any intentional or unintentional action or omission on Stockton's part resulting in the Release of any Hazardous Substances on, at, under or from any of the Leased Facilities, except as disclosed in Schedule 5.10 hereof.

(g) None of the Leased Facilities has been used in the past, or is now being used, as a Major Facility (as such term is defined in N.J.S.A 58:10-23.11b) and Stockton shall not use any of the Leased Facilities as a Major Facility in the future without the prior express

written consent of an Authorized Officer of the Authority, which consent may be given or withheld at the Authority's sole discretion. If any of the Leased Facilities is determined to be a Major Facility in the State, then Stockton shall furnish the NJDEP with all the information required by N.J.S.A. 58:10-23.11d1 to -23.11d15, and shall duly file with the Director of the Division of Taxation in the New Jersey Department of the Treasury a tax report or return, and shall pay all taxes due therewith, in accordance with N.J.S.A. 58:10-23.11h.

(h) Stockton shall not conduct or cause or permit to be conducted on or at any of the Leased Facilities any activity, use or operation which constitutes an "Industrial Establishment" (as such term is defined under ISRA), without the prior express written consent of an Authorized Officer of the Authority, which consent may be given or withheld at the Authority's sole discretion. In the event the provisions of ISRA become applicable to any of the Leased Facilities subsequent to the date hereof, Stockton shall give prompt written notice thereof to the Authority and Stockton shall take all requisite action, including the performance of Remediation, to ensure full compliance with ISRA. Stockton shall promptly deliver to the Authority copies of all correspondence, notices, reports, workplans, laboratory and field data and all other submissions that Stockton generates, or sends to or receives from the NJDEP, in connection with such ISRA compliance.

(i) No lien has been attached to any revenue or any personal property owned by Stockton and located in the State, including, without limitation, any of the Leased Facilities, as a result of (i) the Administrator of the New Jersey Spill Compensation Fund expending moneys from said fund to pay for Damages and/or Cleanup and Removal Costs; or (ii) the Administrator of the United States Environmental Protection Agency expending moneys from the Hazardous Substance Superfund for Damages and/or Response Action Costs. In the event any such lien has been filed, then Stockton shall, within thirty (30) days from the date Stockton is given such notice of such lien (or within such shorter period of time in the event the State or the United States has commenced steps to have any of the Leased Facilities sold), either: (i) pay the claim and remove the lien from the Leased Facilities; or (ii) furnish (a) a bond satisfactory to the Authority in the amount of the claim out of which the lien arises, (b) a cash deposit in the amount of the claim out of which the lien arises, or (c) other security satisfactory to the Authority in an amount sufficient to discharge the claim out of which the lien arises.

(j) During the term of this Agreement, Stockton shall take all steps necessary to determine whether any Hazardous Substances have been Released on, at, under or from any of the Leased Facilities and Stockton shall promptly upon discovery Remediate such Release in accordance with the requirements of Applicable Environmental Law. Without in any way limiting the generality of the foregoing, in the event Stockton performs any Remediation at any of the Leased Facilities pursuant to this Section 5.10, Stockton agrees to:

(i) perform and cause all consultants and contractors retained by Stockton to perform, all such Remediation in a workmanlike manner and consistent with all Applicable Environmental Laws;

(ii) comply with all Applicable Environmental Laws in connection with the implementation of such Remediation at the Leased Facilities and obtain all permits,



authorizations and consents required under Applicable Environmental Laws or by any Governmental Authority in order to implement such Remediation at the Leased Facilities;

(iii) select and propose to the Governmental Authority Remediation that shall not interfere with the current use of any of the Leased Facilities or the operations currently conducted by Stockton nor interfere with, preclude or prevent the future use of any of the Leased Facilities for the same use or any use similar to the current use of the Leased Facilities. Without in any way limiting the generality of the foregoing, Stockton shall not select, propose or use at any of the Leased Facilities any Engineering Controls or Institutional Controls (as such terms are defined under N.J.S.A. 58:10B-1 *et seq.*), or any remediation standards applicable to non-residential properties, without the prior written consent of an Authorized Officer of the Authority, which consent shall not be unreasonably withheld;

(iv) promptly upon the completion of the Remediation, restore the Leased Facilities to substantially the same condition they were in prior to the performance of the Remediation;

(v) provide the Authority with copies of all documents that Stockton (i) submits to any Governmental Authority in connection with the Leased Facilities at the same time Stockton submits such documents to the Governmental Authority, and (ii) receives from any Governmental Authority in connection with the Leased Facilities within three (3) Business Days of Stockton's receipt of same; and

(vi) obtain and provide to the Authority a No Further Action Letter/Covenant Not to Sue issued by the NJDEP pursuant to N.J.S.A. 58:10B-13.1 or, if the Remediation is under the supervision of a Governmental Authority other than the NJDEP, obtain a comparable determination from such other Governmental Authority.

**SECTION 5.11. Municipal Property Taxes.** Stockton agrees to pay, or cause to be paid, any and all local municipal assessments for property taxes, including farmland rollback assessments, directly related to the Leased Facilities. Stockton, if applicable, shall provide the Authority with copies of all applications for exemption from municipal property taxes filed with the local municipality.

**SECTION 5.12. Compliance with Prevailing Wage Act.** Stockton hereby covenants and agrees that it shall comply with the provisions of N.J.S.A. 18A:72A-5.1 to -5.4 (relating to the payment of prevailing wage rates) to the extent applicable with respect to the Leased Facilities.

**SECTION 5.13. P.L. 2005, c.92.** In accordance with P.L. 2005, c.92, Stockton covenants and agrees that all services performed under this Agreement shall be performed within the United States of America.

**SECTION 5.14. Consent to Authority's Use of Photographs and Videos.** Stockton agrees that the Authority may use photographs or videos taken on Stockton's campus (whether taken by the Authority or other person) on the Authority's website and in the

Authority's newsletters, reports or other publications or materials (including PowerPoint presentations) in connection with the Authority's operations.

## ARTICLE VI

### CHARACTER OF AGREEMENT

**SECTION 6.01. Net Lease.** It is mutually agreed by the parties hereto that this is a net lease and notwithstanding any language herein to the contrary, it is intended, and Stockton expressly covenants and agrees, that all rentals and other payments herein required to be made by Stockton to the Authority shall be net payments to the Authority, meaning that the Authority is not and shall not be required to expend any money or do any acts or take any steps affecting or with respect to the maintenance, preservation, repair, restoration, reconstruction, or protection of the Leased Facilities or any part thereof.

## ARTICLE VII

### RIGHTS ON DEFAULT

**SECTION 7.01. Entry.** The Authority and Stockton agree that, if an Event of Default occurs and is continuing, the Authority shall have the right to and may enter the Leased Facilities without being liable for any prosecution or damages therefor, and may relet the Leased Facilities for such term of years, which may exceed the term of this Agreement, and receive the rent therefor, upon such terms as shall be satisfactory to the Authority. Such entry by the Authority shall not relieve Stockton of its obligations under this Agreement nor operate to release Stockton from any Basic Lease Payments to be paid or covenants to be performed under this Agreement during the full term of the Agreement. For the purpose of reletting, the Authority shall be authorized to make such repairs or alterations in or to the Leased Facilities as it may deem necessary to place the same in good order and condition. Stockton shall be liable to the Authority for the cost of such repairs or alterations and all expenses of such reletting. If the sum realized or to be realized from the reletting is insufficient to satisfy the Basic Lease Payments provided in this Agreement, the Authority, at its option, may require Stockton to pay such deficiency month by month, or may hold Stockton liable in advance for the entire deficiency to be realized during the term of the reletting of the Leased Facilities in excess of the Basic Lease Payments reserved in this Agreement. Notwithstanding such entry by the Authority, Stockton agrees that: (i) all rights-of-way, easements or other rights in land conveyed or otherwise provided in accordance with this Agreement shall be continued in full force and effect; and (ii) any utility services shall be furnished by Stockton to the Leased Facilities at the expense of Stockton. Furthermore, upon such entry by the Authority, any sublease of the Leased Facilities shall immediately terminate and be of no further force and effect.

Upon entering the Leased Facilities, the Authority shall as soon as practicable, inspect the Leased Facilities and make inventories of all fixtures, furniture, equipment and effects in the Leased Facilities. Stockton shall pay to the Authority upon receipt of the properly executed vouchers therefor all sums owing to the Authority by Stockton in connection therewith.

If entry upon the Leased Facilities (or any portion thereof) is permitted under this Section 7.01, the Authority may enter upon the Leased Facilities or any portion thereof.

For purposes of this Agreement, an Event of Default shall exist if a "Lease Default Event" shall exist hereunder. The following are Lease Default Events:

- (a) Upon failure by Stockton to pay in full any payment required hereunder, whether at maturity, upon a date fixed for prepayment, by declaration, or otherwise pursuant to the terms hereof or thereof; or
- (b) If any material representation or warranty made by Stockton herein or made by Stockton in any document, instrument or certificate furnished to the Purchaser or the Authority in connection with the issuance of the Series 2020 Bonds shall at any time prove to have been incorrect in any respect as of the time made; or

(c) If Stockton shall fail to observe or perform any other covenant, condition, agreement or provision in this Agreement on its part to be observed or performed, or shall breach any warranty herein contained, for a period of thirty (30) days after written notice, specifying such failure or breach and requesting that it be remedied, has been given to Stockton by the Authority or the Purchaser; except that, if such failure or breach can be remedied but not within such thirty (30) day period and if Stockton has taken all action reasonably possible to remedy such failure or breach within such thirty-day period, such failure or breach shall not become a Lease Default Event for so long as Stockton shall diligently proceed to remedy such failure or breach in accordance with and subject to any directions or limitations of time established by the Purchaser; or

(d) The filing by or against Stockton of any proceeding in bankruptcy, receivership, insolvency, reorganization, liquidation, conservatorship or similar proceeding (and, in the case of any such proceeding instituted against Stockton, such proceeding is not dismissed or stayed within ninety (90) days of the commencement thereof, provided that the Authority and the Escrow Agent shall not be obligated to advance additional funds under the Bond Agreement during such period); or

(e) Assignment by Stockton for the benefit of creditors, or any levy, garnishment, attachment or similar proceeding is instituted against any property of Stockton held by or deposited with the Escrow Agent or the Purchaser; or

(f) The reduction in the long-term rating of Stockton's outstanding public bond indebtedness below an investment grade (i.e., below Baa3 by Moody's or below BBB- by Fitch Ratings, Inc. or, if applicable, below BBB- by Standard & Poor's).

## ARTICLE VIII

### INSPECTIONS

**SECTION 8.01. Authority's Right to Inspect.** Stockton covenants and agrees to permit the Authority and the Purchaser and the authorized agents and representatives of the Authority and the Purchaser to enter the Leased Facilities at all times during business hours for the purpose of inspecting the same.

**SECTION 8.02. Annual Inspection.** Stockton covenants and agrees that at its own expense it will upon the request from time to time of the Authority, and cause an inspection of the Leased Facilities to be made by a professional engineer or architectural firm employed by Stockton or by the officer or employee of Stockton in charge of the grounds and plant of Stockton and that it will file with the Authority such inspection report upon completion. Said report shall set forth in its findings whether the Leased Facilities has been maintained in good repair, working order and condition as well as any recommendations as to the proper maintenance and repair of the Leased Facilities and the estimate of money necessary for such purpose.

## ARTICLE IX

### INTEREST IN THE PROJECT

**SECTION 9.01. No Merger.** It is mutually agreed by the parties hereto that so long as any of the Series 2020 Bonds issued by the Authority for the purpose of providing moneys to pay the cost of the Series 2020 Project are outstanding and unpaid, without provision for such payment duly provided for, the leasehold interest and estate created by this Agreement shall not be merged or deemed to be merged with any reversionary interest and estate of Stockton, if any, in the Leased Facilities.

**SECTION 9.02. Conveyance Requirement.** When the term of this Agreement has expired and the Authority has certified that all of the outstanding Series 2016 A Bonds and Series 2020 Bonds have been paid or provision for payment duly made, and the Purchaser has certified to the Authority that all of the outstanding Series 2020 Bonds, including the principal, redemption premium, if any, and interest and all other obligations incurred by the Authority in connection with the Series 1993 F Project, the Series 2005 C Project, the Series 2006 F Project, the Series 2007 G Project, the Series 2008 A Project, the Series 2016 A Project and the Series 2020 A Project have been paid, or that sufficient funds for such payment in full are held in trust by the Purchaser, an Authorized Officer of the Authority shall transfer all its rights, title and interest in and to the Leased Facilities to the appropriate State entity by deed or deeds in form satisfactory to an Authorized Officer of the Authority. [Notwithstanding the foregoing, in the event any other agreement for any other Authority bonds relating to the Leased Facilities, if any, are still then in effect, the site(s) of the respective Leased Facilities shall not be so transferred until permitted by the terms of such other agreements.]

## **ARTICLE X**

### **ASSIGNMENTS**

**SECTION 10.01. Assignments.** Except as permitted by Section 5.01 above, Stockton shall not assign this Agreement or any interest therein or sublet the Leased Facilities or any part thereof without the prior written consent of the Authority; provided, however, that nothing in this Article X shall prohibit the licensing, to students of Stockton or other use of the Leased Facilities, or any part thereof, so long as Stockton does not grant an interest in or over the Leased Facilities without the consent of the Authority.



**ARTICLE XI**  
**REPRESENTATIONS**

**SECTION 11.01. Condition of Premises.** Stockton shall fully familiarize itself with the physical condition of the Leased Facilities and the improvements, fixtures and equipment constituting part thereof. The Authority makes no representations whatsoever in connection with the condition of the Leased Facilities or the improvements, fixtures or equipment constituting part thereof, and the Authority shall not be liable for any latent or patent defects therein.

**SECTION 11.02. Limitation of Liability.** Stockton covenants that all actions heretofore taken by Stockton in connection with the Leased Facilities, including the making of contracts, and all actions hereafter taken by the Authority in connection with the Leased Facilities and the Project Facilities upon the recommendation or request of any Authorized Public University Representative have been and will be in full compliance with the Bond Agreement, the Resolution, this Agreement and with all pertinent laws applicable to Stockton or the Authority. Stockton acknowledges that any review of any such actions heretofore or hereafter taken by the Authority's staff or counsel has been or will be solely for the protection of the Authority to carry out the Series 2020 Project and shall not estop the Authority from enforcing the foregoing covenant.

The ownership of the Leased Facilities shall not impose any other liability on the Authority, whether contractual or otherwise. Neither the carrying out of the Series 2020 Project or the operation of the Leased Facilities nor the ownership of the Leased Facilities by the Authority shall impose any liability on the members, officers, employees, counsel, consultants or agents of the Authority. Stockton agrees to indemnify the Authority and all members, officers, employees, counsel, consultants or agents of the Authority and save them harmless against any liability intended to be precluded herein.

In the exercise of the powers of the Authority by its members, officers, employees, consultants and agents (other than Stockton) under the Bond Agreement, the Resolution, the Financing Documents and this Agreement, including (without limiting the foregoing) the carrying out of the Series 2020 Project, the application of moneys, the investment of funds and reletting the Leased Facilities in the Event of Default by Stockton, the Authority and its members, officers, employees, consultants and agents shall not be accountable to Stockton for any action taken or omitted by it or them in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred. The Authority and all such other parties shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

Pursuant to *N.J.S.A. 18A: 72A-6*, all payment obligations of the Authority whatsoever arising under the Financing Documents shall constitute special and limited obligations of the Authority payable solely from amounts, if any, paid by Stockton pursuant to this Agreement or otherwise available for such purpose under the Bond Agreement and Resolution.

**SECTION 11.03. Covenant as to Arbitrage.** The Authority and Stockton hereby covenant that they will make no use of the proceeds of the Series 2020 Bonds which would cause the Series 2020 Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, (the “Code”), Treasury Regulations Sections 1.148-0 through 1.148-11 and 1.149(d)-1, and all other applicable regulations of the Internal Revenue Service.

**SECTION 11.04. Tax Covenants.**

(a) The Authority and Stockton covenant that they will take no action which would cause the Series 2020 Bonds to be “private activity bonds” within the meaning of Section 141 of the Code. Accordingly, not more than ten percent (10%) of the proceeds of the Series 2020 Bonds will be used directly or indirectly in any trade or business carried on by any person other than a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code). Not more than five percent (5%) of the proceeds of the Series 2020 Bonds will be used directly or indirectly in any trade or business carried on by any person other than a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code) for any use unrelated to any governmental use of such proceeds or used or to be used in any “disproportionate related business use” (as defined in Section 141 of the Code). Not more than the lesser of five percent (5%) of the proceeds of the Series 2020 Bonds or \$5,000,000 will be used directly or indirectly to make or finance loans to any person other than a state or local governmental unit or instrumentality thereof (within the meaning of Section 141 of the Code). Not more than ten percent (10%) of the proceeds of the Series 2020 Bonds will be (i) secured directly or indirectly by any interest in property used or to be used for a private business use (within the meaning of Section 141(b) of the Code) or by payments in respect of such property, or (ii) derived directly or indirectly from payments (whether or not to the Authority) in respect of property, or borrowed money, used or to be used for a private business use.

(b) Stockton covenants to create and maintain records which, in the judgment of the Authority, are sufficient to determine the compliance of the Series 2020 Bonds with the requirements of Section 141 of the Code, including but not limited to (i) the allocation and use of the proceeds of the Series 2020 Bonds and (ii) the ownership and use of all the property financed or refinanced with proceeds of the Series 2020 Bonds, as such records are further described in the Tax Certificate. The Authority covenants to create and retain records with respect to: (x) all investments made with Gross Proceeds (within the meaning of Treasury Regulations Section 1.148-1 (b)) of the Series 2020 Bonds (including without limitation records required under Treasury Regulations Section 1.148-5(d)(6)); (y) all information necessary to compute the Yield (within the meaning of Treasury Regulations Section 1.148-1 (b)) on the Series 2020 Bonds, including the information necessary to establish the existence of any qualified guarantee or qualified hedge (within the meaning of Treasury Regulations Section 1.148-4(f) and (h)) with respect to the Series 2020 Bonds, the amount and date of payments for a qualified guarantee or qualified hedge with respect to the Series 2020 Bonds, and the issue price of the Series 2020 Bonds; and (z) all information necessary to establish any exception to arbitrage rebate (within the meaning of Treasury Regulations Section 1.148-7) has been met with respect to proceeds of the Series 2020 Bonds, as such records are further described in the Authority’s Arbitrage Certificate. The Authority and Stockton covenant to retain all such records until three years after the last

scheduled maturity date of the Series 2020 Bonds, or in the event the Series 2020 Bonds are retired early, three years after the final retirement of the Series 2020 Bonds.

(c) The Authority and Stockton covenant that they will take no action that would cause the Series 2020 Bonds to be federally guaranteed (within the meaning of Section 149(b) of the Code).

(d) The Authority and Stockton covenant to comply with the provisions of the Code applicable to the Series 2020 Bonds and covenant that they will not take any action or fail to take any action which would cause the interest on the Series 2020 Bonds to lose the exclusion from gross income for purposes of federal income taxation under Section 103 of the Code.

(e) Stockton acknowledges and agrees that the Authority has adopted written Post-Issuance Compliance Procedures intended to meet the guidelines set forth in Internal Revenue Manual Section 7.2.3.4.4 (the "Authority Written Procedures") and represents that it has adopted written Post-Issuance Compliance Procedures intended to meet the guidelines set forth in Internal Revenue Manual Section 7.2.3.4.4 (together with the Authority Written Procedures, the "Written Procedures"). Stockton agrees to comply with the Written Procedures and at least once a year review the use of the 2020 Bonds and any other outstanding bonds of the Authority that have financed facilities for Stockton (together with the 2020 Bonds, the "Authority's Bonds") in order to determine whether such bonds meet all federal tax law conditions applicable to such bonds and certify its findings in writing to the Authority. In addition, Stockton shall, with respect to any of the Authority's Bonds, provide prompt written notice to the Authority of any of the acts or events listed on **Exhibit D** that may jeopardize the tax exempt status of the Authority's Bonds, attached hereto and made a part hereof (a "Special Notice Event"). Stockton will use its best efforts to provide advance notice, but will in any event provide notice no later than thirty (30) days after the occurrence of such Special Notice Event, whether Stockton is on notice of such Special Notice Event by its diligence or internal procedures or its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Special Notice Event shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Special Notice Event has occurred, or otherwise. Stockton agrees that, in consultation with the Authority, at the expense of Stockton, it shall take such actions, if any, as may be necessary or appropriate to remediate such Special Notice Event, including without limitation such actions required under Section 1.141-12 of the Treasury Regulations or a closing agreement with the Internal Revenue Service and provide to the Authority an opinion of Bond Counsel outlining the plan of remediation and whether or not the tax exempt status of the Authority's Bonds will be preserved. In the event the Authority becomes aware of a Special Notice Event, the Authority shall have the right, upon prior written notice to Stockton, to conduct its own investigation and at the sole cost of expense of Stockton, retain Bond Counsel to determine any and all actions required to remediate such Special Notice Event. Upon request of the Authority, Stockton shall adopt and follow its own written post-issuance compliance procedures to supplement the foregoing.

#### **SECTION 11.05. Rebate Requirement.**

(a) The Authority and Stockton covenant and agree that the Authority shall calculate or cause to be calculated the Rebatable Arbitrage at the times and in the manner set forth in the

Tax Certificate and shall pay or direct the Escrow Agent to pay the Rebatable Arbitrage from the Rebate Account to the United States, in the percentage, at the times and in the manner set forth in the Tax Certificate.

(b) Notwithstanding any other provision of this Agreement, to the extent that funds and accounts held by the Escrow Agent are less than the amount required to be deposited by the Authority in the Rebate Fund for the Series 2020 Bonds, Stockton will pay to the Authority the amount equal to the Rebatable Arbitrage.

**SECTION 11.06. Agreement Not to Purchase Bonds.** Stockton agrees that neither it nor any person related to it, within the meaning of Treasury Regulations Sections 1.150-1(b), pursuant to an arrangement, formal or informal, shall purchase bonds of the Authority in an amount related to the amount of the payments to be made pursuant to this Agreement.

**SECTION 11.07. Right to Obtain Bond Counsel Opinion.** The Authority and Stockton shall not be required to comply with any one or more requirements of Sections 11.04, 11.05 and 11.06 hereof to the extent that an opinion of Bond Counsel reasonably acceptable to the Authority is obtained to the effect that failure to comply with such requirements or compliance with other requirements in lieu of Sections 11.04, 11.05 and 11.06 hereof will not impair the exclusion from gross income of interest on the Series 2020 Bonds for purposes of federal income taxation under Section 103 of the Code.

**SECTION 11.08. Intentionally Omitted.**

**SECTION 11.09. Review and Execution of Financing Documents.** Stockton hereby represents and warrants to the Authority that Stockton has reviewed and has a full understanding of all the terms, conditions and risks (economic and otherwise) of each of the Financing Documents, that it is capable of assuming and willing to assume (financially and otherwise) all such risks, that it has consulted with its own legal and financial advisors (to the extent it has deemed necessary) and is not relying upon any advice, counsel or representations (whether written or oral) of the Authority or the Authority's legal and financial advisors, and that it has made its own investment, hedging and trading decisions (including decisions relating to the suitability of each of the Financing Documents) based upon its own judgment and upon any advice from its own legal and financial advisors as it has deemed necessary. Stockton hereby acknowledges that the Authority is entering into the Financing Documents at the request of, and as an accommodation to, Stockton, and that the terms of the Financing Documents have been negotiated by, and are acceptable to, Stockton.

**SECTION 11.10. Additional Representations and Warranties.** Stockton hereby makes the following representations and warranties to the Authority and the Purchaser as of the date hereof:

(a) Article 9. Stockton covenants and agrees to cooperate with the Authority in complying with the provisions of Article 9 of the Uniform Commercial Code enacted by the State Legislature or by any other jurisdiction whose laws govern the perfection and enforceability of any security for the Series 2020 Bonds to the extent that the Authority determines that compliance therewith is required.

(b) Financial Statements. The audited financial statements of Stockton for the most recent fiscal year, including its balance sheets as of such date, correctly and fairly present, in all material respects, the financial condition of Stockton as of said dates and the results of the operations of Stockton for such period, and have been prepared in accordance with generally accepted accounting principles consistently applied except as stated in the notes thereto; and there has been no material adverse change in the condition, financial or otherwise, of Stockton since the date of such financial statements, from that set forth in said financial statements as of, and for the period ended on that date.

(c) Existence and Standing. Stockton is a public institution for higher education existing under the laws of the State, and has the necessary power and authority to execute and deliver this Agreement and any other Financing Documents to which Stockton is a party, and to perform its obligations hereunder and thereunder.

(d) Authorization and Validity. The execution and delivery by Stockton of this Agreement and any other Financing Documents to which Stockton is a party have been duly authorized by proper proceedings of Stockton, and no further approval, authorization or consents are required by law or otherwise. This Agreement and the other Financing Documents to which Stockton is a party constitute the legal, valid and binding obligations of Stockton enforceable in accordance with their respective terms, except as future enforceability may be limited by bankruptcy, insolvency, or similar laws affecting the rights of creditors, and by general equitable principles.

(e) Compliance with Laws and Contracts. Neither the execution and delivery by Stockton of this Agreement and any other Financing Documents to which Stockton is a party, nor the consummation of the transactions herein and therein contemplated, nor compliance with the provisions hereof or thereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on Stockton, Stockton's organizational documents or the provisions of any Bond Agreement, instrument or agreement to which Stockton is a party or is subject, or by which it or its property is bound, or conflict with or constitute a default under or result in the creation or imposition of any lien pursuant to the terms of any such Bond Agreement, instrument or agreement.

(f) Litigation. There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of Stockton, threatened against or affecting Stockton (x) wherein an unfavorable decision, ruling or finding would materially adversely affect (i) the transactions contemplated by or the validity of this Agreement or any other Financing Documents to which Stockton is a party, (ii) the tax-exempt status of Stockton or of the interest on the Series 2020 Bonds, or (iii) Stockton's property, assets, operations or conditions, financial or otherwise, or its ability to perform its obligations hereunder or under such other Financing Documents; or (y) which in any way contests the existence, organization or powers of Stockton or the titles of the officers of Stockton to their respective offices.

**SECTION 11.11. Additional Covenants.** During the term of this Agreement, and until Stockton has paid in full all of its obligations hereunder, Stockton hereby covenants and agrees as follows:

(a) Existence. Stockton shall maintain its existence and operation as a public institution of higher education formed under the laws of the State, and shall not merge, consolidate, enter into a merger or consolidation or liquidate or sell its assets outside the normal course of business.

(b) Compliance With Laws. Stockton shall comply with all laws, rules and regulations, and with all final orders, writs, judgments, injunctions, decrees or awards to which it may be subject and which are material to the Series 2020 Bonds, this Agreement or any other Financing Documents to which Stockton is a party, or the operations, affairs, properties, condition (financial or otherwise) or prospects of Stockton; provided, however, that Stockton may contest the validity or application thereof and appeal or otherwise seek relief therefrom, and exercise any and all of the rights and remedies which it may have with regard thereto, so long as such acts do not affect Stockton's power and authority to execute and deliver this Agreement and such other Financing Documents, and to perform its obligations and pay all amounts payable by it hereunder and thereunder.

(c) Maintain Existence of Authority "Project". Stockton shall operate and use or cause the Leased Facilities and each portion thereof to be operated and used as educational facilities constituting an authorized "Project" under the Act.

(d) Indemnification. Stockton shall indemnify the Authority as follows:

(1) Stockton shall protect, exonerate, defend, indemnify and save the Authority and its members, directors, officers, employees, agents, consultants and attorneys (collectively, the "Indemnified Parties") harmless from and against any and all Losses arising from the use or occupancy of the Leased Facilities by Stockton, by the sublessees thereof, if any, their agents, contractors, servants, employees, licensees or invitees, or Losses, including, but not limited to personal injury, death, loss or damage to property suffered or incurred by any person, entity, firm or corporation arising out of or attributable the financing of the Project, the use, operation or maintenance of the Project Facilities or the Leased Facilities by Stockton, by the sublessees, if any, agents, contractors, servants, employees, licensees, or invitees; and from and against any and all Losses incurred in or about the defense of any such claims, actions or proceedings brought thereon. Stockton's obligations hereunder shall survive the payment of the sums due hereunder and the expiration of the term of this Agreement. In addition, Stockton shall release the Indemnified Parties from, agrees that the Indemnified Parties shall not be liable for, and agrees to hold the Indemnified Parties harmless against any Losses because of any action taken by an Indemnified Party in good faith with respect to this Agreement, the Project Facilities or the Leased Facilities.

(2) The Indemnified Parties, respectively, will give prompt written notice to Stockton of any claim asserted against it or them, as the case may be, which claim, if sustained, may result in liability on the part of an Indemnified Party which is indemnified hereunder; provided, however, that the failure on the part of the Indemnified Party to give such notice shall not relieve Stockton from its obligation under this Section. Upon receipt of such notification, Stockton shall assume the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion, but with the Indemnified Party's

consent, all without cost to the Indemnified Parties including any costs incurred by any Indemnified Party prior to such notification. Any Indemnified Party shall have the right to employ separate counsel in any such claim and to participate in the defense thereof.

(3) The Authority shall be protected in its acting upon any paper or documents believed by it to be genuine, and it may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

(e) Requisition Forms. Stockton shall forward copies of all Requisition Forms (as defined in the Bond Agreement) and accompany documentation to the Authority upon submission of same to the Escrow Agent pursuant to Section 2.5 of the Bond Agreement.

(f) Financial Statements. (i) Stockton shall furnish to the Purchaser and to the Authority or cause to be furnished to the Purchaser and to the Authority, in form and substance satisfactory to the Purchaser, within one hundred eighty (180) days of the end of each fiscal year end of Stockton, a financial statement of Stockton's profit and loss for such fiscal year and a balance sheet as of the end of such fiscal year with a cash flow statement, all in reasonable detail in accordance with generally accepted accounting principles, consistently applied, and audited by an independent certified public accountant acceptable to the Purchaser and the Authority; provided that if audited financial statements are not available within such time period, Stockton shall furnish unaudited financial statements within such time period followed by audited financial statements when available.

(ii) Stockton shall furnish to the Purchaser (and to the Authority, upon request), or cause to be furnished to the Purchaser (and to the Authority, upon request), in form and substance satisfactory to the Purchaser.

(1) not later than December 27<sup>th</sup> of each year, such statistical continuing disclosure data that Stockton is currently filing on the Municipal Securities Rulemaking Board (the "MSRB") Electronic Municipal Markets Access System or any other electronic municipal securities information access system designated by the MSRB for collecting and disseminating primary offering documents and certain other information; and

(2) such other financial information concerning the financial or business affairs of Stockton as may be reasonably requested by the Purchaser from time to time.

## ARTICLE XII

### MISCELLANEOUS

**SECTION 12.01. Severability.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

**SECTION 12.02. Paragraph Headings.** The paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

**SECTION 12.03. Notices.** All notices required to be given or authorized to be given by either party pursuant to this Agreement shall be in writing and shall be sent by registered or certified mail to the main office of the other party. All notices required to be given or authorized to be given to the Purchaser by either party pursuant to this Agreement shall be in writing and shall be sent by registered or certified mail to the designated office of the Purchaser at the address of such office.

**SECTION 12.04. Rights Cumulative.** All rights and remedies herein given or granted to the Authority are cumulative, nonexclusive and in addition to any and all rights and remedies that the Authority may have or be given by reason of any law, statute, ordinance or otherwise.

**SECTION 12.05. Amendments or Modification.** This Agreement shall not be amended or modified in any manner without the written consent of the Authority, the Purchaser and Stockton.

**SECTION 12.06. Resolution and Bond Agreement Controlling.** In the event any provisions of this Agreement shall be incompatible with the Resolution or the Bond Agreement, the provisions of said Resolution and the Bond Agreement shall be controlling.

**SECTION 12.07. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 12.08. Third Party Beneficiary.** The Authority and Stockton agree that the Purchaser is a third party beneficiary of this Agreement.

**SECTION 12.09. Governing Law.** This Agreement shall be governed exclusively by and construed in accordance with the laws of the State without regard to conflict of law principles.



IN WITNESS WHEREOF, the Authority and Stockton have caused these presents to be executed by their duly authorized representatives, all as of the day and year first hereinabove set forth.

NEW JERSEY EDUCATIONAL FACILITIES  
AUTHORITY

Attest:

\_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Eric D. Brophy, Esq.  
Executive Director

STATE OF NEW JERSEY    )  
  )  
COUNTY OF MIDDLESEX    )        SS.

BE IT REMEMBERED that on [\_\_\_\_\_], 2020, before me the subscriber, an officer duly authorized pursuant to N.J.S.A. 46:14-6.1 to take acknowledgments for use in the State of New Jersey, personally appeared Eric D. Brophy, Esq., who being by me duly sworn according to law on his oath, says that such person is the Executive Director of the NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY, the Authority named in the within instrument; that deponent signed and delivered the within instrument, as and for such person's voluntary act and deed and as and for the voluntary act and deed of said Authority.

\_\_\_\_\_

Attest:

STOCKTON UNIVERSITY

\_\_\_\_\_

By:

\_\_\_\_\_  
Jennifer Potter  
Chief Financial Officer

STATE OF NEW JERSEY     )  
                                      )  
COUNTY OF ATLANTIC    )

SS.

BE IT REMEMBERED that on [\_\_\_\_\_], 2020, before me the subscriber, an officer duly authorized pursuant to N.J.S.A. 46:14-6.1 to take acknowledgments for use in the State of New Jersey, personally appeared Jennifer Potter, who, I am satisfied is the person who executed the within Instrument as the Chief Financial Officer of Stockton University, and I having first made known to such person the contents thereof, such person did thereupon acknowledge that the said Instrument made by Stockton University and delivered by such person as an authorized officer of Stockton University, is the voluntary act and deed of Stockton University, made by virtue of authority from its governing body, for the uses and purposes therein expressed.

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

## **EXHIBIT A**

### **PROPERTY DESCRIPTIONS OF THE LEASED FACILITIES**

Housing V – Phase I  
Housing V – Phase II  
Library Addition  
Academic Building  
Verizon Building  
Campus Center  
Housing I  
F-Wing Extension

**[TO BE ATTACHED]**

## **EXHIBIT B**

### **DESCRIPTION OF THE PROJECT FACILITIES**

#### **Series 1993 F Project**

##### Library Addition

This construction project consists of a three floor addition and the renovation of the existing 60,000 gross square foot E-Wing Library facility. The addition which is 27,300 gross square feet was attached to the northwest side of the existing building.

##### Academic Building

The Arts and Sciences Building (Academic Building) is a new 37,000 gross square foot two story structure located immediately to the east of the existing entrance to the Public University at A-Wing.

#### **Series 2005 C Project**

##### F-Wing Project

The construction of an addition to, and renovations of, the F-Wing building. Such additions and renovations create approximately 15 new classrooms and 31 faculty offices.

##### J-Wing Project

Renovations to the J-Wing Building, including the creation of approximately 7,440 gross square feet of additional classrooms and faculty space.

##### Housing I Project

Repairing and upgrading certain interior areas of the Housing I buildings.

##### Electrical Improvements

Certain electrical power improvements at various campus facilities, including the installation of a second source of power to the Public University and installment of an emergency generator for the telecommunications center and computer center.

##### Verizon Building Project

The acquisition and renovation of an office building located in the Township of Galloway.

### Subsequent Amendment

The Series 2005 C Project was subsequently amended to include certain expenses to be incurred on the Housing V, Phase I project.

### **Series 2006 F Project**

#### Housing V – Phase I

The scope of this project is to construct and equip a new 250-bed dormitory facility and surface parking.

#### Energy Conservation Projects

These projects consist of two major energy conservation projects: the installation of an Aquifer Thermal Energy Storage System and a 1.6 megawatt Wind Turbine.

#### Land Acquisition

This project involves the purchase of various parcels of real estate surrounding the Public University's campus to be used primarily for Pinelands mitigation necessitated by the construction of certain Series 2006 F Project facilities.

#### Holocaust Resource Center Renovation

This project involves the renovation of the existing approximately 759 square foot Holocaust Resource Center (which has not been renovated since its initial occupancy in 1990), together with the construction of an approximately 961 square foot addition thereto.

#### Alton Auditorium Renovation

The Alton Auditorium (located in A-Wing), an approximately 5,470 square foot facility with seating for 255 people, is utilized as an academic lecture hall. It has not been renovated since its initial occupancy in 1971. This project consists of the renovation of the Auditorium, including upgrading the lighting and acoustical systems, new seating, and a new vestibule and reception area as well as other miscellaneous repairs.

#### Electrical Power Upgrades

This project consists of additional funding for replacement of the Public University's main power feed as well as installation of a secondary power distribution panel and transformer upgrades.

### Subsequent Amendment

The Series 2006 F Project was subsequently amended to include certain expenses to be incurred on the Housing I and Housing V, Phase II projects and the replacement of roofs on academic buildings A through M.

### **Series 2007 G Project**

#### Housing V – Phase II

The scope of this project is to construct and equip two on campus housing units, with a Lakeside dining build-out, that will provide 130 beds for the Public University's residential students.

#### Safety and Infrastructure

This project consists of the design and installation of campus-wide web-cameras to provide information and security for students, faculty and staff and the replacement of grade-level site lighting with aerial lighting along the pathways on the Public University's campus.

#### Heat Pump Replacement

This project involves the replacement of the academic complex geothermal system A-L wings (Buildings 30, 31 and 31) and interior piping.

#### Arts and Science Building Exterior

This project consists of the replacement of the exterior façade of the Arts and Science Building to prevent any emergency life or safety issues.

#### Fire Safety Upgrades and Replacement

This project consists of the replacement of the geothermal rooftop heat pumps throughout Housing II buildings and retrofitting existing fire alarm panels for fiber optic interface in Housing I, II and III fire alarms.

#### Geothermal Infrastructure

This project consists of upgrading the Preconstruction 2005 Master Plan.

### F-Wing Roof Top Units

This project consists of the development of a comprehensive Program Plan and the design, engineering and construction of suitable systems that will replace two existing “Mammoth” rooftop units which serve F-Wing laboratories.

### Campus Center

The scope of this project is to construct an approximately 155,000 gross square foot Campus Center that will include food service facilities, event facilities, lounges, student and Campus Center offices, meeting rooms, dining facilities, a small theater and facilities support.

### Renovations to College Walk

College Walk has not been upgraded since the original buildings were designed and constructed in 1969. The renovation will add to the overall value of the facilities beyond the actual financial outlay and will include the replacement of the existing concrete in favor of durable asphalt pavers thereby extending the useful life of College Walk and addressing any safety issues.

### Site and Roadway Improvements

This project consists of the installation of a traffic signal and left turn lane on the Public University’s main entrance on Jimmie Leeds Road, resurfacing of three (3) 32-year old parking lots, repair of walkways, improvements of site lighting and the construction of turn lanes at parking lot entrances.

### Subsequent Amendment

The Series 2007 G Project was subsequently amended to include certain expenses incurred on the Unified Science Center, L Wing adaptation, Nacote Creek renovation, renovation of the atrium connecting C Wing and D Wing, renovation of G Wing, daycare center renovations and upgrades, campus signage, HVAC upgrades, deferred maintenance, a new swimming pool, athletic fields, parking facilities, computer system infrastructure, hardware and software, and the costs relating to the design and construction of a Unified Science Center for the Public University.

## **Series 2008 A Project**

### Campus Center Project

The Campus Center will be approximately 155,000 gross square feet. It will include food service facilities, event facilities, lounges, student and Campus Center offices, meeting rooms, dining facilities, a small theater, and facilities support.

### Renovation of College Walk

College Walk has not been upgraded since the original buildings were designed and constructed in 1969. This renovation will add to the overall value of the facilities beyond the actual financial outlay. Existing concrete will be replaced by durable asphalt pavers extending useful life and addressing any safety issues.

### Site and Roadway Improvements

This project consists of the installation of a traffic signal and left turn lane at the Public University's main entrance on Jimmie Leeds Road, resurfacing of three (3) 32-year old parking lots, repair of walkways, improvement of site lighting and the construction of turn lanes at parking lot entrances.

### Unified Science Center Project

This science center will provide facilities to support the Public University's science programs. It will include all or some of the following: wet and dry teaching laboratories, wet and dry research laboratories, classrooms, computer laboratories, support facilities including a vivarium and greenhouse, chemical and general storage, storage facilities, shop support, preparation rooms, etc. to support the natural sciences and mathematics programs. The budget includes site work, fees, furnishings and equipment.

### **Series 2016 A Project**

#### New Unified Science Center.

The Unified Science Center II ("USC2") will be a new 60,000 square foot academic building, consisting of approximately 24 classrooms, 20 faculty offices and teaching space for the Schools of Business, Education, Social and Behavioral Sciences, Arts and Humanities, General Studies, Health Sciences and Natural Sciences and Mathematics. .

#### New Classroom Building.

The New Classroom Building will consist of an addition to the recently completed Unified Science Center I ("USC1") and include additional classrooms for the programs in Physics, Environmental Science and Health Science and labs for teaching and research, a vivarium, a greenhouse, computer labs and faculty offices.

#### New Quadrangle Project.

The New Quadrangle Project will consist of infrastructure, landscape, sidewalk and lighting improvements in the property located between USC1 and USC2.



Backfill of Existing Vacated Academic Space.

Upon completion of the USC2 and the New Classroom Building, existing science and other academic space will be vacated. The backfill of this vacated academic space will consist of the renovation and equipment of an existing 45-year old lab, offices and auxiliary space for new and developing academic programs.

**Series 2020 A Project**

The Project consists of the refinancing of the acquisition of certain land, a building thereon and other related improvements, located in the municipality of Galloway, County of Atlantic, in the State of New Jersey, for use as a dormitory as part of Stockton's Galloway campus.

**EXHIBIT C**

**SCHEDULE OF BASIC LEASE PAYMENTS**

(Included for Informational Purposes Only)

## EXHIBIT D

### SPECIAL NOTICE EVENTS

The following events shall be considered Special Notice Events:

1. **Private business use of the Bond Financed Property** -- if any portion of the financed projects will be used by anyone other than a State or local governmental unit or members of the general public who are not using the property in the conduct of a trade or business (e.g., use by a person as an owner, lessee, purchaser of the output of facilities under a "take and pay" or "take or pay" contract, purchaser or licensee of research, a manager or independent contractor under certain management or professional service contracts or any other arrangement that conveys special legal entitlements, including an arrangement that conveys priority rights to the use or capacity of the financed property, for beneficial use of the property financed with proceeds of tax-exempt debt or an arrangement that conveys a special economic benefit). Use of bond financed facilities by the federal government or a 501(c)(3) corporation, or with respect to solar facilities, or a cell tower by a private entity are considered private business use;

2. **Private Loans Bond Proceeds** -- if any portion of the proceeds of the Authority's Bonds (including any investment earnings) thereon are to be loaned by Stockton;

3. **Naming rights agreements for the Bond Financed Property** -- if any portion of the financed projects will become subject to a naming rights agreement, other than a "brass plaque" dedication;

4. **Research using the Bond Financed Property** -- if any portion of the financed projects has been or will be used for the conduct of research under the sponsorship, or for the benefit of, any entity other than a State or local governmental unit, other than a qualified research contract described in Rev. Proc. 2007-47;

5. **Management agreement or service agreement** -- if any portion of the financed projects is to be used under a management contract (e.g., food service, bookstore, or parking management) or service contract, other than (i) a contract for services that are solely incidental to the primary function of financed projects, such as janitorial services or office equipment repair, or (ii) a qualified management contract described in Rev. Proc. 97-13 (Note: a contract that results in the payment of a concession or similar fee to Stockton is not a qualified contract);

6. **Joint Ventures** -- if any portion of the financed projects will be or has been used in any joint venture arrangement with any person other than a State or local governmental unit;

7. **Sinking fund or pledge fund** -- if Stockton, or any organization related to Stockton, identifies funds which are expected to be used to pay debt service on the Authority's Bonds or secure the payment of debt service on the Authority's Bonds, other than those funds or accounts described in the bond documents for the Authority's Bonds; or

**8. Unexpected Payments or Proceeds** -- if Stockton receives funds related to Bond financed property or the Authority's Bonds, including without limitation, charitable gifts, insurance payments and settlements of litigation or other disputes.

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BOND AGREEMENT

by and between

NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY

and

TD BANK, N.A.

Dated: [CLOSING DATE]

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## ARTICLE I

### Background, Representations and Findings.

Section 1.1 Background. THIS BOND AGREEMENT dated [CLOSING DATE], by and between the NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY (the “Authority”), a body corporate and politic with corporate succession, constituting a political subdivision of the State of New Jersey (the “State”) and TD Bank, N.A., a national banking association organized under the laws of the United States of America (the “Escrow Agent” and “Purchaser”).

WHEREAS, the Authority is a body corporate and politic with corporate succession, constituting a political subdivision of the State created and established by the New Jersey Educational Facilities Authority Law, being Chapter 72A of Title 18A of the New Jersey Statutes as enacted by Chapter 271 of the Laws of 1967, as amended and supplemented (the “Act”); and

WHEREAS, Stockton University (the “Public University”) has determined it is necessary and advisable to undertake a project (the “Project”) consisting of: the acquisition by the Public University of certain property located in the municipality of Galloway, County of Atlantic, in the State and to pay certain costs of the issuance of the Bonds (as hereinafter defined), as approved by the Public University’s Board of Trustees; and

WHEREAS, the Authority has determined that it is necessary and in keeping with its authorized purposes to issue a series of bonds to be designated “New Jersey Educational Facilities Authority Revenue Bonds, Stockton University Issue, Series 2020 A” (the “Bonds” or the “Bond”) for the purpose of providing funds to finance or refinance the Project; and

WHEREAS, the repayment of the Bonds will be secured by the pledge of certain lease payments pursuant to a Lease and Agreement, dated [CLOSING DATE], by and between the Authority and the Public University (the “Lease”) pursuant to which the Authority will lease the Leased Facilities (as hereinafter defined) to the Public University; and

WHEREAS, in order to provide for the issuance and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and premium, if any, and interest thereon, the Authority has authorized the execution and delivery of this Bond Agreement; and

WHEREAS, the execution and delivery of this Bond Agreement have been duly authorized by the parties and all conditions, acts and things necessary and required by the Constitution or statutes of the State or otherwise to exist, to have happened, or to have been performed precedent to or in the execution and delivery of this Bond Agreement do exist, have happened and have been performed.



NOW THEREFORE, in consideration of the premises and the mutual covenants and representations herein, and intending to be legally bound the parties hereto hereby mutually agree as follows:

Section 1.2 Definitions.

In this Bond Agreement the defined terms in the foregoing recitals shall have the meanings set forth therein. In addition, the following terms shall have the following meanings unless a different meaning clearly appears from the context:

“Article” shall mean a specified article hereof, unless otherwise indicated;

“Authorized Authority Representative” shall mean any individual or individuals duly authorized by the Authority to act on its behalf;

“Authorized Public University Representative” shall mean any individual or individuals duly authorized by the Public University to act on its behalf;

“Authority’s Arbitrage Certificate” shall mean the Arbitrage and Tax Certificate dated the date of the issuance of the Bonds executed by the Authority in a form satisfactory to Bond Counsel;

“Basic Lease Payments” shall have the meaning ascribed to such term in the Lease;

“Bond Agreement” or “Agreement” shall mean this Bond Agreement;

“Bond Counsel” shall mean the law firm of McManimon, Scotland & Baumann, LLC, Roseland, New Jersey or an attorney or firm of attorneys of nationally recognized standing on the subject of municipal bonds;

“Bond Documents” shall mean any or all of this Bond Agreement, the Resolution, the Lease and all documents and instruments executed in connection therewith and all amendments and modifications thereto;

“Bond Proceeds” shall mean the amount, including any accrued interest paid to the Authority or its agents by the Purchaser pursuant to this Bond Agreement as the purchase price of the Bond, and interest income earned thereon, if any;

“Business Day” shall mean any day other than (a) a Saturday or Sunday or (b) a day on which commercial banks in New York, New York, or the city or cities in which the primary office of the Purchaser and the Escrow Agent are located, are closed;

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the Treasury Regulations in effect thereunder;

“Cost” shall include all expenses as may be necessary or incident to the Project, including certain costs of issuance incurred in connection with the Bonds and capitalized interest on the Bonds, if any;

“Counsel for the Purchaser” and “Counsel for the Escrow Agent” shall mean the law firm of Windels, Marx, Lane & Mittendorf, LLP, New Brunswick, New Jersey;

“Determination of Taxability” shall mean with respect to the Bonds, the occurrence of one of the following events:

(a) The delivery of written notice (the “Audit Notice”) to the Public University by the Authority declaring that an examination of the Bonds has been undertaken by the IRS, such Audit Notice to be effective thirty (30) days after the giving of the same, unless prior thereto the Public University files written notice with the Authority that it intends to participate in the audit process, at its own expense, to obtain a written determination from the IRS affirming that the interest on the Bonds is excluded from gross income. In the event the final IRS determination is adverse, the Audit Notice will be effective thirty (30) days after the receipt of such final determination.

(b) The delivery of written notice (the “Taxability Notice”) by the holder of the Bonds to the Authority and the Public University declaring that the IRS has issued to the holder of the Bonds a proposed deficiency, the effect of which (in the opinion of the holder of the Bonds) is to assert that the interest on the Bonds is included in the gross income of the holder of the Bonds, such Taxability Notice to be effective thirty (30) days after the giving of the same, subject to a stay of such thirty (30) day period for the period of litigation if prior thereto the Public University agrees in writing to participate in and defend a final judicial determination (including, at the Public University’s discretion, any or all appeals) to affirm that the interest on the Bonds is excluded from gross income. In the event the final judicial determination is adverse, the Taxability Notice will be effective thirty (30) days after the entry of such final judicial determination.

(c) The delivery of written notice (the “Event Notice”) by the Public University to the Authority declaring that a violation of one of the Public University’s Tax Covenants has occurred or will occur on a specified date (other than by reason of any of the events described in the foregoing subparagraphs (a) and (b)), which the Public University has determined (with the assistance of counsel) cannot be cured by appropriate remedial action under Treasury Regulation 1.141-12 or other IRS remedial relief, and describing the violation, such Event Notice to become effective thirty (30) days after the giving of same;

“Escrow Fund” shall mean the fund so designated which is established pursuant to Section 2.5 hereof;

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms, refer to this Bond Agreement; the term “heretofore” shall mean before the date of execution of this Bond Agreement; and the term “hereafter” shall mean after the date of execution of this Bond Agreement;

“Investment Obligations” means the investments identified in Exhibit A hereto.

“IRS” shall mean the Internal Revenue Service;

“Leased Facilities” shall have the meaning ascribed to such term in the Lease;

“Moody’s” shall mean Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware and its successors and assigns;

“Net Proceeds” shall mean the Bond Proceeds less any amounts placed in a reasonably required reserve or replacement fund within the meaning of Section 148 of the Code;

“Paragraph” shall mean a specified paragraph of a Section, unless otherwise indicated;

“Person” or “Persons” shall mean any individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a governmental agency or any political subdivision thereof;

“Pledged Revenues” shall mean Basic Lease Payments and any other amounts payable to the Purchaser by the Public University pursuant to the Lease;

“Project Facilities” shall have the meaning ascribed to such term in the Lease;

“Rebatable Arbitrage” shall mean the excess of the future value, as of a date, of all receipts on nonpurpose investments over the future value, as of that date, of all payments on nonpurpose investments, as more fully described in Code Section 148(f) and Treas. Reg. Sec. 1.148-3;

“Rebate Fund” shall mean the fund so designated which is established pursuant to Section 2.8 hereto;

“Record of Proceedings” shall mean the Bond Documents, certificates, affidavits, opinions and other documentation executed in connection with the sale of the Bonds;

“Requisition Form” shall mean the form of requisition required by Section 2.5 as a condition precedent to the disbursement of moneys from the Escrow Fund, in the form made part of the Record of Proceedings;

“Resolution” shall mean the resolution of the Authority dated January 28, 2020 authorizing the issuance and sale of the Bonds;

“Section” shall mean a specified section hereof, unless otherwise indicated;

“Standard & Poor’s” shall mean S&P Global Ratings, acting through Standard & Poor’s Financial Services LLC and its successors and assigns; and

“Tax Certificate” shall mean the arbitrage and tax certificate executed by the Public University in form and substance acceptable to the Authority, wherein the Public University certifies as to such matters as the Authority shall require.

Section 1.3 Authority Representations and Covenants. The Authority hereby represents and covenants that:

(a) The Authority is a body corporate and politic with corporate succession, constituting a political subdivision of the State, duly organized, established and existing under the laws of the State, particularly the Act. The Authority is authorized to issue the Bonds in accordance with the Act and to use the proceeds thereof for the Project.

(b) The Authority has complied with the provisions of the Act and has full power and authority pursuant to the Act to consummate all transactions contemplated to be performed by the Authority by this Bond Agreement, the Bonds, and any and all agreements relating thereto and to perform its obligations thereunder and to issue, sell and deliver the Bonds to the holders as provided herein. The Authority has duly authorized the execution, delivery and due performance of this Bond Agreement and the Bonds, and the Authority has duly authorized the taking of any and all action as may be required on the part of the Authority pursuant to the express provisions of this Bond Agreement to perform, give effect to and consummate the transactions contemplated by this Bond Agreement, and all approvals necessary in connection with the foregoing have been received.

(c) When the Bonds are issued, transferred and delivered in accordance with the provisions of this Bond Agreement, the Bonds will have been duly authorized, executed, issued and delivered and will constitute the valid special and limited obligation of the Authority payable solely from the Pledged Revenues, and nothing in the Bonds or this Bond Agreement shall be construed as assigning or pledging therefor any other funds or assets of the Authority. THE STATE IS NOT OBLIGATED TO PAY, AND NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE STATE IS PLEDGED TO THE PAYMENT OF, THE PRINCIPAL OR REDEMPTION PRICE, IF ANY, OF OR INTEREST ON THE BONDS. THE BONDS ARE NOT A DEBT OR LIABILITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE AUTHORITY. THE BONDS ARE SPECIAL AND LIMITED OBLIGATIONS OF THE AUTHORITY, PAYABLE SOLELY OUT OF THE PLEDGED REVENUES AND FROM ANY AMOUNTS OTHERWISE AVAILABLE HEREUNDER FOR THE PAYMENT OF THE BONDS. THE BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE AUTHORITY. THE AUTHORITY HAS NO TAXING POWER.

The Act provides that neither the members of the Authority nor any person executing bonds for the Authority shall be liable personally on said bonds by reason of the issuance thereof.

(d) The execution and delivery of this Bond Agreement, the Bonds and any and all other Bond Documents to which the Authority is a party, and compliance with the provisions thereof, will not conflict with or constitute on the part of the Authority a violation of the

Constitution of the State or the Act or a violation, breach of or default under its By-Laws or any statute, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Authority is a party or by which the Authority is bound, or to the knowledge of the Authority, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Authority or any of its activities or properties, and, to the knowledge of the Authority, all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required to be obtained by the Authority for the consummation of the transactions contemplated thereby have been obtained. No authority or proceedings for the issuance of the Bonds or documents executed in connection therewith have been repealed, revoked, rescinded or superseded.

(e) To the knowledge of the Authority, as of this date, there is no action, suit or proceeding, at law or in equity, pending or threatened against the Authority to restrain or enjoin the issuance or sale of the Bonds or in any way contesting the validity or affecting the power of the Authority with respect to the issuance and sale of the Bonds or the documents or instruments executed by the Authority in connection therewith or the existence of the Authority or the right or power of the Authority to finance the Project, nor to the Authority's knowledge, any basis therefor.

(f) The Authority, to its knowledge, has never defaulted and is not now in default with respect to any bonds, notes or other obligations that it has issued.

(g) Any certificate signed by an Authorized Authority Representative shall be deemed a representation and warranty by the Authority to the respective parties as to the statements made therein.

(h) The Authority makes no representation as to (i) the financial position or business condition of the Public University or (ii) the correctness, completeness or accuracy of any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made by the Public University in connection with the sale or transfer of the Bonds, the execution and delivery of this Bond Agreement or the consummation of the transactions contemplated hereby.

(i) The Authority agrees that it will cooperate with the Purchaser in connection with the Authority's obligation to cause all documents, statements, memoranda or other instruments to be registered, filed or recorded in such manner and at such places as may be required by law fully to protect the security of the Purchaser and the right, title and interest of the Purchaser in and to any moneys or securities held hereunder or any part thereof (including any refilings, continuation statements or such other documents as may be required).

(j) Pursuant to Section 11.04 of the Lease, the Public University has covenanted that it will (i) take no action that would cause the Bonds to be "private activity bonds" within the meaning of Section 141 of the Code, (ii) take no action that would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code, (iii) comply with the provisions of the Code applicable to the Bonds and (iv) not take any action or fail to take any action which would cause the interest on the Bonds to lose the exclusion from gross income for

purposes of Federal income taxation under Section 103 of the Code. The Authority hereby covenants that it will (i) take no action that would cause the Bonds to be “private activity bonds” within the meaning of Section 141 of the Code, (ii) take no action that would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code, (iii) comply with the provisions of the Code applicable to the Bonds and (iv) not take any action or fail to take any action which would cause the interest on the Bonds to lose the exclusion from gross income for purposes of Federal income taxation under Section 103 of the Code. In Section 11.05 of the Lease, Authority and the Public University covenant and agree that the Authority shall calculate or cause to be calculated the Rebatale Arbitrage at the times and in the manner set forth in the Tax Certificate and shall pay or direct the Escrow Agent to pay the Rebatale Arbitrage from the Rebate Account to the United States, in the percentage, at the times and in the manner set forth in the Tax Certificate. The Authority further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code and any regulations promulgated thereunder, to the extent applicable.

(k) No portion of the proceeds of the Bonds will be used for (i) the purpose of purchasing or carrying any “margin security” or “margin stock” as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R 221 and 224 or (ii) primarily personal, family or household purposes.

Section 1.4 Purchaser Representations. The Purchaser hereby represents as follows:

(a) it has made an independent investigation and evaluation of the financial position and business condition of the Public University and the value of the Project Facilities, or has caused such investigation and evaluation of the Public University and the Project to be made by persons it deems competent to do so. All information relating to the business and affairs of the Public University that the Purchaser has requested from the Public University or the Authority in connection with the transactions referred to herein has been provided to the Purchaser. The Purchaser hereby expressly waives the right to receive such information from the Authority and relieves the Authority and its agents, representatives and attorneys of any liability for failure to provide such information or for the inclusion in such information or in any of the documents, representations or certifications to be provided by the Public University under the Lease or by the Authority under this Bond Agreement of any untrue fact or for the failure therein to include any fact;

(b) it is purchasing the Bonds for its own account, with the purpose of investment and not with the present intention of distribution or resale thereof. The Bonds will not be sold unless registered in accordance with the rules and regulations of the Securities and Exchange Commission or the Authority is furnished with an opinion of counsel or a “No Action” letter from the Securities and Exchange Commission, that such registration is not required;

(c) it has taken all action necessary to be taken by it prior to the date of this Bond Agreement to authorize the execution, delivery and performance of this Bond Agreement; and

(d) this Bond Agreement is the legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms.

## ARTICLE II

### The Financing.

Section 2.1 The Financing. In order to provide for the financing of the Project, the Purchaser has agreed with the Authority to purchase the Bonds, and the Authority has agreed to lease the Leased Facilities to the Public University. To accomplish this financing, the following acts will occur simultaneously and concurrently with the execution and delivery of this Bond Agreement:

- (a) The Authority will sell, issue and deliver the Bonds to the Purchaser.
- (b) The Purchaser will deliver the proceeds from the sale of the Bonds to the Escrow Agent in accordance with instructions from the Authority to the Purchaser to such effect.
- (c) The Public University and the Authority will execute and deliver the Lease.

Section 2.2 The Bonds. Subject to the terms and conditions and upon the basis of the representations hereinafter set forth, the Authority hereby agrees to sell the Bonds to the Purchaser, and the Purchaser hereby agrees to purchase the Bonds from the Authority at the purchase price of [\$7,000,000]. In the Lease, the Public University has agreed to pay Basic Lease Payments (as defined therein) from legally available funds of the Public University at the times and in the amounts sufficient to satisfy the payment obligations under the Bonds. The Purchaser acknowledges that, in the Lease, the Public University has authorized the Purchaser to debit the Demand Deposit Account (as defined in the Lease) on any date on which payment of Basic Lease Payments are due in an amount equal to the amount of such payment. The Bonds, the form of which is set forth in Exhibit B attached hereto, are the only bonds to be issued pursuant to the Resolution or this Bond Agreement, and the Authority hereby agrees that it will not issue any additional bonds thereunder or hereunder without the prior written consent of the Purchaser.

The Bonds will be delivered in registered form. Payment for the Bonds by the Purchaser and delivery thereof by the Authority shall be made at the offices of the Authority in Princeton, New Jersey or at such other place in the State as the Authority and Purchaser mutually agree.

The offering of the Bonds has not been registered under the Securities Act of 1933, as amended, and this Bond Agreement has not been qualified under the Trust Indenture Act of 1939, as amended. The Bonds may not be offered or sold by the Purchaser in contravention of said acts.

Section 2.3 Security. The Authority hereby pledges and grants to the Purchaser a security interest in Pledged Revenues and in all funds deposited from time to time in the Escrow Fund (the "Pledged Property"). This Bond Agreement shall be deemed to be a security agreement for the purposes of creating the security interests granted herein subject to the provisions of the State Uniform Commercial Code. The Authority hereby agrees that it will not

pledge or grant any other security interest in the Pledged Property other than to the Purchaser and its successors and/or assigns. The Authority hereby authorizes the Purchaser to file such financing statements as the Purchaser reasonably deems necessary or appropriate for the purpose of perfecting the security interest described in this Section.

Section 2.4 Deposit of Net Proceeds. The Net Proceeds of the Bonds will be deposited in the Escrow Fund established in Section 2.5 hereof for payment of Costs of the Project upon requisition by the Authority and/or the Public University, as applicable, as provided in Section 2.5 of this Bond Agreement. The Authority hereby authorizes and directs TD Bank, N.A., in its capacity as Purchaser and Escrow Agent, to deposit the proceeds of the Bonds, [\$7,000,000], into the Escrow Fund. The Authority agrees that the sums so requisitioned from the Escrow Fund will be used for the Costs of the Project.

Section 2.5 Escrow Fund. There is hereby created and established with the Escrow Agent a fund to be designated the Escrow Fund, which will be a restricted deposit account in the name of the Public University. The Authority irrevocably authorizes and directs the Escrow Agent to allow the Public University access to the Escrow Fund to pay directly Costs of the Project, or to reimburse itself for any Cost of the Project paid by it, provided the conditions set forth in this Section are satisfied.

(a) The Authority agrees as a condition precedent to the release of any portion of the Escrow Fund to the Public University to comply with the terms of this Bond Agreement and to cause to be furnished or to furnish the Escrow Agent with a Requisition Form signed by an Authorized Public University Representative and otherwise approved by an Authorized Authority Representative stating with respect to each release of funds: (i) the requisition number; (ii) the name and address of the Person to whom payment is to be made by the Public University or, if the funds are to be released to the Public University for a reimbursable advance, the name, address and a copy of the invoice of the Person to whom such advance was made together with proof of payment by the Public University; (iii) the amount to be released; (iv) that each obligation for which payment is sought is a Cost of the Project against the Escrow Fund, is unpaid or unreimbursed, and has not been the basis of any previously paid requisition; (v) if such release of funds is a reimbursement to the Public University for costs or expenses incurred by reason of work performed or supervised by officers or employees of the Public University or any of its affiliates, that the amount to be released does not exceed the actual cost thereof to the Public University or any of its affiliates; and (vi) no written notice of any lien, right to lien or attachment upon, or other claim affecting the right to receive payment of, any of the moneys payable under such Requisition Form to any of the Persons named therein has been received, or if any of the foregoing has been received, it has been released or discharged or will be released or discharged upon payment of the Requisition Form, and the Public University is not in default of any of its obligations. Each Requisition Form shall be accompanied by such invoices, bills or receipts as the Authority may reasonably require. The Escrow Agent is not required to process more than one (1) Requisition Form in any 30-day period.

(b) The Authority further agrees that prior to the first release of funds from the Escrow Fund, the Authority shall furnish the Escrow Agent or cause to be furnished to the Escrow Agent, paid or unpaid invoices, bills, receipts, affidavits, certificates and opinions



(c) Upon the written request of the Authority, the Escrow Agent shall furnish the Authority with a record of the requisitions and funds released from the Escrow Fund.

Section 2.6 Investment of Escrow Fund. (a) The Escrow Agent may invest or reinvest, in accordance with written directions, or oral directions confirmed in writing, of an Authorized Authority Representative or Authorized Public University Representative only in Investment Obligations.

(b) Notwithstanding anything in this Section 2.6 to the contrary, the Authority acknowledges and agrees that (i) the moneys on deposit in the Escrow Fund initially shall be held in an interest bearing deposit account at the Escrow Agent, and (ii) any direction by the Authority hereunder to invest the funds held in the Escrow Funds in a Permitted Investment other than such deposit account may require the Escrow Agent to process the purchase of that Permitted Investment through an affiliate of the Escrow Agent and require the execution and delivery of certain additional account documents with the Authority and/or the Public University.

Section 2.7 General Provisions of Investments. (a) Any permissible investments of money in the Escrow Fund shall be held by or under the control of the Escrow Agent and shall be deemed at all times as part of the fund or account from which the investment was made and the interest accruing on any such investment and any profit realized from such investment shall be credited to such fund or account and any loss resulting from such investment shall be charged to such fund or account.

(b) Neither the Authority nor the Public University shall direct the Escrow Agent to invest the proceeds of the Bonds or payments due under the Bond Agreement, or any other funds which may be deemed to be proceeds of the Bonds pursuant to Section 103 or 148 of the Code and the applicable regulations thereunder, including proposed regulations, in such a way as to cause the Bonds to be treated as “arbitrage bonds” within the meaning of Section 103 or 148 of the Code and such regulations issued thereunder, as applicable to the Bonds. In accordance with the foregoing, unless the Escrow Agent shall have been furnished with an approving opinion of Bond Counsel, no moneys in the Escrow Fund shall be invested, except as provided in the Authority’s Arbitrage Certificate.

(c) The Escrow Agent shall not be held liable for any breach by the Authority or the Public University of provisions of the foregoing subparagraph as long as the Escrow Agent invests or reinvests, pursuant to written directions of an Authorized Authority Representative or Authorized Public University Representative, in Investment Obligations pursuant hereto. The Escrow Agent shall refuse to invest in obligations directed by an Authorized Authority Representative or Authorized Public University Representative that violate the provisions hereof.

(d) The Escrow Agent is entitled to rely on such written directions and shall not be liable for any direct or consequential damages which may result from the Escrow Agent’s compliance with such directions.

Section 2.8 Rebate Fund. At the written request of the Authority, the Escrow Agent shall create a special fund designated as the Rebate Fund. The Authority shall notify the Public University of the amount of Rebatable Arbitrage, if any, and of the obligation to deposit such amount in the Rebate Fund. The Authority shall transfer or cause to be transferred by the Escrow Agent from the Rebate Fund at such times and to such person as required by Section 148 of the Code an amount equal to the Rebatable Arbitrage. Amounts in the Rebate Fund shall be exempt from the lien of this Bond Agreement. To the extent such amounts on deposit in the Rebate Fund are not sufficient to meet the Rebatable Arbitrage, the amount of the deficiency shall be immediately paid by the Public University to the Escrow Agent for deposit in the Rebate Fund. Notwithstanding anything contained in this Bond Agreement to the contrary, the Escrow Agent shall not be responsible or liable for any loss, liability, or expense incurred to the extent incurred as a result of the failure of the Authority to fulfill its obligations with respect to the calculation and payment of the Rebatable Arbitrage. The Purchaser and the Escrow Agent shall be entitled to rely conclusively upon the calculations provided by the Authority.

Moneys held in the Rebate Fund shall be invested and reinvested upon the written direction of the Authority by the Escrow Agent in Investment Obligations that mature at such times specified in such written direction, which times shall be not later than such times as shall be necessary to provide moneys when needed for the payments to be made from such Rebate Fund and in accordance with the provisions hereof. The interest earned on any moneys or investments in the Rebate Fund shall be retained in the Rebate Fund.

Moneys held in the Rebate Fund shall be held by the Escrow Agent for a period of not less than seventy-five (75) days following the redemption or final maturity of the Bonds.

Section 2.9 Excess Bond Proceeds. When the Public University certifies to the Escrow Agent and the Authority that the Project is complete, any amounts remaining in the Escrow Fund, as and when determined by the Escrow Agent and the Purchaser, will be applied to the payment of current interest on the Bonds and/or to the payment of accrued interest, as directed by the Authority. If for any reason the amount in the Escrow Fund proves insufficient to pay all Costs of the Project, the Public University will pay the remainder of such Costs as may be necessary to complete the Project.

Section 2.10 Opinion of Bond Counsel. As a condition precedent to the issuance of the Bonds, the Authority and the Purchaser shall have received the opinion of Bond Counsel to the effect that:

- (a) interest income on the Bonds is not includable in gross income for federal income tax purposes under the Code;
- (b) interest income on the Bonds or gain from the sale thereof is not includable as gross income under the State Gross Income Tax Act (P.L. 1976, Chapter 47);
- (c) the offering or sale of the Bonds is not required to be registered under the Securities Act of 1933, as amended, or under the rules and regulations promulgated thereunder

and this Bond Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended; and

(d) the Bonds have been duly authorized and issued under the provisions of the Resolution and the Act and constitute valid, binding special and limited obligations of the Authority and are enforceable in accordance with their terms.

Section 2.11 Opinion of Counsel for the Escrow Agent and Purchaser. As a condition precedent to the issuance of the Bonds, the Authority shall have received an opinion of [(a)] Counsel for the Escrow Agent, dated the date hereof, addressed to the Authority and reasonably satisfactory in form and substance to Bond Counsel that the Escrow Agent is lawfully empowered, authorized and duly qualified to serve as escrow agent and to perform the provisions of and to accept the fiduciary obligations contemplated hereby, and the Escrow Agent has duly authorized the acceptance of the escrow contemplated hereby[ and (b) Counsel for the Purchaser, dated the date hereof, addressed to the Authority and reasonably satisfactory in form and substance to Bond Counsel that the Purchaser has duly executed and delivered this Bond Agreement, which is a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms.

Section 2.12 Opinion of Counsel to the Public University. As a condition precedent to the issuance of the Bonds, the Authority and the Purchaser shall have received the opinion of counsel for the Public University to the Authority and the Purchaser and satisfactory in form and substance to Bond Counsel and Counsel for the Purchaser:

(a) confirming certain representations and warranties of the Public University set forth in the Lease as reasonably requested by Bond Counsel; and

(b) to the effect that (i) the Lease has been duly executed and delivered by the Public University and constitutes the legal, valid and binding obligation of the Public University, enforceable in accordance with its terms, except to the extent that the enforceability of may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and (ii) such other matters as Bond Counsel or Counsel for the Purchaser may reasonably require.

Section 2.13 Bond and Other Documents. As a condition precedent to the issuance of the Bonds, the Authority, the Purchaser and the Escrow Agent shall have received:

(a) the Lease and this Bond Agreement duly executed by all parties thereto;

(b) certificates, in form and substance acceptable to the Authority and the Escrow Agent evidencing the insurance required to be maintained by the Lease;

(c) the Tax Certificate, in form and substance satisfactory to Bond Counsel; and

(d) all other documents required by the Authority, the Escrow Agent and the Purchaser.

Any certificate signed by an Authorized Authority Representative or Authorized Public University Representative and delivered to the Purchaser or the Escrow Agent shall be deemed a representation or warranty by the Authority or the Public University to the Purchaser or the Escrow Agent, as the case may be, as to the statements made therein.

Section 2.14 Payments Adjusted for Non-Business Days. The Following Business Day Convention shall be used with respect to the Bond to adjust any relevant date if that date would otherwise fall on a day that is not a Business Day. For the purposes herein, the term Following Business Day Convention shall mean that an adjustment will be made if any relevant date would otherwise fall on a day that is not a Business Day so that the date will be the first following day that is a Business Day.

## ARTICLE III

### The Escrow Agent

Section 3.1 Appointment of Escrow Agent; Acceptance of the Escrow. (a) TD Bank, N.A. is hereby appointed as Escrow Agent. The Escrow Agent hereby accepts the escrow imposed upon it by this Bond Agreement, and agrees to perform said escrow, but only upon and subject to the following express terms and conditions:

(i) The Escrow Agent may execute any of the powers hereof and perform any of its duties by or through attorneys or agents (provided that neither the Authority, the Public University nor any affiliate or agent of any of the foregoing shall act as an agent of the Escrow Agent), and shall not be answerable for any misconduct or negligence on the part of any attorney or agent appointed hereunder and shall be entitled to advice of counsel concerning all fiduciary matters hereof and the duties hereunder and may in all cases pay such reasonable compensation to all such attorneys and agents as may reasonably be employed in connection with the fiduciary obligations hereof and may be reimbursed therefor. The Escrow Agent may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Authority or the Public University) approved by the Escrow Agent in the exercise of its reasonable judgment. The Escrow Agent shall not be responsible for any loss or damage resulting from any action or nonaction in good faith in reliance upon such opinion or advice.

(ii) The Escrow Agent shall not be responsible for any recital herein or in the Bonds or for insuring the Project Facilities or the Leased Facilities, or collecting any insurance moneys, or for the validity of execution by the Authority of this Bond Agreement or of any supplements hereto or any instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the Leased Facilities or otherwise as to the maintenance of the security hereof, or, except as provided in Article II hereof, for the eligibility of any security as an investment of escrow funds held by it.

(iii) The Escrow Agent shall not be accountable for the use of the Bonds delivered hereunder after the Bonds shall have been delivered in accordance with the instructions of the Authority. The Escrow Agent may become the Purchaser of the Bonds secured hereby with the same rights that it would have if not Escrow Agent. The Escrow Agent shall have the same rights and powers as any other bank or lender and may exercise the same as though it were not the Escrow Agent, and it may accept deposits from, lend money to and generally engage in any kind of business with the Public University as though it were not the Escrow Agent.

(iv) The Escrow Agent shall be protected in acting in good faith upon any notice, request, investment instruction, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Escrow Agent

pursuant to this Bond Agreement upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Purchaser of any Bond, shall be conclusive and binding upon all future Purchasers of the same Bond and upon a Bond issued in exchange therefor or in place thereof.

(v) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Escrow Agent shall be entitled, in the absence of bad faith on its part, to rely upon a certificate of the Authority or the Public University signed by an Authorized Authority Representative or Authorized Public University Representative, as applicable, as sufficient evidence of the facts therein contained, and shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Escrow Agent may accept a certificate of the Secretary or any Assistant Secretary of the Authority or the Public University, as applicable, to the effect that a resolution in the form therein set forth has been adopted by the Authority or the Public University, as applicable, as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(vi) The permissive right of the Escrow Agent to take actions enumerated in this Bond Agreement shall not be construed as a duty, and it shall not be answerable for other than its gross negligence, willful misconduct, or willful default. The Escrow Agent shall act on behalf of the Authority hereunder only insofar as its duties are expressly set forth and shall not have implied duties. The Escrow Agent shall not be under a duty to inquire into or pass upon the validity, effectiveness, genuineness or value of the Bond Documents and shall assume that the same are valid, effective and genuine and what they purport to be. The Escrow Agent may consult with legal counsel selected by it and shall be entitled to rely upon the opinion of such counsel in taking or omitting to take any action.

(vii) The Escrow Agent shall not be personally liable for any debts contracted or for damages to Persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts by the Public University or the Authority during any period.

(viii) The Escrow Agent shall not be required to give any bond or surety in respect of the execution of the said escrows and powers or otherwise in respect to its duties herein.

(ix) All moneys or investments received by the Escrow Agent shall, until used or applied as herein provided, be held in escrow in the manner and for the purposes for which they were received.

(b) The Escrow Agent shall exercise the rights and powers vested in it hereby, and use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

(c) Before taking any action hereunder the Escrow Agent may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from gross negligence, willful misconduct or willful default by reason of any action so taken.

Section 3.2 Fees, Charges and Expenses of Escrow Agent. Unless otherwise provided by contract with the Escrow Agent, the Authority shall pay to the Escrow Agent, from time to time, reasonable compensation for all services rendered by it hereunder and also all its reasonable expenses, charges, counsel fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties hereunder. The Authority shall indemnify and save the Escrow Agent harmless against any expenses and liabilities which it may incur in the exercise and performance of its powers and duties hereunder, and that are not due to the gross negligence or willful misconduct of the Escrow Agent; and further provided that the foregoing is subject to the limitations of the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:2-1 *et seq.*, and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.* While the New Jersey Contractual Liability Act, N.J.S.A. 59: 13-1 *et seq.*, is not applicable by its terms to claims arising under contracts with the Authority, the Escrow Agent, by accepting its appointment as such under this Bond Agreement, agrees that such statute (except N.J.S.A. 59:13-9) shall be applicable to all claims against the Authority arising under this Bond Agreement. None of the provisions contained in this Bond Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it. The provisions of this section shall survive resignation or removal of the Escrow Agent and payment of the Bonds.

Section 3.3 Intervention by Escrow Agent. In any judicial proceeding to which the Authority is a party and which in the opinion of the Escrow Agent and its counsel has a substantial bearing on the interests of the Purchaser of the Bonds, the Escrow Agent may, and if requested in writing by the Purchaser shall, intervene on behalf of the Purchaser provided the Purchaser agrees to indemnify the Escrow Agent for such intervention.

Section 3.4 Successor Escrow Agent. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, provided such corporation or association is a trust company or national or state bank within or outside the State having escrow powers, in good standing, being otherwise acceptable to the Purchaser and having reported capital surplus and undivided profits of not less than \$50 million *ipso facto*, shall be and become successor Escrow Agent hereunder and vested with all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 3.5 Resignation by the Escrow Agent. The Escrow Agent and any successor Escrow Agent may at any time resign by giving not less than thirty (30) days' written notice to the Authority, the Purchaser and the Public University. Such resignation shall take effect only upon the appointment of a successor Escrow Agent by the Authority. In case at any time the Escrow Agent shall resign and no appointment of a successor Escrow Agent shall be made prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the resigning Escrow Agent may forthwith apply to a court of competent jurisdiction for the appointment of a successor Escrow Agent. The Escrow Agent shall be compensated by the Authority for all costs of seeking and appointing a successor should the Authority fail to so appoint a successor Escrow Agent within the thirty (30) day time period to do so.

Section 3.6 Removal of the Escrow Agent. (a) Upon thirty (30) days written notice, the Escrow Agent may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Escrow Agent, the Authority and the Public University and signed by the Purchaser.

(b) The Escrow Agent may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provisions of this Bond Agreement, by any court of competent jurisdiction upon the application by the Authority, the Purchaser or the Public University.

Section 3.7 Appointment of Successor Escrow Agent. (a) In case the Escrow Agent hereunder shall resign, or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder as fiduciary for Purchaser of the Bonds, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, the Authority, by an instrument executed by an Authorized Authority Representative, with the written consent of the Public University, shall forthwith appoint a successor Escrow Agent to fill such vacancy. Such appointment shall become final upon the written acceptance of such fiduciary obligations by the successor Escrow Agent so appointed as provided in Section 3.8 hereof.

(b) Every such Escrow Agent appointed pursuant to the provisions of this Section shall be a national banking association or a domestic bank or trust company having trust powers in good standing, being otherwise acceptable to the Purchaser and having a reported capital, surplus and undivided profits of not less than \$50 million.

Section 3.8 Concerning any Successor Escrow Agent. (a) Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor Escrow Agent, the Authority and the Public University an instrument in writing accepting such appointment hereunder as fiduciary for the Purchaser of the Bonds. Thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors.

(b) Every predecessor Escrow Agent shall, on the written request of the Authority, or of the successor Escrow Agent, execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and escrows, duties and obligations of



such predecessor hereunder. Every predecessor Escrow Agent shall deliver all securities and moneys held by it as Escrow Agent hereunder to its successor for direct deposit in the appropriate successor escrow accounts. Should any instrument in writing from the Authority be required by a successor Escrow Agent for more fully and certainly vesting in such successor the estates, properties, rights, powers, escrows, duties and obligations hereby vested or intended to be vested in the predecessor Escrow Agent, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

(c) The resignation of any Escrow Agent and the instrument or instruments removing any Escrow Agent and appointing a successor hereunder, or the instrument evidencing the transfer of the escrow funds shall be filed and/or recorded by the successor Escrow Agent in each filing or recording office where this Bond Agreement (or a memorandum thereof) shall have been filed and/or recorded.

Section 3.9 Escrow Agent Protected in Relying upon Resolutions, etc. The resolutions, opinions, certificates and other instruments provided for in this Bond Agreement may be accepted by the Escrow Agent as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Escrow Agent for the application of moneys hereunder and the taking of or omitting to take any other action under this Bond Agreement.

Section 3.10 Successor Escrow Agent. Any Escrow Agent that has resigned or been removed shall cease to be Escrow Agent of the funds, and the successor Escrow Agent shall become such Escrow Agent. Every predecessor Escrow Agent shall deliver to its successor Escrow Agent all books of account and all other records, documents and instruments relating to its duties as Escrow Agent.

Section 3.11 Escrow Agent and Authority Required to Accept Directions and Actions of Public University. Whenever, after reasonable request by the Public University, the Authority shall fail, refuse or neglect to give any direction to the Escrow Agent or to require the Escrow Agent to take any other action that the Authority is required to have the Escrow Agent take pursuant to the provisions of this Bond Agreement, the Public University, upon thirty (30) days prior written notice to the Authority, instead of the Authority, may give such direction to the Escrow Agent or require the Escrow Agent to take any such action after such thirty (30) day notice period. Upon receipt by the Escrow Agent of a written notice from the Public University stating that the Public University has made reasonable request of the Authority, and that the Authority has failed, refused or neglected to give any direction to the Escrow Agent or to require the Escrow Agent to take any such action and proof that such written notice has been furnished to the Authority, the Escrow Agent is hereby irrevocably empowered and directed, subject to other provisions of this Bond Agreement, to accept such direction from the Public University as sufficient for all purposes of this Bond Agreement. The Public University shall have the direct right to cause the Escrow Agent to comply with any of the Escrow Agent's obligations under this Bond Agreement to the same extent that the Authority is empowered so to do.

Notwithstanding the foregoing, the Authority reserves the right to dispute and challenge any direction given by the Public University or action taken by the Escrow Agent pursuant to this

Section in any manner available under law, provided, however, the Escrow Agent shall not be liable for action taken in good faith reliance on such direction.

Section 3.12 Escrow Agent Not Responsible for Use of Proceeds. The Public University acknowledges that the Escrow Agent is not responsible for the ultimate use of the Bond Proceeds or any consequences, of whatever kind, resulting, directly or indirectly, from the Public University's use of Bond Proceeds.

Section 3.13 Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated, or be destroyed, stolen or lost, the Authority shall, upon request of the registered owner, execute and upon the request of the Purchaser, the Authority shall execute and deliver a new Bond to the Purchaser of like tenor and of the same principal amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond upon surrender and cancellation of such mutilated Bond, or in lieu of and in substitution for the Bond destroyed, stolen or lost, on the condition that the Purchaser shall (a) certify to the Authority that the Purchaser is the owner of the Bond and the Bond has been destroyed, stolen or lost, (b) furnish the Authority with indemnity satisfactory to the Authority, (c) comply with such other reasonable regulations as the Authority may prescribe and (d) pay such fees and expenses as the Authority may require in connection therewith.

Section 3.14 Immunity of Authority. In the exercise of the powers of the Authority and its members, officers, employees or agents under this Bond Agreement or any other Bond Document and including without limitation the application of moneys or the investment of funds, neither the Authority nor its members, officers, employees or agents shall be accountable to the Purchaser or the Escrow Agent for any action taken or omitted by it or them in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred. The Authority and its members, officers, employees and agents shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it and they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

Section 3.15 Neither Authority, the Purchaser, Nor Escrow Agent Responsible for Insurance, Taxes, Acts of the Authority or Application of Moneys Applied in Accordance with this Bond Agreement. Neither the Authority, the Purchaser nor the Escrow Agent shall be under any obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the Public University, or to report, or make or file claims or proof of loss for, any loss or damage insured against or which may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made. Neither the Authority, the Purchaser nor the Escrow Agent shall have responsibility in respect of the sufficiency of the security provided by this Bond Agreement. Neither the Authority, the Purchaser nor the Escrow Agent shall be under any obligation to ensure that any duties herein imposed upon any party other than itself, or any covenants herein contained on the part of any party other than itself to be performed, shall be done or performed, and neither the Authority, the Purchaser nor the Escrow Agent shall be under any liability for failure to see that any such duties or covenants are so done or performed.

Neither the Authority, the Purchaser nor the Escrow Agent shall be liable or responsible because of the failure of the Authority or of any of its members, officers, employees, attorneys or agents to make any collections or deposits or because of the loss of any moneys arising through the insolvency or the act or default or omission of any other depository in which such moneys shall have been deposited under the provisions of this Bond Agreement. Neither the Authority, the Purchaser nor the Escrow Agent shall be responsible for the application of any of the proceeds of the Bonds or any other moneys deposited with it and paid out, withdrawn or transferred hereunder if such application, payment, withdrawal or transfer shall be made in accordance with the provisions of this Bond Agreement.

The immunities and exemptions from liability of the Authority, the Purchaser, the Public University and the Escrow Agent hereunder shall extend to their respective directors, members, attorneys, officers, employees and agents.

Section 3.16 Authority, Purchaser and Escrow Agent May Rely on Certificates. The Authority, the Purchaser and the Escrow Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith and in accordance with the terms of this Bond Agreement, upon any resolution, order, notice request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document that it shall in good faith believe to be genuine and to have been adopted or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Bond Agreement, or upon the written opinion of any attorney, engineer, accountant or other expert believed by it to be qualified in relation to the subject matter, and neither the Authority, the Purchaser nor the Escrow Agent shall be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

## ARTICLE IV

### Events of Default

Section 4.1 Events of Default. An event of default shall exist hereunder (herein called "Event of Default") if:

(a) payment of the principal of any Bond or an installment of interest on any Bond shall not be made when the same shall become due and payable, either on a stated interest payment date, at maturity or by proceedings for redemption or otherwise; or

(b) the Authority shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Bond Agreement on the part of the Authority to be performed and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Authority by the Purchaser or the Escrow Agent; or

(c) an event of default, as defined in the Lease, has occurred under the Lease and is continuing.

Section 4.2 Purchaser's Remedies. Upon receipt by the Purchaser of notice of the occurrence of an Event of Default hereunder, and at any time thereafter during the continuance of such Event of Default, the Purchaser may, by written notice to the Authority and the Public University, declare the entire unpaid principal amount of the Bonds to be due and payable forthwith, to the extent and in accordance with this Bond Agreement, whereupon, such amount shall become forthwith due and payable, both as to principal and interest, without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, anything contained herein or elsewhere to the contrary notwithstanding, and thereupon the Purchaser may take one or more of the following remedial steps in such order and sequence as the Purchaser in its sole judgment may determine;

(a) take any action at law or in equity to collect the payments, costs and expenses then due and thereafter to become due under this Bond Agreement or any of the other Bond Documents or to enforce performance and observance of any obligation, agreement or covenant of the Public University under this Bond Agreement or under any other Bond Document or to otherwise protect its rights hereunder; or

(b) exercise any and all rights and remedies conferred upon secured parties by the Uniform Commercial Code and other applicable laws.

If the Purchaser shall have proceeded to enforce the rights of the Purchaser under this Bond Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Purchaser, then the Authority and the Purchaser shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Authority and the Purchaser shall continue as though no such proceedings had taken place.

Section 4.3 No Remedy Exclusive. No remedy herein conferred or reserved to the Authority or the Purchaser is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Bond Agreement or now or hereafter existing under any other agreements at law or in equity or by statute. No delay or omission to exercise any right or power occurring 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. In order to entitle the Authority or the Purchaser to exercise any remedy reserved to either of them in this Article, it shall not be necessary to give notice, other than such notice as may be required in this Article.

Section 4.4 Agreement to Pay Attorneys' Fees and Expenses. If upon the occurrence of an Event of Default the Purchaser shall require and employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement herein or in the Lease, the Authority agrees that it will pay to the Purchaser the reasonable fees of such attorneys and such other expenses so incurred by the Purchaser or both whether or not suit be brought, but only from sums available or payable by the Public University under the Lease.

Section 4.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Bond Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE V

### Miscellaneous

Section 5.1 Limitation of Liability of Authority. In the event of any default by the Authority hereunder, the liability of the Authority to the Purchaser shall be enforceable only out of its interest under this Bond Agreement and there shall be no other recourse for damages by the Purchaser against the Authority, its officers, members, agents, counsel and employees, or any of the property now or hereafter owned by it or them.

Section 5.2 Notices. Notice hereunder shall be effective upon receipt and shall be given by personal service or by certified or registered mail, return receipt requested, to:

The Authority -

New Jersey Educational Facilities Authority  
103 College Road East  
Princeton, New Jersey 08540  
Attention: Executive Director

with a copy to:

McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue  
2<sup>nd</sup> Floor  
Roseland, New Jersey 07068  
Attention: John V. Cavaliere, Esq.

The Purchaser/Escrow Agent -

TD Bank, N.A.  
Middle Market Lending  
1068 Stelton Road  
Piscataway, New Jersey 08854  
Attention: Cynthia Colucci, Vice President

with a copy to:

Windels, Marx, Lane & Mittendorf, LLP  
120 Albany Street Plaza  
New Brunswick, New Jersey 08901  
Attention: John B. Bitar, Esq.

The Public University -

Stockton University  
101 Vera King Farris Drive  
Galloway, New Jersey 08205  
Attention: General Counsel

Section 5.3 Severability. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable, it shall be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof, all of which shall be liberally construed in order to effect the provisions of this Bond Agreement.

Section 5.4 Applicable Law. This Bond Agreement shall be governed by the laws of the State without regard to conflicts of laws principles.

**THE AUTHORITY, THE PURCHASER AND THE ESCROW AGENT AGREE THAT ANY SUIT FOR THE ENFORCEMENT OF THIS BOND AGREEMENT OR ANY OF THE OTHER BOND DOCUMENTS SHALL BE BROUGHT IN THE COURTS OF THE STATE LOCATED IN THE COUNTY OF MERCER OR IN FEDERAL COURTS IN THE DISTRICT OF NEW JERSEY OR THIRD CIRCUIT AND CONSENT TO THE JURISDICTION OF SUCH COURTS. THE AUTHORITY, THE PURCHASER AND THE ESCROW AGENT HEREBY WAIVE ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT FORUM.**

Section 5.5 Successors and Assigns. This Bond Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns, and the terms "Authority," "Escrow Agent" and "Purchaser" shall, where the context requires, include the respective permitted successors and assigns of such persons.

Section 5.6 Amendments. This Bond Agreement may not be amended except by an instrument in writing signed by the Purchaser, the Escrow Agent and the Authority.

Section 5.7 Term of Agreement. This Bond Agreement and the respective obligations of the parties hereto shall be in full force and effect from the date hereof until (a) the principal or redemption price of, and all interest on, the Bonds shall have been paid and (b) payment in full of the fees, charges and expenses of the Purchaser and the Escrow Agent in accordance herewith. Notwithstanding the foregoing, the rebate requirements hereof shall survive the termination of this Bond Agreement.

Section 5.8 No Warranty of Condition or Suitability by Authority. The Authority makes no warranty, either express or implied, as to the condition of the Project Facilities or the Leased Facilities or any part thereof or that they will be suitable for the Public University's

purposes or needs. The Purchaser acknowledges and agrees that the Authority is not a dealer in property of such kind, and that the Authority has not made, and does not hereby make, any representation or warranty or covenant with respect to the merchantability, fitness for a particular purpose, condition or suitability of the Project Facilities or the Leased Facilities in any respect or in connection with or for the purposes and uses of the Public University or its tenants.

Section 5.9 Amounts Remaining in Escrow Fund. It is agreed by the parties that any amounts remaining in the Escrow Fund, after payment in full of the Bonds and of the fees, charges and expenses of the Purchaser, Escrow Agent and the Authority in accordance herewith, shall be paid by the Purchaser to, or at the direction of, the Authority.

Section 5.10 Headings. The captions or headings in this Bond Agreement are for convenience of reference only and shall not control or affect the meaning or construction of any provision hereof.

Section 5.11 Further Assurances and Corrective Instruments. The Authority and the Purchaser hereby agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further acts, instruments, conveyances, transfers and assurances, as are reasonably necessary or advisable for the implementation, correction, confirmation or perfection of this Bond Agreement and any rights hereunder.

Section 5.12 Jury Trial Waiver. THE AUTHORITY AND THE PURCHASER MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS BOND AGREEMENT OR ANY OTHER BOND DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF THE AUTHORITY OR THE PURCHASER RELATING TO THE ADMINISTRATION OR ENFORCEMENT OF THE BOND DOCUMENTS, AND AGREE THAT THE PARTIES WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.



Section 5.13 Right to Sell a Portion of the Bonds to a Prospective Participant. The Purchaser shall have the unrestricted right at any time and from time to time, and without the consent of or notice to the Authority to grant to one or more banks or other financial institutions (each, a “Participant”) participating interests in the Bonds. In the event of any such grant by the Purchaser of a participating interest to a Participant, whether or not upon notice to the Authority, the Purchaser shall remain responsible for the performance of its obligations hereunder and the Authority shall continue to deal solely and directly with the Purchaser in connection with the Purchaser’s rights and obligations hereunder. The Purchaser may furnish any information concerning the Authority or the Public University in its possession from time to time to prospective Participants, provided that the Purchaser shall require any such prospective Participant to agree in writing to maintain the confidentiality of such information.

**{THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK}**

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Bond Agreement to be executed and delivered as of the date first written above.

ATTEST:

NEW JERSEY EDUCATIONAL  
FACILITIES AUTHORITY

\_\_\_\_\_  
[ ]  
Assistant Secretary

By \_\_\_\_\_  
Eric D. Brophy, Esq.  
Executive Director

TD Bank, N.A.,  
as Purchaser and Escrow Agent

By: \_\_\_\_\_  
Cynthia Colucci  
Vice President

## EXHIBIT A

### INVESTMENT OBLIGATIONS

#### *Investment Types*

- A. U.S. Treasury and other government obligations that carry the full faith and credit guarantee of the United States of America for the payment of principal and interest.
- B. Federal agency or U.S. government sponsored enterprise obligations, participations or other instruments.
- C. Bonds or notes issued by any state or municipality.
- D. Negotiable bank certificates of deposit, deposit notes or other deposit obligations issued by a nationally or state chartered bank, credit union or savings association, or by a federally- or state-licensed branch of a foreign bank or financial institution.
- E. Commercial paper.
- F. Corporate bonds and medium-term notes.
- G. Asset-backed securities.
- H. Investment agreements or guaranteed investment contracts.
- I. Certificates of deposit of any bank, savings and loan or trust company organized under the laws of the United States of America or any state thereof, including the trustee or any Holder of the Bonds; *provided*, that such certificates of deposit shall be fully collateralized (with a prior perfected security interest), to the extent they are not insured by the Federal Deposit Insurance Corporation, by the Investment Obligations described in (A) and (B) above having a market value at all times equal to the uninsured amount of such deposit.
- J. Repurchase agreements that meet the following requirements:
  - a. Must be governed by a written SIFMA Master Repurchase Agreement that specifies securities eligible for purchase and resale and that provides the unconditional right to liquidate the underlying securities should the counterparty default or fail to provide full and timely repayment.
  - b. Counterparty must be a Federal Reserve Bank, a Primary Dealer as designated by the Federal Reserve Bank of New York or a nationally chartered commercial bank.

- c. Securities underlying repurchase agreements must be delivered to a third-party custodian under a written custodial agreement that may be of deliverable or tri-party form. Securities must be held in the Authority's custodial account or in a separate account in the name of the Authority.
  - d. Acceptable underlying securities include only securities that are direct obligations of, or that are fully guaranteed by, the United States of America or any agency of the United States of America, including U.S. agency-issued mortgage-backed securities.
  - e. Underlying securities must have an aggregate current market value, including accrued interest, of at least 102% (or 100%, if the counterparty is a Federal Reserve Bank) of the purchase price plus current accrued price differential at the close of each Business Day.
- K. Shares in open-end and no-load money market mutual funds that are backed by U.S. government securities; *provided*, such funds are registered under the Investment Company Act of 1940 and operate in accordance with Rule 2a-7 thereof.
- L. New Jersey Cash Management Fund.

#### *Collateralization*

All demand deposits, time deposits and certificates of deposit shall be collateralized for amounts over and above Federal Deposit Insurance Corporation coverage. All collateral shall be permitted investments as set out in the below chart. There shall be a written custodial agreement that, among other things, specifies the circumstances under which collateral may be substituted. The Authority shall not accept a pledge of a proportionate interest in a pool of collateral. The market value and accrued interest of collateral should, at least, equal the value of the investment plus any accrued interest at all times. The recorded value of collateral backing any investment should be compared with current market values (mark-to-market) at the time of the initial investment and monthly thereafter to be certain that it continues to be at least equal to the value of the investment plus accrued interest. The mark-to-market reviews should use "bid" prices from a constant source.

## Investment Parameters

Sector Type	Sector Max (%)	Issuer Max (%)	Minimum Ratings Requirement <sup>1</sup>	Max Maturity
US Treasury	100%	N/A	N/A	10 Years
Federal Agency	25%	5%	N/A	10 Years
Municipals	25%	5%	Two Highest LT Rating Categories (AA-/Aa3/AA-)	10 Years
Negotiable CDs	50% in aggregate <sup>2</sup>	5%	Highest ST or Three Highest LT Rating Categories (A-1/P-1/F-1; A-/A3/A-)	10 Years
Commercial Paper		5%	Highest ST Rating Category (A-1/P-1/F-1)	270 Days
Corporate Bonds & Medium-Term Notes		5%	Highest ST or Three Highest LT Rating Categories (A-1/P-1/F-1; A-/A3/A-)	10 Years
Asset Backed Securities	20%	5%	Highest LT Rating (AAA/Aaa/AAA)	10 Year Avg. Life
Certificates of Deposit	25%	5%	Highest ST or Three Highest LT Rating Categories (A-1/P-1/F-1; A-/A3/A-)	10 Years
Repurchase Agreements	20%	5%	Counterparty (or if the counterparty is not rated by an NRSRO, then the counterparty's parent) must be rated in the highest ST Rating category (A-1/P-1/F-1). If the counterparty is a Federal Reserve Bank, no rating is required.	90 Days
Government Money Market Funds	100%	25%	Highest rating by all NRSROs who rated the fund (AAAm or equivalent)	N/A
New Jersey Cash Management Fund	100%	N/A	N/A	N/A

<sup>1</sup>Rating by at least one SEC-registered Nationally Recognized Statistical Rating Organization ("NRSRO"), unless otherwise noted. In the case of split-rated issuers, the lowest rating shall prevail. ST= Short-term; LT=Long-term.  
<sup>2</sup>Funds invested in the credit sector may exceed the 50% target only with the written permission of the Authority and the borrowing institution.

In addition, the diversification parameters for investment agreements or guaranteed investment contracts are as follows:

- Investment agreements or guaranteed investment contracts with any financial institution whose senior long-term debt obligations, or whose obligations under such an investment agreement or guaranteed investment contract are guaranteed by a financial institution whose senior long-term debt obligations, have a rating (at the time the agreement or contract is entered into) of "Aa3" or higher by Moody's and "AA-" or higher by Standard & Poor's.

**EXHIBIT B**  
**FORM OF BONDS**

UNITED STATES OF AMERICA  
STATE OF NEW JERSEY  
NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
REVENUE BOND, STOCKTON UNIVERSITY ISSUE,  
SERIES 2020 A

[\$BOND AMOUNT]

DATED DATE: [CLOSING DATE]  
INTEREST RATE: [ ]%  
MATURITY DATE: [MATURITY DATE]

The NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY (herein called the "Authority"), a public body corporate and politic constituting an instrumentality of the State of New Jersey (the "State"), acknowledges itself indebted and for value received, hereby promises to pay in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, to TD BANK, N.A. (the "Purchaser"), the principal sum of [ ] and 00/100 Dollars (\$[BOND AMOUNT].00), as set forth below.

Interest shall accrue at the Interest Rate set forth above, subject to the provisions of this Bond set forth below. The Authority will make payments of accrued interest on this Bond on July 1 of each year commencing on July 1, 2020. The Authority will make payments of principal in accordance with the attached Schedule A.

All computations of interest shall be made on the basis of a three hundred sixty (360) day year and the actual number of days elapsed.

Each of said payments shall be applied first in payment of accrued and unpaid interest and the balance to the payment of unpaid principal.

Increased Costs; Capital Adequacy; Maximum Marginal Statutory Rate

(a) If any Regulatory Change or any change in, present or future law, governmental rule, regulation, policy, guideline, directive or similar requirement (whether or not having the force of law) imposes, modifies, decreases or deems applicable any capital adequacy, capital maintenance or similar requirement, which affects the manner in which the Purchaser allocates capital resources to its commitments (including any commitments hereunder), and as a result thereof, in the reasonable opinion of the Purchaser, the rate of return on the Purchaser's or such controlling person's capital as a consequence of the Purchaser's ownership of the Bond or with regard to the purchase of the Bond is reduced to a level below that which the Purchaser or such controlling person could have achieved but for such circumstances, then, in such case and upon written notice from the Purchaser to the Authority and Stockton University (the "Public University"), from time to time, the Authority shall immediately, within ten (10) Business Days of such written notice, pay directly to the Purchaser such additional amount or amounts as shall reasonably compensate the Purchaser or such controlling person for such reduction in the



Purchaser's or such controlling person's rate of return for the period from the effective date of such Regulatory Change to the final maturity of the Bond. Such written notice shall contain the statement of the Purchaser with regard to any such amount or amounts which shall, in the absence of manifest error, be conclusive and binding upon the Authority. Any rules, regulations, policies, guidelines, directives or similar requirements adopted, promulgated or implemented in connection with (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) the Purchaser for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or any United States Governmental Authority, in each case pursuant to Basel III, shall in all events be deemed to have been imposed, introduced and adopted after the date of this Bond.

(b) If the Maximum Marginal Statutory Rate decreases for any period during which this Bond is outstanding then, within forty-five (45) days of any written notice from time to time by the Purchaser to the Authority and the Public University, the Authority shall promptly pay directly to Purchaser additional amounts sufficient to compensate Purchaser for such reduction for the period from the effective date of the decrease in the Maximum Marginal Statutory Rate to the final maturity of the Bond. Such notice shall contain the written statement of the Purchaser as to any such additional amount or amounts (including calculations thereof in reasonable detail) and shall, in the absence of manifest error, be conclusive and binding on the Authority. In determining such amount, the Purchaser may use any method of averaging and attribution that it (in its sole and absolute discretion shall deem applicable). In no event shall Authority be obligated to pay Purchaser amounts under this subsection (b) during any time the Maximum Marginal Statutory Rate is above the Maximum Marginal Statutory Rate in effect on the date hereof. If there has been an increase in the compensation paid to the Purchaser in connection with a reduction in the Maximum Marginal Statutory Rate, and then a subsequent change occurs that would increase the Maximum Marginal Statutory Rate, the Purchaser shall provide written notice to the Authority and the Public University of the new calculation of the amount owed hereunder taking into account the higher Maximum Marginal Statutory Rate.

(c) The forgoing payments shall constitute payment obligations under the Bond and payable as Basic Lease Payments, as defined in the Lease referred to below. No failure on the part of Purchaser to demand compensation on any one occasion shall constitute a waiver of its right to demand such compensation on any other occasion and no failure on the part of Purchaser to deliver any certificate in a timely manner shall in any way reduce any obligation of the Authority to Purchaser under this section.

As used herein:

“Maximum Marginal Statutory Rate” means the tax rate on the highest bracket of taxable income to be imposed upon domestic corporations pursuant to Section 11(b) of the Code (or corresponding section in any future income tax law enacted by the Congress and signed into law). As of the Dated Date, the Maximum Marginal Statutory Rate is [21] %.

“Regulatory Change” means the adoption, effectiveness or phase-in, after the Dated Date, of any applicable law, rule or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or

comparable agency charged with the interpretation or administration thereof, or compliance by Purchaser with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency.

Said sums shall be paid from Pledged Revenues and other revenues, moneys and accounts pledged therefor under the Bond Agreement and the Lease. This Bond, as to principal, interest and premium, if any, when due will be payable at the office of the Purchaser at 1068 Stelton Road, Piscataway, New Jersey 08854 or such other place as the Purchaser may from time to time specify in writing, in lawful currency of the United States of America, in immediately available funds, without counterclaim or setoff and free and clear of, and without any deduction or withholding for, any taxes or other payments.

This Bond is the duly authorized bond designated as the New Jersey Educational Facilities Authority Revenue Bond, Stockton University Issue, Series 2020 A issued in the principal amount of \$[BOND AMOUNT] (the "Bond"). This Bond has been issued under and by virtue of the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes, as amended and supplemented) (the "Act"), and by virtue of a resolution adopted by the Authority on January 28, 2020 (the "Resolution"). This Bond is secured by a Lease and Agreement, dated the Dated Date (the "Lease"), by and between the Authority and the Public University pursuant to a Bond Agreement (and the documents referred to therein) dated the Dated Date (the "Bond Agreement") by and between the Authority and the Purchaser for the purpose of financing the Project. Capitalized terms used herein and not defined shall be defined as set forth in the Bond Agreement.

Reference is hereby made to the Resolution, the Lease and the Bond Agreement, copies of which are on file at the office of the Authority for a description of the provisions, among others, with respect to the terms upon which this Bond is issued, the nature and extent of the security for this Bond, the rights, duties and obligations of the Authority, the Public University and the Purchaser, and the modification or amendment of the Bond Agreement, the Lease, and the Resolution, to all of which the holder of this Bond hereto assents by acceptance of this Bond.

This Bond is subject to redemption (a "Redemption"), in whole or in part, only upon at least thirty (30) days prior written notice to the Purchaser (which notice shall be irrevocable). In the event of any Redemption, whether by voluntary Redemption, acceleration or otherwise, the Authority shall, at the option of the Purchaser, pay a fixed rate Redemption premium (a "Redemption Premium") equal to the greater of (a) 1% of the principal balance being redeemed multiplied by the "Remaining Term," as hereinafter defined, in years or (b) a "Break Funding Fee" in an amount computed as follows:

The current cost of funds, specifically the "US Dollar ICE Swap Rate" as hereinafter defined (the "Current Rate"), shall be subtracted from US Dollar ICE Swap Rate on the day that the above stated interest rate was fixed (the "Original Rate"). If the result is zero or a negative number, there shall be no Break Funding Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the amount being prepaid times the number of days in the "Remaining Term" divided by 360.

Break Funding Fee = {Amount Being Prepaid x (Original Rate - Current Rate) x Days in the Remaining Term/360 days} + any accrued interest due.

“Remaining Term” as used herein shall mean the remaining term of this Bond.

“US Dollar ICE Swap Rate” as used herein shall mean the US Dollar Swap Rate as determined by the Intercontinental Exchange Benchmark Administration (“ICE” or the successor thereto if ICE is no longer making a US Dollar Swap Rate available) with a maturity closest to the “Remaining Term” as published on the ICE website or another recognized electronic source two (2) Business Days prior to the determination date

Any partial redemption hereunder shall be accompanied by the payment of all accrued and unpaid interest on this Bond and all other fees, expenses and other sums due and owing, if any, and be applied in inverse order of maturity and shall be applied first to fees, costs, expenses or charges under the Bond Documents, then to the payment of accrued interest and the balance to principal hereunder.

This Bond is subject to the additional provisions set forth in Rider A attached hereto and made a part hereof.

This Bond is a special and limited obligation of the Authority payable from the revenues derived by the Authority from the Public University under the Lease, and neither the State of New Jersey nor any political subdivision thereof, other than the Authority, shall be obligated to pay the principal of or interest on this Bond except from the revenues pledged therefor under the Bond Agreement, and neither the faith and credit nor the taxing power of the State of New Jersey or any political subdivision thereof is pledged to the payment of the principal of or interest on this Bond. The Authority has no taxing power.

No recourse shall be had for the payment of the principal of or interest on this Bond against any member or other officer of the Authority or any person executing this Bond, all such liability, if any, being hereby expressly waived and released by every holder or registered owner of this Bond by the acceptance hereof and as a part of the consideration hereof, as provided in the Resolution and the Bond Agreement.

It is hereby certified, recited and declared by the Authority that all acts, conditions and things required by the Constitution and statutes of the State and the Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this Bond in order to make it the legal, valid and binding, special and limited obligations of the Authority in accordance with its terms, exist, have happened and have been performed in regular and due time, form and manner as required by law, and that the issuance of this Bond, together with all other indebtedness of the Authority, does not exceed or violate any constitutional, statutory or other limitation upon the amount of the bonded indebtedness prescribed by law for the Authority.

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IN WITNESS WHEREOF, the New Jersey Educational Facilities Authority has caused this Bond to be executed in its name by the manual or facsimile signature of its Chair, Vice Chair or Executive Director and its official common seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual or facsimile signature of its Executive Director, Secretary or any Assistant Secretary, all as of the Dated Date.

NEW JERSEY EDUCATIONAL  
FACILITIES AUTHORITY

{SEAL}

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

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

ATTEST:

\_\_\_\_\_  
[ \_\_\_\_\_ ]  
Assistant Secretary

**ASSIGNMENT**

FOR VALUE RECEIVED, \_\_\_\_\_  
hereby sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_ the within Bond issued by the New Jersey Educational Facilities Authority, and all rights thereunder, hereby irrevocably appointing \_\_\_\_\_ attorney to transfer said Bond, with full power of substitution in the premises.

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

Signature Guaranteed:

---

Notice: The Assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.

## RIDER A

### ADDITIONAL BOND PROVISIONS

1. PURCHASER'S DETERMINATION CONCLUSIVE; NOTICE OF AMOUNTS DUE.

(a) Determination by the Purchaser of additional costs incurred from the date hereof pursuant to this Bond or of the amount or amounts necessary to compensate the Purchaser or its holding company pursuant to this Bond shall be conclusive absent manifest error.

(b) The Purchaser will provide notice to the Public University and the Authority of any event occurring after the date of this Bond that will entitle the Purchaser to compensation pursuant to this Bond as promptly as practicable after it obtains knowledge thereof and determines to request such compensation. Said notice shall be in writing, shall specify the applicable section or sections of this Bond to which it relates and shall set forth the amount or amounts then payable pursuant to each section, as applicable. The amount shown as due on such notice shall be payable within thirty (30) days after its receipt of said notice.

(c) Failure on the part of the Purchaser to demand compensation for additional costs or for reduction in return on capital with respect to any period pursuant to this Bond shall not constitute a waiver of the Purchaser's right to demand compensation with respect to such period or any other period.

2. APPLICATION OF PAYMENTS. All payments shall be applied first to the payment of all fees, expenses, and other amounts due to the Purchaser (excluding principal and interest), then to accrued interest, and the balance on account of outstanding principal; provided, however, that after the occurrence of an Event of Default, payments will be applied as the Purchaser determines in its sole discretion.

3. LATE FEE. If the entire amount of any required principal and/or interest is not paid in full within fifteen (15) days after the same is due, then a late fee equal to six percent (6%) of the entire payment shall be due hereunder.

4. WAIVER. The Authority and any endorser(s) or guarantor(s) hereof, severally and jointly waive presentment, demand for payment, protest, notice of protest, and any defense by reason of extension of time for payment or other indulgence granted by the Purchaser or by any subsequent holder hereof.

5. DEFAULT INTEREST RATE. Upon the occurrence of an Event of Default (whether or not the Purchaser has accelerated payment of this Bond), or after maturity or after judgment has been rendered on this Bond, the unpaid principal of all advances shall, at the option of the Purchaser, bear interest at a rate which is [four] ([4]) percentage points per annum greater than that which would otherwise be applicable. The Authority hereby acknowledges that: (i) such additional rate is a material inducement to the Purchaser to purchase this Bond; (ii) the Purchaser would not have purchased the Bond in the absence of the agreement to pay such

default rate; (iii) such additional rate represents compensation for increased risk to the Purchaser that the Bond will not be paid; and (iv) such rate is not a penalty and represents a reasonable estimate of (a) the cost to the Purchaser in allocating its resources (both personnel and financial) to the ongoing review, monitoring, administration and collection of this Bond; and (b) compensation to the Purchaser for losses that are difficult to ascertain.

**TIME IS OF THE ESSENCE WITH RESPECT TO THIS BOND**

**SCHEDULE A**  
**PRINCIPAL PAYMENTS**

**[TO BE INSERTED]**



**RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
REAUTHORIZING THE CONVEYANCE OF A CERTAIN PARCEL OF REAL PROPERTY  
TO ROWAN UNIVERSITY AND ALL OTHER DOCUMENTS, APPROVALS AND ACTION  
NECESSARY TO IMPLEMENT SUCH CONVEYANCE**

**Adopted: January 28, 2020**

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

**WHEREAS**, the Authority holds title to a parcel of land described in Exhibit A hereto (the "Authority-Owned Parcel"), the acquisition and development of which was financed and refinanced on behalf of Rowan University (the "University") through issuance of various series of bonds including the Authority's Revenue Refunding Bonds, Rowan University Issue, Series 2011 C (the "Series 2011 C Bonds") and the Authority's Revenue Refunding Bonds, Rowan University Issue, Series 2016 C (the "Series 2016 C Bonds"); collectively with the Series 2011 C Bonds, the "Bonds"); and

**WHEREAS**, although proceeds of the Bonds are allocable to acquisition and development of the Authority-Owned Parcel, the Authority-Owned Parcel is not subject to an existing lease from the Authority to the University; and

**WHEREAS**, the Authority authorized the conveyance of the Authority-Owned Parcel to the University in a resolution adopted on October 22, 2019 (the "2019 Resolution"); and

**WHEREAS**, Exhibit A of the 2019 Resolution incorrectly described the area for the Authority-Owned Parcel as "WC North"; and

**WHEREAS**, the correct area for the Authority-Owned Parcel is "Triad" as set forth in EXHIBIT A hereto; and

**WHEREAS**, the University has requested, and the Authority has agreed, to revise Section 1, entitled "Authorization of Conveyance," of the 2019 Resolution, as to the conditions for the conveyance of the Authority-Owned Parcel as set forth herein.

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

**Section 1. Reauthorization of Conveyance.** The Authority hereby reapproves the conveyance to the University of the Authority-Owned Parcel. The Authority hereby authorizes and directs the Chair, Vice Chair, Executive Director, Deputy Executive Director, Treasurer, Director of Project Management, Director of Compliance Management, Secretary, Assistant Treasurer or any Assistant Secretary of the Authority, and any other person authorized by resolution of the Authority, and any of such officers designated as "acting" or "interim" (each an "Authorized Officer") to execute and deliver a Deed conveying the Authority-Owned Parcel to the University under the official common seal of the Authority; and to execute and attest any other documents and

take any and all such other actions as may be necessary or appropriate to effect the conveyance; such documents to be executed in the form satisfactory to the Authorized Officer executing the same with the advice of bond counsel and the Office of the Attorney General; provided that at the time of such conveyance, the Authority have received such certificates, opinions or other documents in form satisfactory to the Authorized Officer, as such Authorized Officer shall deem necessary and appropriate, with the advice of bond counsel and the Office of the Attorney General.

**Section 2. Authorization of Action by Authorized Officers.** The Authorized Officers are each hereby authorized and directed to take any and all such other actions as may be necessary or appropriate and to execute, attest and affix the official common seal of the Authority, as applicable, to all other documents, certificates, agreements, instruments and notices necessary for the conveyance of all Authority-Owned Parcel to the University, each of such documents, certificates, agreements, instruments and notices to be in the form approved by the Authorized Officer executing same with the advice of bond counsel and/or the Office of the Attorney General, such execution to be conclusive evidence of the approval thereof by such Authorized Officer.

**Section 3. Prior Resolutions.** All prior resolutions of the Authority or portions thereof inconsistent herewith are hereby repealed.

**Section 4. Effective Date.** This Resolution shall take effect in accordance with the provisions of the Act.

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

**AYE:** Joshua Hodes  
Ridgeley Hutchinson  
Louis Rodriguez  
Elizabeth Maher Muoio (represented by Ryan Feeney)  
Zakiya Smith Ellis

**NAY:** None

**ABSTAIN:** None

**ABSENT:** None

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

Rowan Conveyance - 1/28/20

**Exhibit A**

**"Authority-Owned Parcel"**

<b>Municipality</b>	<b>Area</b>	<b>Block</b>	<b>Lot</b>	<b>Acreage</b>	<b>Bond Issue</b>
Glassboro	TRIAD	363	1.04	5.3	2011C/2016C

**NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
2019 BUDGET VARIANCE ANALYSIS  
FOR THE TWELVE MONTHS ENDED DECEMBER 31, 2019**

**EXECUTIVE SUMMARY**

**Net Operating Income**

The NJEFA concluded the year with preliminary unaudited net income in the amount of \$1,321 based on revenues of \$2,656,924 and expenses of \$2,655,474. Note that these numbers will change prior to the finalization of the 2019 financial statements.

**Revenues**

Revenues for the year were \$419,968 less than projected due to lower transaction volume during the during the year than anticipated and delays in the state backed grant programs.

**Expenses**

Operating expenditures for the year 2019 were under budget by \$1,106,564 primarily due to staff vacancies and lower than anticipated expenditures for professional services.

**Exhibits**

<b><u>Report</u></b>	<b><u>Page</u></b>
Actual vs. Budget Report	1
Operating Account – Vendor Payments	2 & 3
Summary of Construction Funds	4

**NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY**  
**ACTUAL vs. BUDGET REPORT**  
**DECEMBER 2019**

	Month Ended			Year-To-Date		
	December 31, 2019			December 31, 2019		
	<u>Actual</u>	<u>Budget</u>	<u>Variance</u>	<u>Actual</u>	<u>Budget</u>	<u>Variance</u>
<b><u>Operating Revenues</u></b>						
Annual Administrative Fees	\$186,719	\$206,212	\$ (19,493)	\$ 2,371,480	\$ 2,476,892	\$ (105,412)
Initial Fees	-	118,750	(118,750)	65,870	475,000	(409,130)
Investment Income	61,970	10,417	51,553	219,574	125,000	94,574
	<u>\$ 248,689</u>	<u>\$ 335,379</u>	<u>\$ (86,690)</u>	<u>\$ 2,656,924</u>	<u>\$ 3,076,892</u>	<u>\$ (419,968)</u>
<b><u>Operating Expenses</u></b>						
Salaries	\$113,557	\$123,172	\$ 9,615	\$ 1,398,280	\$ 1,601,226	\$ 202,946
Employee Benefits	40,898	72,055	31,157	511,445	864,662	353,217
Provision for Post Ret. Health Benefits	-	29,167	29,167	175,000	350,000	175,000
Office of The Governor	(991)	2,083	3,074	21,926	25,000	3,074
Office of The Attorney General	6,635	10,417	3,782	36,635	125,000	88,365
Sponsored Programs & Meetings	202	817	615	4,493	9,800	5,307
Telecom & Data	5,236	2,833	(2,403)	33,532	34,000	468
Rent	16,445	16,667	222	195,610	200,000	4,390
Utilities	2,132	2,167	35	24,964	26,000	1,036
Office Supplies & Postage Expense	1,410	2,250	840	13,933	27,000	13,067
Travel & Expense Reimbursement	84	1,417	1,333	5,142	17,000	11,858
Staff Training & Conferences	7,683	3,583	(4,100)	30,057	43,000	12,943
Insurance	4,272	6,526	2,254	51,633	65,000	13,367
Publications & Public Relations	13,863	2,238	(11,625)	15,570	26,850	11,280
Professional Services	(786)	10,167	10,953	59,133	172,000	112,867
Dues & Subscriptions	2,843	7,458	4,615	32,010	89,500	57,490
Maintenance Expense	1,722	1,500	(222)	17,475	18,000	525
Depreciation	2,907	3,167	260	28,636	38,000	9,364
Contingency	-	30,000	30,000	-	30,000	30,000
	<u>218,112</u>	<u>327,684</u>	<u>109,572</u>	<u>2,655,474</u>	<u>3,762,038</u>	<u>1,106,564</u>
<b>Net Operating Income</b>	<u>\$ 30,577</u>	<u>\$ 7,695</u>	<u>\$ 22,882</u>	<u>\$ 1,450</u>	<u>\$ (685,146)</u>	<u>\$ 686,596</u>
Gain/Loss on Disposal of Fixed Assets	\$ (129)			\$ (129)		\$ (129)
<b>Net Income</b>	<u>\$ 30,448</u>		<u>\$ 22,882</u>	<u>\$ 1,321</u>		<u>\$ 686,467</u>

**NJEFA  
Vendor Payments  
December 2019**

12:50 PM

Type	Date	Num	Name	Memo	Account	Accrual Basis Amount
Bill Pmt -Check	12/02/2019	EFT	Neopost	Annual ACH Meter Fee	Accounts Payable	50.00
Bill Pmt -Check	12/05/2019	EFT	BMO Financial Group	Charger	Accounts Payable	21.94
Bill Pmt -Check	12/05/2019	EFT	BMO Financial Group	Crash Plan	Accounts Payable	9.99
Bill Pmt -Check	12/06/2019	EFT	NJSHBP	12/19 Covg	Accounts Payable	22,435.47
Bill Pmt -Check	12/06/2019	EFT	NJSHBP	12/19 Covg	Accounts Payable	3,058.51
Bill Pmt -Check	12/18/2019	1147	Cannon, Barbara	2019MedicarePartB	Accounts Payable	3,250.80
Bill Pmt -Check	12/18/2019	1148	Comcast	120719	Accounts Payable	86.90
Bill Pmt -Check	12/18/2019	1149	DocuSafe	123967	Accounts Payable	173.92
Bill Pmt -Check	12/18/2019	1150	ElectraKOM	1122	Accounts Payable	2,520.00
Bill Pmt -Check	12/18/2019	1151	Government News Network	85892-G	Accounts Payable	340.00
Bill Pmt -Check	12/18/2019	1152	Nelson, Steven	12032019 10/29/19 Travel	Accounts Payable	15.00
Bill Pmt -Check	12/18/2019	1153	NJ Economic Development Authority	2019December	Accounts Payable	1,522.09
Bill Pmt -Check	12/18/2019	1154	O'Donnell, Jamie	12132019 10/25/19-12/13/19 Travel	Accounts Payable	32.70
Bill Pmt -Check	12/18/2019	1155	Panacek, Joan	2019MedicarePartB	Accounts Payable	1,626.00
Bill Pmt -Check	12/18/2019	1156	Polar Inc.	070786	Accounts Payable	8.15
Bill Pmt -Check	12/18/2019	1157	Raymond James	2019NJICb JB	Accounts Payable	25.00
Bill Pmt -Check	12/18/2019	1158	Refinitive Global Markets Inc.	97188522	Accounts Payable	760.00
Bill Pmt -Check	12/18/2019	1159	Toles, Sheila R.	Employee Reimbursement	Accounts Payable	36.76
Bill Pmt -Check	12/18/2019	1160	Treasurer, State of New Jersey - DAG	FY20201stQtr	Accounts Payable	9,288.00
Bill Pmt -Check	12/18/2019	1161	UPS	2Y687X499, 2Y687X479	Accounts Payable	31.70
Bill Pmt -Check	12/18/2019	1162	Uyhazi, Donald D.	2019MedicarePartB	Accounts Payable	1,490.50
Bill Pmt -Check	12/18/2019	1163	Verizon Wireless	9843357460	Accounts Payable	303.76
Bill Pmt -Check	12/18/2019	1164	W.B. Mason Company, Inc.	IS1047500	Accounts Payable	252.12
Bill Pmt -Check	12/18/2019	1165	Yang, Ellen	12122019 12/12/19 Travel	Accounts Payable	19.73
						47,359.04

**New Jersey Educational Facilities Authority**  
**Summary of Construction Funds**  
**As of December 31, 2019**

<u>Institution</u>	<u>Issue</u>	<u>Description</u>	<u>Bond Proceeds</u>	<u>Net Disbursed</u>	<u>Balance</u>	<u>% Complete</u>
<b><u>Private</u></b>						
Stevens Institute of Technology	2017 Series A	Various Renov & Improvements, Refund 1998 I, 2007 A	\$ 76,911,558.14	\$ (67,197,205.15)	\$ 9,714,352.99	87%
Rider University	2017 Series F	Academic & Residential Facilities, Science & Technology Bldg	44,228,160.45	(27,737,388.70)	16,490,771.75	63%
Georgian Court University	2017 Series G&H	Various Capital Improvements & Renovations, Refund 07 D, H	7,874,383.16	(149,443.32)	7,724,939.84	2%
Sub Total			\$ 129,014,101.75	\$ (95,084,037.17)	\$ 33,930,064.58	
<b><u>Public</u></b>						
New Jersey City University	Series 2015 A	Various Renovations & Improv, Refund 02 A, 08 E	37,869,656.10	(35,183,972.65)	2,685,683.45	93%
Ramapo College of New Jersey	Series 2017 A	Refund 06 I, Renov Library, Learning Center	11,278,830.75	(852,355.22)	10,426,475.53	8%
Sub Total			\$ 49,148,486.85	\$ (36,036,327.87)	\$ 13,112,158.98	
<b><u>Other Programs</u></b>						
Equipment Leasing Fund	Series 2014 A&B	Acquisition and Installation of Equipment	\$ 101,266,893.00	\$ (95,839,912.91)	\$ 5,426,980.09	95%
Technology Infrastructure Fund	Series 2014	Development of Technology Infrastructure	41,313,667.00	(38,326,358.95)	2,987,308.05	93%
Capital Improvement Fund	Series 2014 A-D	Capital Improvements	191,905,596.00	(186,334,706.29)	5,570,889.71	97%
Facilities Trust Fund	Series 2014	Construct, Reconstruct, Develop & Improve Facilities	219,977,164.00	(201,390,022.14)	18,587,141.86	92%
Capital Improvement Fund	Series 2016 B	Capital Improvements	146,700,261.19	(131,596,540.12)	15,103,721.07	90%
Sub Total			\$ 701,163,581.19	\$ (653,487,540.41)	\$ 47,676,040.78	
<b>Grand Total</b>			<b>\$ 879,326,169.79</b>	<b>\$ (784,607,905.45)</b>	<b>\$ 94,718,264.34</b>	

\* This issue has reached a completion rate of 95% or higher and will not appear on future reports.