

Vance County Board of Commissioners
Vance County Administration Building
122 Young Street, Suite B
Henderson, N.C. 27536

Jerry L. Ayscue
County Manager

Telephone (252) 738-2001
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Kelly H. Grissom
Clerk to Board

Telephone (252) 738-2001

MEMORANDUM

To: Deborah F. Brown
Dan Brummitt
Terry E. Garrison
Archie B. Taylor, Jr.
Gordon Wilder
Eddie L. Wright

From: Kelly H. Grissom, Clerk to the Board *KG*

Date: June 20, 2013

Re: **Special Called Meeting**

This memorandum will serve as notice that Chairman Thomas S. Hester, Jr. has called a special meeting for Tuesday, June 25 at 5:30 p.m. in the Commissioners' Conference Room, Vance County Administration Building, 122 Young Street, Henderson, NC. The purpose of the special meeting is to address the following:

1. Qualified Zone Academy Bonds
2. Adoption of FY 2013-2014 Budget Ordinance - to be distributed at meeting
3. Authorization of Year-End Closeouts
4. CDBG Debarment Certifications
5. Appointment of Voting Delegate and Alternate for NACo Annual Conference
6. Henderson Collegiate Charter School Lease Agreement
7. Other items as needed

c: Chairman Thomas S. Hester, Jr.
Jonathan S. Care, County Attorney
David C. Beck, Finance Director

The Board of Commissioners for the County of Vance, North Carolina, met in a regular meeting in Commissioners' Meeting Room at the Vance County Administration Building located at 122 Young Street in Henderson, North Carolina at 5:30 p.m. on June 25, 2013.

Present: Chairman Thomas Hester, presiding, and Commissioners

Absent: Commissioners

Also present: _____

* * * * *

_____ introduced the following resolution the title of which was read and copies of which had been distributed to each Commissioner:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT AND DEED OF TRUST, A PROJECT FUND AGREEMENT, A LEASE AGREEMENT, A REHABILITATION AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH AN INSTALLMENT FINANCING FOR SCHOOL IMPROVEMENTS

BE IT RESOLVED by the Board of Commissioners (the "Board") for the County of Vance, North Carolina (the "County"):

Section 1. The Board does hereby find and determine as follows:

(a) The Vance County Board of Education (the "Board of Education"), the governing board of the local school administrative unit in the County, has determined that a need exists for renovating, improving and equipping various public school facilities in the County, including, without limitation, Aycock Elementary School, Dabney Elementary School, Zeb Vance Elementary School, E.O. Young Elementary School, Carver Elementary School, L.B. Yancey Elementary School, Eaton-Johnson Middle School, Henderson Middle School and Northern Vance High School (collectively, the "Project").

(b) The Project is hereby approved.

(c) After a public hearing and due consideration, the Board has determined that the most efficient manner of financing the Project will be through the County entering into a Financing Agreement and Deed of Trust, to be dated the date of delivery thereof (the "Agreement"), in an aggregate principal amount not to exceed \$2,000,000 with Branch Banking and Trust Company (the "Lender"), pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended. Pursuant to the Agreement, the Lender will advance moneys to the County in an

amount sufficient to pay, together with other available funds, the costs of the Project, and the County will repay the advancement in installments (the "Installment Payments"). In order to secure the Installment Payments, the Agreement will grant a lien on the site of the L.B. Yancey Elementary School (the "Site"), together with all buildings, improvements and fixtures located or to be located thereon.

(d) In order to provide for the deposit and investment of funds with the Lender pending disbursement thereof to pay the costs the Project and related financing expenses, the County will enter into a Project Fund Agreement, to be dated the date of delivery thereof (the "Project Fund Agreement"), between the County and the Lender.

(e) In order for the County to enter into the plan of finance, the Board of Education will convey the Site to the County.

(f) The Site will be leased back to the Board of Education pursuant to a Lease Agreement (the "Lease Agreement") between the County and the Board of Education, which Lease Agreement will be subordinate to the lien created by the Agreement.

(g) The Board of Education will acquire, construct, renovate and equip the Project in accordance with a Rehabilitation Agreement in substantially the form presented to the Board (the "Rehabilitation Agreement").

(h) There has been presented to the Board forms of the following documents relating to the transaction hereinabove described:

- (1) the Agreement;
- (2) the Project Fund Agreement;
- (3) the Rehabilitation Agreement; and
- (r) the Lease Agreement.

Section 2. The Board hereby approves the Agreement, the Project Fund Agreement, the Rehabilitation Agreement and the Lease Agreement in substantially the forms presented at this meeting. The Chairman or Vice Chairman of the Board or the County Manager is hereby authorized to execute and deliver on behalf of the County each of said documents in substantially the forms presented at this meeting, containing such insertions, deletions and filling in of blanks as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the Board of any such changes. The Clerk to the Board or any Deputy or Assistant Clerk to the Board is hereby directed to affix the official seal of the County to each of said documents and to attest the same.

Section 3. No deficiency judgment may be rendered against the County in any action for breach of any contractual obligation under the Agreement, and the taxing power of the County is not and may not be pledged directly or indirectly to secure any moneys due under the Agreement or the Deed of Trust.

Section 4. The Chairman, the Vice Chairman, the County Manager, the Finance Director, the County Attorney and the Clerk to the Board or any Deputy or Assistant Clerk to the Board, and any other officers, agents and employees of the County, are hereby authorized and directed to execute and deliver such closing certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions described above, including (a) the execution of any necessary financing statements relating to fixtures located on the Site and (b) the execution of any documents necessary for the conveyance of the Site to the County.

Section 5. The Board hereby designates its obligations under the Agreement to be a qualified zone academy bond pursuant to Section 1397E of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

Section 6. This resolution shall take effect immediately upon its passage.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing resolution was adopted by the following vote:

Ayes: _____

Noes: _____

* * * * *

I, Kelly H. Grissom, Clerk to the Board of Commissioners for the County of Vance, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of such much of the proceedings of said Board, at a regular meeting held on June __, 2013, as it relates in any way to the passage of the foregoing resolution relating to an installment financing by said County and that said proceedings are recorded in the minutes of said Board.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and official seal of said County this ____ day of June, 2013.

[SEAL]

Clerk to the Board of Commissioners

REHABILITATION AGREEMENT

This REHABILITATION AGREEMENT, dated as of June 26, 2013 (the “Agreement”), between the COUNTY OF VANCE, NORTH CAROLINA, a body politic and corporate existing under the laws of the State of North Carolina (the “County”) and the VANCE COUNTY BOARD OF EDUCATION, a body corporate existing under the laws of the State of North Carolina (the “Board of Education”);

WITNESSETH:

WHEREAS, the County is a body politic and corporate existing under the laws of the State of North Carolina vested with the powers and authority conferred upon counties by the laws of the State of North Carolina, acting through its Board of Commissioners;

WHEREAS, the Board of Education is the governing board of the Vance County local school administrative unit of the public school system of the State of North Carolina, vested with the powers and authority conferred upon boards of education by the laws of the State of North Carolina, including general control and supervision of all matters pertaining to the public schools in the County;

WHEREAS, pursuant to Section 153A-158.1, as amended, of the General Statutes of North Carolina, as the same applies to the County, the County may acquire by any lawful method the fee or any lesser interest in real or personal property for use by the Board of Education;

WHEREAS, the Board of Education has heretofore conveyed to the County that certain parcel of real property known as the site of L.B. Yancey Elementary School (the “Site”), as more fully described in Exhibit A to the Lease (as defined herein), for the purpose of renovating and modernizing Aycock Elementary School, Dabney Elementary School, Zeb Vance Elementary School, E.O. Young Elementary School, Carver Elementary School, L.B. Yancey Elementary School, Eaton-Johnson Middle School, Henderson Middle School and Northern Vance High School, as more fully described in Exhibit A to the Financing Agreement (hereinafter defined) (collectively, the “Project”), for the use of the Board of Education pursuant to the terms of the Lease;

WHEREAS, the County has arranged to finance a portion of the costs of the Project pursuant to Financing Agreement and Deed of Trust (the “Financing Agreement”), between the County and Branch Banking and Trust Company (the “Bank”), pursuant to which the Bank has advanced to the County amounts sufficient to pay a portion of the costs of the Project, and the County has agreed to repay such advancement in installments (the “Installment Payments”), and the County has granted a lien on the Site and all buildings, improvements and fixtures located and to be located thereon;

WHEREAS, the County, as lessor, and the Board of Education, as the lessee, have entered into a Lease Agreement, dated as of June 26, 2013, as supplemented and amended (as supplemented and amended, the "Lease"), pursuant to which the County has agreed to lease the Site and all buildings, improvements and fixtures located and to be located thereon to the Board of Education;

WHEREAS, the County desires for the Board of Education to oversee the Project, and the Board of Education is willing to undertake such obligation;

NOW THEREFORE, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

Section 1. Supervision of the Project by the Board of Education. The County and the Board of Education hereby agree and covenant that the Board of Education shall have supervisory power ("Supervisory Power"), subject to the consent provision as set forth in Section 3 below, in connection with the acquisition, renovation and installation of the Project. The Board of Education shall use its best efforts to cause the acquisition and construction of the Project in accordance with the plans and specifications therefor and otherwise in accordance with the Financing Agreement and any applicable requirements of governmental authorities and law.

Notwithstanding the foregoing, nothing contained in this Agreement, the Financing Agreement, the Lease or the other agreements entered into between the County and the Board of Education in connection with the financing of the improvements leased to the Board of Education hereunder shall be construed to grant to the County any jurisdiction or supervision over the operation and use of the public school system for the County and its facilities that would not exist in the absence of these transactions. The County and the Board of Education hereby acknowledge and agree that the transactions contemplated by this Agreement, the Financing Agreement, the Lease or the other agreements entered into between the County and the Board of Education are entered to facilitate the financing by the County of the costs of such improvements. The County shall have no rights over the public school system or its facilities on account of this Agreement and the other transactions contemplated hereby except as shall be necessary for the County to carry out its obligations under the financing arrangements.

Section 2. Covenants as to the Completion of the Project. In consideration of the grant of Supervisory Power by the County to the Board of Education pursuant to Section 1 hereof, the County and the Board of Education hereby agree as follows in connection with the renovation, acquisition and equipping of the Project by the Board of Education:

(a) The Board of Education shall comply with the provisions of law, including all applicable laws relating to the procurement of construction and equipment through competitive bidding, and enter into one or more contracts or purchase orders providing for the acquisition and construction of the Project. The Board of Education shall obtain all orders, permits or similar governmental approvals necessary for the construction and operation of the Project as a public school. The Board of Education shall cause the acquisition, construction and installation of the Project to be carried on expeditiously in accordance with the plans and specifications therefor, all

applicable ordinances and statutes, and in accordance with the requirements of all regularly constituted authorities having jurisdiction over same.

(b) The Board of Education shall comply will all provisions of the Financing Agreement relating to the acquisition, construction and installation of the Project.

(c) The County, the Bank and their respective representatives and agents shall have the right to enter upon and inspect the Site and the Project from time to time, during and after construction, and the Board of Education agrees to cause any contractor or subcontractor to cooperate with the County, the Bank and their respective representatives and agents during such inspections.

(d) Payment of the Project costs shall be made from the moneys deposited in the Project Fund as provided in the Financing Agreement. In the Financing Agreement, the Bank has set forth the procedure for payments of Project costs to be paid with the Project Fund. The Board of Education covenants that it will not request payment for any costs other than Project costs and costs incurred in connection with the execution and delivery of the Financing Agreement and related financing pursuant thereto, and the County agrees to approve such requisitions in a timely manner.

(e) The Board of Education shall use its best efforts to cause the Project to be completed. Upon completion of the Project, the Board of Education shall prepare and deliver to the County for delivery to the Bank a certificate of completion in the manner prescribed by the Financing Agreement.

Section 3. Consent of the County and the Bank. (a) The County hereby recognizes and covenants that the Board of Education shall have the right to make any changes in the description of the Project or of any component or components thereof subject to the prior consent, oral or written, of the County and the Bank in accordance with the Financing Agreement; provided, however, that any such change shall not alter the purpose of the Project as public schools and any such change shall comply with all Qualified Zone Academy Bond requirements pursuant to Section 1397E of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, and pursuant to Article 34B of Chapter 115C of the General Statutes of North Carolina, as amended.

(b) The Board of Education shall have the right, in its sole discretion and at its own expense, to construct real property improvements and install items of equipment or other personal property in or upon any portion of the Project that do not materially impair the effective use, nor materially decrease the value, of the Site.

Section 4. Construction Conferences. The Board of Education hereby agrees that it will, upon the request of the County Manager of the County, provide to the County Manager or his designee timely notice of all conferences with representatives of the architects, contractors and vendors with respect to the acquisition, construction and equipping of the Project and that the County Manager or his designee shall have the right to attend all such conferences.

Section 5. Board of Education's Right to Enforce Contracts. The Board of Education shall have the right to enforce in its own name or the name of the County such purchase orders or

contracts at law or in equity; provided, however, that the assignment by the County shall not prevent the County from asserting said rights and powers in its own behalf.

Section 6. Acceptance. The Board of Education, for one dollar (\$1.00) and other good and valuable consideration in hand received, does hereby accept the foregoing appointment of Supervisory Power over the acquisition, construction and equipping of the Project as described in Section 1 hereof and does hereby accept the foregoing delegation of duties as described in Section 2 hereof.

Section 7. Board of Education Not an Agent of the County. The Board of Education in carrying out its duties under this Agreement is acting as an independent contractor and is not an agent of the County in connection with this Agreement or in connection with any other agreement between the Board of Education and the County, express or implied.

Section 8. Disclaimers of the County. The Board of Education acknowledges and agrees that the design of the Project has not been made by the County, that the County has not supplied any plans or specifications with respect thereto and that the County (a) is not a manufacturer of, or a dealer in, any of the component parts of the Project or similar projects, (b) has not made any recommendation, given any advice or taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the construction thereof, (c) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed or constructed or will accomplish the results which the Board of Education intends therefor or (iii) is safe in any manner or respect.

The County makes no express or implied warranty or representation of any kind whatsoever with respect to the Project or any component part thereof to the Board of Education or any other circumstance whatsoever with respect thereto, including, but not limited to, any warranty or representation with respect to the merchantability or the fitness or suitability thereof for any purpose; the design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the ability thereof to perform any function; that the funds advanced by the Bank pursuant to the Financing Agreement will be sufficient (together with other available funds of the Board of Education) to pay the costs of the Project; or any other characteristic of the Project; it being agreed that all risks relating to the Project, the completion thereof or the transactions contemplated hereby or by the Financing Agreement are to be borne by the Board of Education, and the benefits of any and all implied warranties and representations of the County are hereby waived by the Board of Education.

Section 9. Agreement to Survive Termination of Lease. Notwithstanding anything to the contrary contained herein, the Supervisory Power granted to the Board of Education by the

County hereunder shall, in the event that the Project is not fully completed prior to the termination of the Lease, survive the termination of the Lease.

Section 10. Indemnification. To the extent permitted by law, the Board of Education shall indemnify and save the County harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, construction and equipping of the Project; provided, however, that the Board of Education shall not be obligated to pay the Installment Payments pursuant to the Financing Agreement or to indemnify any party to the Financing Agreement for any third-party claims asserted against any such party relating to the payment of such Installment Payments. The Board of Education shall be notified promptly by the County of any action or proceeding brought in connection with any such claims arising from the acquisition, construction and equipping of the Project.

Section 11. Amendments and Further Instruments. The County and the Board of Education may, from time to time, with the written consent of the Bank, execute and deliver such amendments to this Agreement and such further instruments as may be required or desired for carrying out the expressed intention of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and attested this Agreement by their duly authorized representative as of the day and year first written above.

COUNTY OF VANCE, NORTH CAROLINA

[SEAL]

By: _____
Chairman of the Board of Commissioners

Attest:

Clerk to the Board

VANCE COUNTY BOARD OF EDUCATION

[SEAL]

By: _____
Chairman of the Board of Education

Attest:

Secretary of the Board of Education

PROJECT FUND AGREEMENT

THIS PROJECT FUND AGREEMENT is dated as of June 26, 2013, and is by and between the **COUNTY OF VANCE, NORTH CAROLINA**, a public body of the State of North Carolina (the “County”), and **BRANCH BANKING AND TRUST COMPANY** (“BB&T”).

RECITALS

The County is, simultaneously with the execution and delivery of this Project Fund Agreement, executing and delivering a Financing Agreement and Deed of Trust, dated as of June 26, 2013 (the “Financing Agreement”), to a deed of trust trustee for BB&T’s benefit. The purpose of the Financing Agreement is to provide for BB&T’s advance of \$2,000,000 to the County to finance the County’s renovations and improvements to certain school facilities (as described in the Financing Agreement). In partial consideration for BB&T’s entering into the Financing Agreement, the County has agreed to provide for financing proceeds to be deposited and disbursed pursuant to this Project Fund Agreement.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. DEFINITIONS.

In this Project Fund Agreement, the term “*Project Costs*” means all costs of the design, planning, renovating, acquiring, installing and equipping of the Project as determined in accordance with generally accepted accounting principles, including (a) sums required to reimburse the County or its agents for advances made for any such costs, (b) interest during the construction process and for up to six months thereafter, and (c) all costs related to the financing of the Project and all related transactions.

In addition, any capitalized terms used in this Project Fund Agreement and not otherwise defined shall have the meanings assigned thereto in the Financing Agreement.

SECTION 2. PROJECT FUND.

2.1. Project Fund. On the Closing Date, BB&T will deposit \$2,000,000 into a special account of the County at Branch Banking and Trust Company to be designated “2013 Vance County, North Carolina QZAB Project Fund” (the “Project Fund”). The Project Fund shall be held separate and apart from all other funds of the County. The Project Fund is the County’s property, but the County will withdraw amounts on deposit in the Project Fund only as provided in this Project Fund Agreement and only for application from time to time to the payment of Project Costs. Pending such application, such amounts shall be subject to a lien and charge in favor of BB&T to secure the County’s obligations under the Financing Agreement.

2.2. Requisitions from Project Fund. (a) The County may withdraw funds from the Project Fund only after authorization from BB&T. BB&T will disburse funds from the Project

Fund only to the County and only upon its receipt of one or more written requisitions signed by one of the below listed designated County Representatives substantially in the form of Exhibit A.

Printed Name:

Signature:

Jerry Ayscue

David Beck

The County may designate additional Representatives to sign requisitions upon written notification to BB&T.

An electronic version of a requisition in substantially the form of Exhibit A may be provided transmitted electronically to the e-mail address included in Exhibit A.

Upon receipt of a requisition from the County, BB&T will promptly undertake such review of the matters referred to in such requisition as it shall deem appropriate, and will then promptly notify the County of its approval of the requisition or the reasons for its disapproval.

[(b) Notwithstanding any other provision of this Project Fund Agreement, BB&T will not be obligated to honor any requisition for disbursements after 30 days from the Closing Date until the County provides to BB&T a final title policy, in form and substance reasonably acceptable to BB&T, insuring the priority of BB&T's lien position under the Financing Agreement.]

2.3. Disposition of Project Fund Balance. (a) *Upon completion* -- Promptly after the Project has been completed to the point that it is suitable for carrying out substantially all the purposes it is to serve for the County, the County must deliver to BB&T (i) a certificate to such effect signed by a County Representative and (ii) an opinion of counsel to the County that there are no liens or encumbrances on the Site other than Permitted Encumbrances. BB&T will then withdraw any balance remaining in the Project Fund (and not required to be retained to pay Project Costs incurred but not yet paid) and apply such balance against outstanding Required Payments.

(b) *Upon default* -- Upon the occurrence of an Event of Default, BB&T may withdraw any balance remaining in the Project Fund and apply such balance against outstanding Required Payments.

(c) *After delay or inactivity* -- If (i) more than three years have elapsed from the Closing Date or (ii) at least six months has passed from BB&T's most recent receipt of a requisition for Project Costs, then BB&T, upon 30 days' notice from BB&T to the County, may withdraw any balance remaining in the Project Fund and apply such balance against outstanding Required Payments. Notwithstanding the foregoing, any remaining funds in the Project Fund at the end of the three years from the Closing Date will be applied to prepay a portion of the principal component of the Installment Payments in accordance with Section 3.03(c) of the Financing Agreement not later than three years and 90 days following the Closing Date.

(d) *Application of Project Fund balance* -- Except as otherwise provided in subsection (c) of this Section, BB&T will apply any amounts paid to it pursuant to this section (i) first against all

Additional Payments then due and payable, (ii) then to interest accrued and unpaid to the Project Fund disposition date and (iii) then to the payment of the next maturing principal installment or any prepayment of principal in accordance with the provisions of the Financing Agreement. Such prepayment, however, will not affect any other County payment obligation under the Financing Agreement. BB&T will notify the County of any withdrawal from the Project Fund made under this Section 2.3, and in the notice will describe its application of the funds withdrawn.

At the time of the disposition of the Project Fund and closure of the Project Fund account, accrued interest will post to the account only through the last complete calendar month the account is opened. If the account is closed prior to month end, accrued but unposted interest will be forfeited.

2.4. Investment. (a) The County and BB&T agree that money in the Project Fund will be continuously invested and reinvested in a public funds money rate savings account.

(b) From and after the date that is three years from the Closing Date, the County will not purchase or hold any investment which has a “yield,” as determined under the Code, in excess of the “yield” on the County's obligations under the Financing Agreement, unless the County has supplied BB&T with a Bond Counsel Opinion to the effect that such investment will not adversely affect the exclusion from gross income for federal income tax purposes to which the interest components of Installment Payments would otherwise be entitled.

(c) Investment obligations acquired with money in the Project Fund shall be deemed at all times to be part of the Project Fund. The interest accruing thereon and any profit or loss realized upon the disposition or maturity of any such investment shall be credited to or charged against the Project Fund.

(d) All earnings on moneys in the Project Fund must be used for Project Costs.

SECTION 3. MISCELLANEOUS.

3.1. Notices. (a) Any communication provided for in this Project Fund Agreement must be in writing (not to include facsimile transmission or electronic mail).

(b) Any communication under this Project Fund Agreement will be sufficiently given and deemed given (1) for items delivered by hand, on the date of delivery, and (2) for items delivered by other delivery methods, on the date shown as the delivery date on a United States Postal Service certified mail receipt or a delivery receipt (or similar evidence) from a national commercial package delivery service, in either case if addressed as follows:

(i) If intended for the County, addressed to it at the following address: Vance County, 122 Young Street, Suite B, Henderson, North Carolina 27536, Attention: Finance Officer.

(ii) If intended for BB&T, addressed to it at the following address: BB&T Governmental Finance, Attention: Account Administration/Municipal – Project Fund Agreement Notice, 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217.

Any party may designate a different or alternate address for notices by notice given under this Project Fund Agreement.

3.2. Survival of Covenants and Representations. All covenants, representations and warranties made by the County in this Project Fund Agreement and in any certificates delivered pursuant to this Project Fund Agreement shall survive the delivery of this Project Fund Agreement.

3.3. Choice of Law. The parties intend that North Carolina law shall govern this Project Fund Agreement.

3.4. Amendments. This Project Fund Agreement may not be modified or amended unless such amendment is in writing and signed by BB&T and the County.

3.5. No Third-Party Beneficiaries. There are no parties intended to be or which shall be deemed to be third-party beneficiaries of this Project Fund Agreement.

3.6. Successors and Assigns. All of the covenants and conditions of this Project Fund Agreement shall be binding upon and inure to the benefit of the parties to this Project Fund Agreement and their respective successors and assigns.

3.7. Severability. If any court of competent jurisdiction shall hold any provision of this Project Fund Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Project Fund Agreement.

3.8. Counterparts. This Project Fund Agreement may be executed in any number of counterparts, including separate counterparts, each executed counterpart constituting an original but all together only one agreement.

3.9. Termination. Except as otherwise provided in this Project Fund Agreement, this Project Fund Agreement shall cease and terminate upon payment of all funds (including investment proceeds) from the Project Fund.

(The remainder of this page has been left blank intentionally.)

IN WITNESS WHEREOF, each of the parties has caused this Project Fund Agreement to be signed and delivered by a duly authorized officer, all as of the date first above written.

COUNTY OF VANCE, NORTH CAROLINA

[SEAL]

By: _____
Chairman of the Board of Commissioners

Attest:

Clerk to the Board of Commissioners

BRANCH BANKING AND TRUST COMPANY

By: _____
Name: _____
Title: _____

[Project Fund Agreement dated as of June 26, 2013]

PROJECT FUND REQUISITION

[To Be Prepared on County's Letterhead for Submission]

[Date] _____

BB&T Governmental Finance
Attention: Project Fund Management
5130 Parkway Plaza Boulevard, Building 9
Charlotte, North Carolina 28217

E-Mail: GFProjectfunds@bbandt.com

RE: Request for disbursement of funds from the Project Fund related to Contract No. _____
with the County of Vance, North Carolina, dated June 26, 2013.

Ladies and Gentlemen:

Pursuant to the terms and conditions of the Project Fund Agreement, dated as of June 26, 2013, the County of Vance, North Carolina (the "County") requests the disbursement of funds from the Project Fund established under the Project Fund Agreement for the following Project Costs:

This is requisition number ____ from the Project Fund.

Disbursements will be to the County of Vance, North Carolina.

Amount: \$_____

Applicable Vendor Invoices:

Project Description:

Location of Equipment/Facilities:

To receive funds via wire transfer please include:

ABA Routing Number:

Account Number:

Physical address of County:

The County of Vance makes this requisition pursuant to the following representations:

1. The County has appropriated in its current fiscal year funds sufficient to pay the Installment Payments and estimated Additional Payments due in the current fiscal year.
2. The purpose of this disbursement is for partial payment on the Project provided for under the Contract referenced above.
3. The requested disbursement has not been subject to any previous requisition.
4. No notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.
5. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.
6. No Event of Default is continuing under the Financing Agreement, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.
7. The County will execute any Uniform Commercial Code financing statements with respect to this portion of the Facilities that BB&T may request to evidence its security interest.
8. The County has in place insurance on this portion of the Facilities that complies with the insurance provisions of the above-referenced Contract.

Each amount requested for payment in this requisition either (a) represents reimbursement to the County for a Project Cost expenditure previously made, or (b) will be used by the County promptly upon the receipt of funds from BB&T to make the payments to third parties described in this requisition.

Attached is evidence that the amounts shown in this requisition are properly payable at this time, such as bills, receipts, invoices, architects' payment certifications or other appropriate documents.

COUNTY OF VANCE, NORTH CAROLINA

By: _____

Title: _____

Prepared by and return to:

G. Thomas Lee
Womble Carlyle Sandridge & Rice, LLP
Post Office Box 831
Raleigh, North Carolina 27602

LEASE AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF VANCE

This LEASE AGREEMENT, dated as of June 26, 2013 (the "Lease"), between the COUNTY OF VANCE, NORTH CAROLINA, a body politic and corporate existing under the laws of the State of North Carolina (the "County"), and the VANCE COUNTY BOARD OF EDUCATION, a body corporate existing under the laws of the State of North Carolina (the "Board of Education");

WITNESSETH:

WHEREAS, the County is a body politic and corporate existing under the laws of the State of North Carolina vested with the powers and authority conferred upon counties by the laws of the State of North Carolina, acting through its Board of Commissioners;

WHEREAS, the Board of Education is the governing board of the Vance County local school administrative unit of the public school system of the State of North Carolina, vested with the powers and authority conferred upon boards of education by the laws of the State of North Carolina, including general control and supervision of all matters pertaining to the public schools in the County;

WHEREAS, pursuant to Section 153A-158.1 of the General Statutes of North Carolina, as amended, as the same applies to the County, the County may acquire by any lawful method the fee or any lesser interest in real or personal property for use by the Board of Education;

WHEREAS, pursuant to Section 160A-274(b) of the General Statutes of North Carolina, as amended, the County may lease to the Board of Education, and the Board of Education may lease from the County, upon such terms and conditions as the County and the Board of Education deem wise, with or without consideration, any interest in real or personal property that the County may own;

WHEREAS, the Board of Education has heretofore conveyed to the County that certain parcel of real property upon which L.B. Yancey Elementary School is located and as more fully described in Schedule I hereto (the "Site") which Site the County will lease and rent to the Board of Education for the use of the Board of Education pursuant to the terms of this Lease;

WHEREAS, the County has arranged to finance a portion of the costs of renovating and modernizing Aycock Elementary School, Dabney Elementary School, Zeb Vance Elementary School, E.O. Young Elementary School, Carver Elementary School, L.B. Yancey Elementary School, Eaton-Johnson Middle School, Henderson Middle School and Northern Vance High School (collectively, the "Project") pursuant to a Financing Agreement and Deed of Trust, dated as of June 26, 2013 (the "Financing Agreement"), between the County and Branch Banking and Trust Company (the "Bank"), pursuant to which the Bank has advanced to the County amounts sufficient to pay a portion of the costs of the Project, and the County has agreed to repay the advance in installments, and has granted a lien on the Site and all buildings, improvements and fixtures located and to be located thereon, as security for the payment by the County of its obligations under the Financing Agreement;

WHEREAS, the parties hereto have mutually agreed to the terms of this Lease as hereinafter set forth,

NOW THEREFORE, in consideration of the premises, the rents to be paid, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, the County hereby leases and rents to the Board of Education, and the Board of Education hereby leases and rents from the County, the Site and all buildings, improvements and fixtures located and to be located thereon, (collectively, the "Leased Premises"), upon the terms, provisions and conditions hereinafter set forth, to wit:

Section 1. Lease of the Leased Premises. The County hereby leases and rents to the Board of Education, and the Board of Education hereby leases and rents from the County the Leased Premises, together with all right, title and interest, if any, of the County in and to easements, rights-of-way, streets, alleys, passages, water rights, waters, water courses, water privileges, tenements, hereditament, appurtenances and all other rights, whatsoever, now or hereafter in any way belonging, relating or appertaining to the Leased Premises, and all rights, title, and interest, if any, of the County, in and to the land lying in the streets, roads or avenues, open or proposed, in front of, adjoining or servicing the Leased Premises.

Section 2. Term of Lease. The term of this Lease (the "Term") shall commence on June 26, 2013 and shall terminate, subject to prior termination as hereinafter provided, at 12:00 midnight, on June 30, 2028.

Section 3. Rental. The annual rental for each year of the Term shall be one dollar (\$1.00) payable in advance on July 1 of each year. The County hereby acknowledges receipt of the annual rent for the first year of the Term.

Section 4. Quiet Enjoyment. The County hereby covenants that the Board of Education shall, during the Term of this Lease, peaceably and quietly have and hold and enjoy the Leased Premises without suit, trouble or hindrance from the County, except as expressly required or permitted by this Lease. The County shall not interfere with the quiet use and enjoyment of the Leased Premises during the Term of this Lease. The County shall, at the Board of Education's request and the County's cost, join and cooperate fully in any legal action in which the Board of Education asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Premises. In addition, the Board of Education may at its own expense join in any legal action affecting its possession and enjoyment of the Leased Premises, and shall be joined (to the extent legally possible, and at the Board of Education's expense) in any action affecting its liabilities hereunder. The provisions of this Section shall be subject to rights to inspect the Leased Premises granted to parties under Section 9 hereof.

Notwithstanding the foregoing, nothing contained in this Lease, the Financing Agreement or the other agreements entered into between the County and the Board of Education in connection with the financing of the improvements leased to the Board of Education hereunder shall be construed to grant to the County any jurisdiction or supervision over the operation and use of the public school system for the County and its facilities that would not exist in the absence of these transactions. The County and the Board of Education hereby acknowledge and agree that the transactions contemplated by this Lease, the Financing Agreement or the other agreements entered into between the County and the Board of Education are entered to facilitate the financing by the County of the costs of such improvements. The County shall have no rights over the public school system or its facilities on account of this Lease and the other transactions contemplated hereby except as shall be necessary for the County to carry out its obligations under the financing arrangements.

Section 5. Use and Maintenance of Site. During the Term, the Leased Premises shall be used solely for the accomplishment of public purposes and, in particular, the operation of a public school in the County; provided, however, that the Board of Education may use the Leased Premises for any other school related purpose. The Board of Education shall use the Leased Premises in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Leased Premises so as to keep it in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, and shall replace any part of the Leased Premises as may from time to time become worn out, lost, stolen, destroyed or damaged or unfit for use. The Board of Education hereby further agrees not to take or omit to take any action with respect to the Leased Premises which would cause the County to be in default of its obligations under the Financing Agreement.

Section 6. Utilities. The Board of Education shall pay or cause to be paid all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility service furnished to or used on or in connection with the Leased Premises.

Section 7. Insurance. The Board of Education shall procure and maintain throughout the term of this Lease such fire, casualty, public liability, property damage and theft insurance for the Leased Premises as required by the Financing Agreement. The Board of Education shall cooperate fully with the County and the Bank in filing any proof of loss with respect to such insurance policies. In no event shall the Board of Education voluntarily settle, or consent to the settlement of, any proceedings arising out of any insurance claim with respect to the Leased Premises without the prior written consent of the County.

The Board of Education hereby agrees that the net proceeds of such insurance shall applied in accordance with the provisions of the Financing Agreement.

Section 8. Installation of Additional Improvements. The Board of Education may at any time and from time to time, in its sole discretion and at its own expense, construct real property improvements and install items of equipment or other personal property in or upon any portion of the Project that do not materially impair the effective use, nor materially decrease the value, of the Leased Premises. All such items shall be subject to the lien of the Financing Agreement. The Board of Education shall repair and restore any and all damage resulting from the construction, installation, modification or removal of any such items of equipment.

Section 9. Access to the Project. The Board of Education agrees that the County and the Bank and their respective representatives and agents shall have the right at all reasonable times to enter upon the Leased Premises or any portion thereof to examine and inspect the Leased Premises. The Board of Education further agrees that the County and the Bank and their respective representatives and agents shall have such rights of access to the Leased Premises as may be reasonably necessary to cause the proper maintenance of the Leased Premises in the event of failure by the Board of Education to perform its obligations hereunder.

Section 10. Liens. Except for Permitted Encumbrances (as defined in the Financing Agreement), the Board of Education shall not create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claims on or with respect to the Leased Premises. The Board of Education shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Board of Education hereby agrees, to the extent permitted by law, to reimburse the County or the Bank for any expense incurred by either of them in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim for which the Board of Education is responsible.

Section 11. Indemnification of the County. To the extent permitted by law, the Board of Education covenants to defend, indemnify and hold harmless the County against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such indemnified party may become subject under any statute or at law or in equity or otherwise in connection with the failure by the Board of Education to comply with covenants set forth in this Lease and shall reimburse any such indemnified party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the failure by the Board of Education to comply with covenants set forth in this Lease.

Section 12. Compliance with Qualified Zone Academy Bond Requirements. The Board of Education hereby acknowledges that the County has obtained financing of the improvements leased hereunder through the issuance of a “Qualified Zone Academy Bond”

within the meaning of Section 1397E of the provisions of the Internal Revenue Code of 1986, as amended. The Board of Education hereby covenants that it will not use nor permit the use of the Leased Premises or the Project in any manner that the Board of Education is advised by the County might result in the obligations of the County under the Financing Agreement not to comply with the requirements for a “Qualified Zone Academy Bond” within the meaning of Section 1397E of the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

It is the intention of the parties hereto that the County’s obligation under the Financing Agreement be and remain “qualified zone academy bonds” within the meaning of Section 1397E of the Code, and to that end the Board of Education hereby represents, warrants and agrees as follows:

(a) 95% or more of the proceeds of the amount provided to the County by the Bank under the Agreement, as requisition by the Board of Education, shall be used to rehabilitate, repair or equip the Qualified Zone Academies (as defined in the Financing Agreement);

(b) Each of the Qualified Zone Academies is a public school or academic program within a public school which is established and operated by the Board of Education, a local education agency of the County, to provide education and training below the post secondary level and is located in an empowerment or enterprise community or there is a reasonable expectation that as of the date of Closing (as defined in the Financing Agreement) that at least 35% of the students attending the school or participating in the program will be eligible for free or reduced cost lunch programs under the school lunch program established under the National School Lunch Act;

(c) the County or the Board of Education has received written commitments from private entities to make qualified contributions (as defined in Section 1397E of the Code) having a present value of not less than 10% of the proceeds of the Advancement with respect to the Qualified Zone Academies;

(d) Each of the Qualified Zone Academies:

(i) has been designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce;

(ii) subjects its students to the same academic standards and assessments as other students educated by the Board of Education; and

(iii) has in place a comprehensive education plan approved by the Board of Education.

Section 13. Assignment by the Board of Education. The Board of Education will not assign its rights under this Lease or sublease the Leased Premises to any other person, firm or corporation without the prior written consent of the County. Any assignments must be in accordance with the Financing Agreement.

Section 14. Release of Mortgaged Property. Upon request of the Board of Education, the County shall request the Bank to release the Mortgaged Property, or any part thereof, as provided in the Financing Agreement.

Section 15. Recording The Board of Education and the County agree that this Lease or a memorandum of this Lease shall be recorded in the office of the Vance County Register of Deeds.

Section 16. Hazardous Materials. The Board of Education, its successors and assigns represents, warrants and agrees that (a) the Leased Premises shall not be used to generate, manufacture, transport, treat, store, handle, dispose of, or process Hazardous Materials except in accordance with all applicable Environmental Laws (as such terms are defined in the Financing Agreement); (b) the Board of Education shall not cause or permit the improper installation of Hazardous Materials on the Leased Premises or a release of Hazardous Materials on the Leased Premises; (c) the Board of Education shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Leased Premises and shall keep the Leased Premises free and clear of any liens imposed pursuant to any applicable Environmental Laws; (d) the Board of Education will at all times obtain and/or maintain all licenses, permits, and/or other governmental or regulatory actions necessary to comply with Environmental Laws with respect to the Leased Premises (the "Permits"), and the Board of Education will comply with the terms and provisions of the Permits; (e) the Board of Education shall immediately give the County oral and written notice in the event that the Board of Education receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Leased Premises and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Leased Premises in accordance with all applicable Environmental Laws. To the extent permitted by law, the Board of Education hereby agrees to indemnify the County and the Bank and hold it harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, reasonable attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against the County or the Bank for, with respect to, or as a direct or indirect result of (a) the presence on, or under, or the escape, spillage, emission or release from the Leased Premises of any Hazardous Material regardless of whether or not caused by or within the control of the Board of Education, (b) the violation of any Environmental Laws relating to or affecting the Leased Premises, whether or not caused by or within the control of the Board of Education, (c) the failure by the Board of Education to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by the Board of Education in this paragraph being false or untrue in any material respect.

Section 17. Priority of Deed of Trust. Notwithstanding any other provisions to the contrary herein, the Board of Education hereby expressly acknowledges that its rights under this Lease are subject in all respects to the rights of the Bank, as beneficiary under the Financing Agreement, and the Board of Education shall cooperate with the Financing Agreement trustee and the Bank in such manner as shall be necessary to assure that the Bank enjoys the full benefits of the rights granted under the Financing Agreement.

Section 18. Events of Default. Each of the following events shall be an "Event of Default" under this Lease:

(a) the Board of Education's failure to observe and perform any covenant, condition or agreement on its part to be observed or performed for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied shall have been given to the

Board of Education by the County, unless the County shall agree in writing to an extension of such time prior to its expiration; or

(b) the dissolution or liquidation of the Board of Education or the voluntary initiation by the Board of Education of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Board of Education of any such proceeding which shall remain undismissed for sixty (60) days, or the entry by the Board of Education into an agreement of composition with creditors or the Board of Education's failure generally to pay its debts as they become due.

Section 19. Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the County may take one or any combination of the following remedial steps:

(a) terminate this Lease, evict the Board of Education from the Leased Property or any portion thereof and release the Leased Premises or any portion thereof;

(b) have reasonable access to and inspect, examine and make copies of the Board of Education's books and records and accounts during the Board of Education's regular business hours, if reasonably necessary in the County's opinion; or

(c) take whatever action at law or in equity may appear necessary or desirable, including the appointment of a receiver, to collect the amounts then due, or to enforce performance and observance of any obligation, agreement or covenant of the Board of Education under this Lease.

No remedy herein conferred upon or reserved to the County is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder and every remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, and any such right and power may be exercised from time to time as may be deemed expedient. In order to entitle the County to exercise any remedy reserved in this Section, it shall not be necessary to give any notice other than such notice as may be required in this Section.

If any agreement contained herein should be breached by either party and thereafter waived by the 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 20. Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. The Board of Education and County agree, to the extent permitted by law, that in the case of a termination of this Lease by reason of an Event of Default, neither the Board of Education nor the County nor any one claiming through or under either of them shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of any remedy provided hereunder; and the Board of Education and the County, for themselves and all who may at any time claim through or under either of them, each hereby waives, to the full extent that it may lawfully do so, the benefit of such laws.

Section 21. Miscellaneous. (a) If any term or provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby.

(b) The headings in this Lease are for purposes of reference only and shall not limit or define the meaning hereof.

(c) Subject to express provisions hereof to the contrary, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns during the Term hereof and during any extensions or renewals of said Term.

IN WITNESS WHEREOF, the parties hereto have executed and attested this Agreement by their duly authorized representative as of the day and year first written above.

COUNTY OF VANCE,
NORTH CAROLINA

[SEAL]

By: _____
Chairman of the Board of Commissioners

Attest:

Clerk to the Board

VANCE COUNTY
BOARD OF EDUCATION

[SEAL]

By: _____
Chairman of the Board of Education

Attest:

Secretary of the Board of Education

ACKNOWLEDGEMENT FOR COUNTY

STATE OF NORTH CAROLINA

COUNTY OF VANCE

This ____ day of June, 2013, personally came before me, a Notary Public in and for the said City and State, Kelly Grissom, who, being by me duly sworn, says that she is the Clerk to the Board of Commissioners of the County of Vance, a body politic and corporate existing under the laws of the State of North Carolina and acting through its Board of Commissioners, and by authority duly given and as the act of said County, the foregoing instrument was signed in its name by Thomas Hester, as its Chairman, sealed with its seal, and attested by himself as the Clerk to the Board of Commissioners.

WITNESS my hand and notarial seal this ____ day of June, 2013.

Notary Public

My commission expires:

[Official Seal]

ACKNOWLEDGEMENT FOR BOARD OF EDUCATION

STATE OF NORTH CAROLINA

COUNTY OF VANCE

This ____ day of June, 2013, personally came before me, a Notary Public in and for the said City and State, _____, who, being by me duly sworn, says that he is the Secretary of the Vance County Board of Education, a body corporate existing under the laws of the State of North Carolina, and by authority duly given and as the act of said Board of Education, the foregoing instrument was signed in its name by _____, as its Chairman, sealed with its seal, and attested by himself, as its Secretary.

WITNESS my hand and notarial seal this ____ day of June, 2013.

Notary Public

My commission expires:

[Official Seal]

SCHEDULE I

LEGAL DESCRIPTION OF THE SITE

[To be provided by the County]

RECITALS:

The County has the power, pursuant to Section 160A-20 of the North Carolina General Statutes, to enter into installment contracts to finance the purchase or improvement of real or personal property, and to secure its obligations under such contracts by security interests in all or a portion of the property purchased or improved. This Agreement provides for BB&T to advance \$2,000,000 to the County to enable the County to acquire, construct and install the Facilities (as defined below), and provides for securing the County's obligations under this Agreement by creating certain lien and security interest in favor of BB&T.

This Agreement secures current advances of \$2,000,000. The current scheduled date for final repayment is on June 1, ____.

NOW, THEREFORE,

(1) in consideration of the execution and delivery of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged;

(2) to secure the County's performance of all its covenants under this Agreement, including the repayment of amounts advanced and to be advanced, together with interest on all such advances as provided in this Agreement or any amendments hereto, and all charges and expenses of collection (including court costs and reasonable attorneys' fees and expenses); and

(3) charge the Mortgaged Property (as defined below) with such payment and performance, the County hereby sells, grants and conveys to the Deed of Trust Trustee, his heirs and assigns forever, in trust, with power of sale, the following (collectively, the "Mortgaged Property"):

(a) (i) the property described in Exhibit A and (ii) all real property hereafter acquired by the County in replacement of, or in substitution for, all or any part of any property described in this subparagraph, and in all cases together with all easements, rights, liberties, rights-of-way and appurtenances belonging to any such property (collectively, the "Site");

(b) the improvements described in Exhibit B, whether or not located on the Site that constitute personal property under the Uniform Commercial Code as enacted in the State of North Carolina, including (i) all renewals and replacements thereof and all additions thereto, (ii) all articles in substitution thereof, and (iii) all proceeds of all the foregoing in whatever form resulting from the loss or disposition of the foregoing, including all proceeds of and unearned premiums for any insurance policies covering the Facilities and such improvements, proceeds of title insurance and payments related to the exercise of condemnation or eminent domain authority, and all judgments or settlements in lieu of any of the foregoing (collectively, the "Facilities"); and

(c) the moneys on deposit from time to time in the Project Fund, as provided in Sections 2.02 and 2.03.

TO HAVE AND TO HOLD the Mortgaged Property with all privileges and appurtenances thereunto belonging, to the Deed of Trust Trustee, his heirs and assigns forever, upon the trusts, terms and conditions and for the purposes set out below, in fee simple in trust;

SUBJECT, HOWEVER, to the encumbrances described in Exhibit C (the “Existing Encumbrances”);

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST: if the Required Payments (as defined below) are paid in full in accordance with this Agreement, and the County shall comply with all of the terms, covenants and conditions of this Agreement, this conveyance shall be null and void and shall be canceled of record at the County's request and cost, and title shall revert as provided by law.

BUT IF, HOWEVER, THERE SHALL OCCUR AN EVENT OF DEFAULT UNDER THIS AGREEMENT, then BB&T shall have the remedies provided for in this Agreement, including directing the Deed of Trust Trustee to sell the Mortgaged Property under power of sale.

THE COUNTY COVENANTS AND AGREES with the Deed of Trust Trustee and BB&T (and their respective heirs, successors and assigns), in consideration of the foregoing, as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

Unless the context clearly requires otherwise, capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

“Additional Payments” means any of BB&T’s reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of BB&T’s expenses (including reasonable attorneys’ fees) in prosecuting or defending any action or proceeding in connection with this Agreement, any required license or permit fees, state and local sales and use or ownership taxes or property taxes which BB&T is required to pay as a result of this Agreement, inspection and re-inspection fees, and any other amounts payable by the County (or paid by BB&T on the County’s behalf) as a result of its covenants under this Agreement (together with interest that may accrue on any of the above if the County shall fail to pay the same, as set forth in this Agreement).

“Amount Advanced” has the meaning assigned in Section 2.02.

“Board of Education” means the Vance County Board of Education, a public school administrative unit organized and existing under the laws of the State.

“Bond Counsel Opinion” means a written opinion (in form and substance acceptable to BB&T) of an attorney or firm of attorneys acceptable to BB&T.

“Budget Officer” means the County officer from time to time charged with preparing the County’s draft budget as initially submitted to the Governing Board for its consideration.

“Business Day” means any day on which banks in the State are not by law authorized or required to remain closed.

“County” means the County of Vance, North Carolina.

“County Representative” means the County’s Finance Director, County Manager or such other person or persons at the time designated, by a written certificate furnished to BB&T and signed on the County’s behalf by the presiding officer of the County’s Governing Board, to act on the County’s behalf for any purpose (or any specified purpose) under this Agreement.

“Closing Date” means the date on which this Agreement is first executed and delivered by the parties.

“Code” means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the County’s obligations under this Agreement and all proposed (including temporary) regulations which, if adopted in the form proposed, would apply to such obligations. Reference to any specific Code provision shall be deemed to include any successor provisions thereto.

“Construction Agreements” means any contracts with contractors related to the construction or renovation of the Facilities.

“Event of Default” means one or more events of default as defined in Section 8.01.

“Event of Nonappropriation” means any failure by the Governing Board to adopt, by the first day of any Fiscal Year, a budget for the County that includes an appropriation for Required Payments, or the Governing Board’s amendment to the annual budget to remove an appropriation for Required Payments, each as contemplated by Section 3.05.

“Existing Encumbrances” means the encumbrances described in Exhibit C.

“Fiscal Year” means the County's fiscal year beginning July 1, or such other fiscal year as the County may later lawfully establish.

“Governing Board” means the County's governing board as from time to time constituted.

“Installment Payments” means the payments payable by the County pursuant to Section 3.01.

“LGC” means the North Carolina Local Government Commission.

“Mortgaged Property” means the Mortgaged Property (as defined above).

“Net Proceeds,” when used with respect to any amounts derived from claims made on account of insurance coverages required under this Agreement, any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, payments on any bonds required by Section 5.03, any amounts recovered from any contractor on an action for default or breach, as described in Section 5.03, or any amounts received in lieu or in settlement of any of the foregoing, means the amount remaining after deducting from the gross proceeds thereof all expenses (including attorneys' fees and costs) incurred in the collection of such proceeds, and after reimbursement to the County or BB&T for amount previously expended to remedy the event giving rise to such payment or proceeds.

“Payment Dates” means the dates indicated in Exhibit D.

“Permitted Encumbrances” means, as of any particular time, (a) the Existing Encumbrances, (b) liens for taxes and assessments not then delinquent, (c) this Agreement, (d) any lease of the Mortgaged Property to the Board of Education provided such lease is subordinate to lien and security interest on the Mortgaged Property created by this Agreement and (e) easements, rights-of-way and other such minor encumbrances, defects or restrictions as normally exist with respect to property of the same general character as the Mortgaged Property which will not impair the County's intended use of the Mortgaged Property.

“Plans and Specifications” means all plans and specifications for the Facilities prepared by architects, engineers and other consultants.

“Prime Rate” means the interest rate so denominated and set by Branch Banking & Trust Company of North Carolina (whether or not such Bank, or any affiliate thereof, is at any time the beneficiary under this Agreement) as its “Prime Rate,” as in effect from time to time.

“Project Costs” means all costs of the design, planning, constructing, acquiring, installing and equipping of the Facilities as determined in accordance with generally accepted accounting principles, including (a) sums required to reimburse the County or its agents for advances made for any such costs, (b) interest during the construction process and for up to six months thereafter, and (c) all costs related to the financing of the Facilities through this Agreement and all related transactions

“Project Fund” has the meaning assigned in Section 2.02.

“Project Fund Agreement” has the meaning assigned in Section 2.02.

“Required Payments” means Installment Payments and Additional Payments.

“Section 160A-20” means Section 160A-20 of the North Carolina General Statutes, as amended, or any successor provision of law.

“State” means the State of North Carolina.

“UCC” means the Uniform Commercial Code or any successor law as in effect from time to time in the State, currently Chapter 25 of the North Carolina General Statutes.

All references in this Agreement to designated “Sections” and other subdivisions are to the designated sections and other subdivisions of this Agreement. The words “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision unless the context indicates otherwise. Words importing the singular number shall include the plural number and vice versa.

ARTICLE II

SECURITY PROVIDED BY THIS AGREEMENT; ADVANCE

2.01. Security for Payment and Performance. This Agreement secures the County's payment, as and when the same shall become due and payable, of all Required Payments and the County's timely compliance with all terms, covenants and conditions of this Agreement.

2.02. Advance. BB&T advances \$2,000,000 (the "Amount Advanced") to the County on the Closing Date, and the County hereby accepts the Amount Advanced from BB&T. BB&T is advancing the Amount Advanced by making a deposit to the Project Fund (the "Project Fund") established under the Project Fund Agreement, dated as of the date hereof (the "Project Fund Agreement"), between the County and BB&T. The amount of this deposit is equal to the Amount Advanced less a loan fee to BB&T of \$2,700. The County agrees that BB&T may net this fee against the funding of the Amount Advanced. All amounts on deposit from time to time in the Project Fund, including the Amount Advanced and all investment earnings, shall be used only for Project Costs until the Project Fund is terminated as provided under the Project Fund Agreement.

The County hereby allocates and designates the principal component of the Installment Payments as set forth in Exhibit D hereto as a "qualified zone academy bond" under Section 54E of the Code.

2.03. UCC Security Agreement. (a) This Agreement is intended as and constitutes a security agreement pursuant to the UCC with respect (i) fixtures constituting a part of the Mortgaged Property and (ii) all moneys on deposit from time to time in the Project Fund. The County hereby grants to BB&T a security interest in the fixtures constituting a part of the Mortgaged Property and the moneys on deposit from time to time in the Project Fund to secure the Required Payments.

(b) The County shall deliver and file, or cause to be filed, in such place or places as may be required by law, financing statements (including any continuation statements required by the UCC or requested by BB&T) in such form as BB&T may reasonably require to perfect and continue the security interest in fixtures constituting a part of the Mortgaged Property and the moneys on deposit from time to time in the Project Fund.

2.04. County's Limited Obligation. (a) THE PARTIES INTEND THAT THIS TRANSACTION COMPLY WITH SECTION 160A-20. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE COUNTY'S FAITH AND CREDIT WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS A DELEGATION OF GOVERNMENTAL POWERS OR AS AN IMPROPER DONATION OR A LENDING OF THE COUNTY'S CREDIT WITHIN THE MEANING OF THE STATE CONSTITUTION. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN VIOLATION OF SECTION 160A-20. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the County's moneys (other than the funds held under the Project

Fund Agreement or this Agreement), nor shall any provision of this Agreement restrict the future issuance of any of the County's bonds or obligations payable from any class or source of the County's moneys (except to the extent this Agreement restricts the incurrence of additional obligations secured by the Mortgaged Property). To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

(b) Nothing in this Section is intended to impair or prohibit foreclosure on this Agreement if the Required Payments are not paid when due or otherwise upon the occurrence of an Event of Default under this Agreement or the Project Fund Agreement, and in any such event BB&T may request the Deed of Trust Trustee to foreclose on the Mortgaged Property as provided in this Agreement, to the extent permitted by law.

2.05. County's Continuing Obligations. The County shall remain liable for full performance of all its covenants under this Agreement (subject to the limitations described in Section 2.04), including payment of all Required Payments, notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

- (a) BB&T's waiver of any right granted or remedy available to it;
- (b) The forbearance or extension of time for payment or performance of any obligation under this Agreement, whether granted to the County, a subsequent owner of the Mortgaged Property or any other person;
- (c) The release of all or part of the Mortgaged Property or the release of any party who assumes all or any part of such performance;
- (d) Any act or omission by BB&T (but this Section provision does not relieve BB&T of any of its obligations under this Agreement or the Project Fund Agreement);
- (e) The sale of all or any part of the Mortgaged Property; or
- (f) Another party's assumption of the County's obligations under this Agreement.

2.06. Construction Mortgage. The security interest evidenced hereby is a “construction mortgage” with respect to the Facilities located on the Site within the meaning of Section 25-9-334 of the North Carolina General Statutes, as amended, or any successor provision.

ARTICLE III

COUNTY'S PAYMENT OBLIGATION AND RELATED MATTERS

3.01. Installment Payments. The County shall repay the Amount Advanced by making Installment Payments to BB&T in lawful money of the United States at the times and in the amounts set forth in Exhibit D, except as otherwise provided in this Agreement. All payments are to be made by wire transfer, or other transfer of immediately available funds, on the payable date to BB&T to such account in the United States as BB&T may from time to time designate to the County. As indicated in Exhibit D, the Installment Payments reflect the repayment of the Amount Advanced and include designated interest components.

3.02. Additional Payments. The County shall pay all Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed in lawful money of the United States.

3.03. Prepayment. (a) Upon at least thirty (30) days written notice to BB&T (unless otherwise waived by BB&T), the County may at its option prepay the outstanding principal component of the Amount Advanced, in whole but not in part, on any Payment Date, by paying (i) all Additional Payments then due and payable, (ii) 100% of the outstanding principal component of the Amount Advanced and (iii) interest on any late Installment Payments as provided in Section 3.04.

(b) The Installment Payments are subject to mandatory prepayment in part from any unexpended proceeds of Amount Advanced remaining on the date which is three years from the date of this Agreement at a prepayment price equal to 100% of the principal amount of the Installment Payments to be prepaid plus accrued interest to the prepayment date. The County shall provide at least ten (10) days' notice to the Bank of such mandatory prepayment in part; provided, however, that such prepayment must occur within ninety (90) days following the end of such three-year period. Any such prepayment shall be applied to the redemption of principal of the Installment Payments in inverse order of their respective maturities. Upon any such prepayment in part, the related payment schedule set forth in Exhibit D shall be modified to take into account such prepayment.

3.04. Late Payments. If the County fails to pay any Installment Payment when due, the County shall pay additional interest on the late Installment Payment (as permitted by law) at an annual rate equal to the Prime Rate from the original due date.

3.05. Appropriations. (a) The Budget Officer shall include in the initial proposal for each of the County's annual budgets the amount of all Installment Payments and estimated Additional Payments coming due during the Fiscal Year to which such budget applies. Notwithstanding that the Budget Officer includes such an appropriation for Required Payments in a proposed budget, the Governing Board may determine not to include such an appropriation in the County's final budget for such Fiscal Year, in its sole discretion.

(b) If the amount specified in subsection (a) of this Section is not appropriated by the Governing Body in any Fiscal Year, the Budget Officer shall deliver to BB&T within 15 days after the beginning of such Fiscal Year a certificate stating that such amount has not been so

appropriated. The Budget Officer shall also send a copy of any such certificate to the LGC, to the attention of its Secretary, at the Albemarle Building, 325 North Salisbury Street, Raleigh, North Carolina 27603-1385.

(c) The actions required of the County and its officers pursuant to this Section shall be deemed to be and shall be construed to be in fulfillment of ministerial duties, and it shall be the duty of each and every County official to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the County to carry out and perform the actions required pursuant to this Section and the remainder of this Agreement to be carried out and performed by the County.

(d) The County reasonably believes that it can obtain funds sufficient to pay all Required Payments when due.

3.06. No Abatement. There shall be no abatement or reduction of the Required Payments for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or imaginary) arising out of or related to the Site or of the Facilities, except as expressly provided in this Agreement. The County assumes and shall bear the entire risk of completion, loss and damage to the Site and the Facilities from any cause whatsoever. The Installment Payments shall be made in all events unless the County's obligation to make Installment Payments is terminated as otherwise provided in this Agreement.

ARTICLE IV

COUNTY'S COVENANTS, REPRESENTATIONS AND WARRANTIES

4.01. Warranties of Title. The County covenants with the Deed of Trust Trustee and BB&T that the County is seized of and has the right to convey the Site in fee simple, that the Site is free and clear of all liens and encumbrances other than the Existing Encumbrances, that title to the Site is marketable, and that the County will forever warrant and defend title to the Site against the claims of all persons.

4.02. Indemnification. To the extent permitted by law, the County shall indemnify, protect and save the Deed of Trust Trustee, BB&T and its officers and directors, and the LGC's members and employees, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Facilities or the transactions contemplated by this Agreement, including without limitation the possession, condition, construction or use of the Facilities. The indemnification arising under this Section shall survive the Agreement's termination.

4.03. Representations, Warranties and Covenants as to Federal Tax Matters. (a) The County hereby represents:

(i) The Amount Advanced has been allocated to rehabilitate, repair or equip the Facilities by the North Carolina Department of Public Instruction and any changes to such allocation must be approved by the North Carolina Department of Public Instruction.

(ii) 95% or more of the proceeds of the Amount Advanced shall be used to rehabilitate, repair or equip a "qualified zone academy" within the meaning of Section 54E of the Code;

(iii) the Facilities constitute a public school or academic program within a public school which is established by and operated under a local education agency of the County to provide education and training below the post secondary level and is located in an empowerment or enterprise community or there is a reasonable expectation that as of the date of Closing that at least 35% of the students attending the school or participating in the program will be eligible for free or reduced cost lunch programs under the school lunch program established under the National School Lunch Act; and

(iv) the County or the Vance County Board of Education has received written commitments from private entities to make qualified contributions (as defined in Section 54E of the Code) having a present value of not less than 10% of the proceeds of the QZAB Component with respect to the Facilities.

(v) (A) all applicable state and local law requirements governing conflicts of interest are and will be satisfied with respect to the QZAB Component and (b) if the Secretary of the United States Treasury prescribes additional conflicts of interest rules governing the appropriate Members of Congress, Federal, State and local officials, and

their spouses, such additional rules will be satisfied with respect to the QZAB Component.

(d) The County covenants that it will comply with the provisions of Subchapter IV of chapter 31 of title 40, United States Code (the “Davis-Bacon Act”) with respect to the public Facilities financed with the Amounts Advanced under this Agreement to the extent required by Section 1601 of the American Recovery and Reinvestment Act of 2009.

(e) The County acknowledges that its personnel must be familiar with the federal tax law requirements relating to “qualified zone academy bonds” because the applicable tax credits to be received by the Bank in connection herewith depends upon continuing compliance with such rules. The County therefore covenants to take all reasonable action to assure that County personnel responsible for the investment of and accounting for financing proceeds comply with the applicable provisions of the Code.

(f) The County will provide to BB&T, at such reasonable times as BB&T may request, all information reasonably available to the County concerning the County’s compliance with the requirements of this Agreement and otherwise with the requirements of Sections 54E and 1400U-1 or 1400U-2 of the Code.

4.04. Validity of Organization and Acts. The County is validly organized and existing under State law, has full power to enter into this Agreement and has duly authorized and has obtained all required approvals and all other necessary acts required prior to the execution and delivery of this Agreement. This Agreement is a valid, legal and binding obligation of the County.

4.05. Maintenance of Existence. The County shall maintain its existence, shall continue to be a local governmental unit of the State, validly organized and existing under State law, and shall not consolidate with or merge into another local governmental unit of the State, or permit one or more other local governmental units of the State to consolidate with or merge into it, unless the local governmental unit thereby resulting assumes the County's obligations under this Agreement.

4.06. Acquisition of Permits and Approvals. All permits, consents, approvals or authorizations of all governmental entities and regulatory bodies, and all filings and notices required on the County's part to have been obtained or completed as of today in connection with the authorization, execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the acquisition, construction, renovation and equipping of the Facilities have been obtained and are in full force and effect, and there is no reason why any future required permits, consents, approvals, authorizations or orders cannot be obtained as needed.

4.07. No Breach of Law or Contract. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, (a) to the best of the County's knowledge, constitutes a violation of any provision of law governing the County or (b) results in

a breach of the terms, conditions or provisions of any contract, agreement or instrument or order, rule or regulation to which the County is a party or by which the County is bound.

4.08. No Litigation. There is no litigation or any governmental administrative proceeding to which the County (or any official thereof in an official capacity) is a party that is pending or, to the best of the County's knowledge after reasonable investigation, threatened with respect to (a) the County's organization or existence, (b) its authority to execute and deliver this Agreement or to comply with the terms of this Agreement, (c) the validity or enforceability of this Agreement or the transactions contemplated hereby, (d) the title to office of any Governing Board member or any other County officer, (e) any authority or proceedings relating to the County's execution or delivery of this Agreement, or (f) the undertaking of the transactions contemplated by this Agreement.

4.09. No Current Default or Violation. To the County's knowledge, (a) the County is not in violation of any existing law, rule or regulation applicable to it, (b) the County is not in default under any contract, other agreement, order, judgment, decree or other instrument or restriction of any kind to which the County is a party or by which it is bound or to which any of its assets are subject, including this Agreement, and (c) no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including this Agreement, which constitutes or which, with notice or lapse of time, or both, would constitute an event of default hereunder or thereunder.

4.10. No Misrepresentation. No representation, covenant or warranty by the County in this Agreement is false or misleading in any material respect.

4.11. Environmental Warranties and Indemnification. (a) The County warrants and represents to BB&T as follows:

(i) Except as may have been disclosed by the County to BB&T in writing or in any environmental assessment report relating to the Mortgaged Property furnished to BB&T, the County has no knowledge of, and after reasonable inquiry no reason to believe (A) that any industrial use has been made of the Mortgaged Property, (B) that the Mortgaged Property has been used for the storage, treatment or disposal of chemicals or any wastes or materials that are classified by federal, State or local laws as hazardous or toxic substances, or (C) that any manufacturing, landfilling or chemical production has occurred on the Mortgaged Property.

(ii) Except as may have been disclosed by the County to BB&T in writing or in any environmental assessment report relating to the Mortgaged Property furnished to BB&T, the Mortgaged Property is in compliance with all federal, State and local environmental laws and regulations, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 et seq., and the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law No. 99-499, 100 Stat. 1613.

(iii) The County has fully disclosed to BB&T in writing the existence, extent and nature of any hazardous materials, substances, wastes or other environmentally regulated

substances (including without limitation, any materials containing asbestos), which the County is legally authorized and empowered to maintain on, in or under the Mortgaged Property or use in connection therewith, and the County has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in compliance with all of the terms, conditions and requirements of such licenses, permits and approvals.

(iv) The County will promptly notify BB&T of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith, and will promptly send to BB&T copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property.

(b) To the extent permitted by law, the County shall indemnify and hold BB&T and the Deed of Trust Trustee harmless from and against (i) any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against the Deed of Trust Trustee or BB&T as a direct or indirect result of any warranty or representation made by the County in subsection (a) above being false or untrue in any material respect, or (ii) any requirement under any law, regulation or ordinance, local, State or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by the Deed of Trust Trustee, BB&T or the County or any transferee or assignee of the Deed of Trust Trustee, BB&T or the County.

(c) The County's obligations under this Section shall continue in full effect notwithstanding full payment of the Required Payments or foreclosure under this Agreement or delivery of a deed in lieu of foreclosure.

4.12. Further Instruments. Upon BB&T's request, the County shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by BB&T to carry out more effectively the purposes of this Agreement or any other document related to the transactions contemplated hereby, and to subject to the liens and security interests hereof and thereof all or any part of the Mortgaged Property intended to be given or conveyed hereunder or thereunder, whether now given or conveyed or acquired and conveyed subsequent to the date of this Agreement.

4.13. BB&T's Advances for Performance of County's Obligations. If the County fails to perform any of its obligations under this Agreement, BB&T is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by BB&T (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Mortgaged Property, and any associated legal or other expenses), together with interest thereon at the Prime Rate, shall be secured as Additional Payments under this Agreement. The County promises to pay all such amounts to BB&T immediately upon demand.

4.14. Facilities Will Be Used and Useful. The acquisition, construction and renovation of the Facilities is necessary and expedient for the County and the Board of Education to perform essential functions appropriate for units of local government. The County and the Board of Education have an immediate need for, and expect to make immediate use of, all of the Facilities, and do not expect such need or use to diminish in any material respect during the term of this Agreement.

4.15. Financial Information. (a) The County shall send to BB&T a copy of the County's audited financial statements for each Fiscal Year within 30 days of the County's acceptance of such statements, but in any event within 210 days of the completion of such Fiscal Year.

(b) The County shall furnish BB&T, at such reasonable times as BB&T shall request, all other financial information (including, without limitation, the County's annual budget as submitted or approved) as BB&T may reasonably request. The County shall permit BB&T or its agents and representatives to inspect the County's books and records and make extracts therefrom, except for information that the County is prohibited by law from disclosure.

4.16. Taxes and Other Governmental Charges. The County shall pay, as Additional Payments, the full amount of all taxes, assessments and other governmental charges with respect to the Mortgaged Property lawfully made by any governmental body during the term of this Agreement. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the County shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the Agreement term. The County shall not allow any liens for taxes, assessments or governmental charges with respect to the Mortgaged Property or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Mortgaged Property or any portion thereof which, if not paid, will become a charge on any interest in the Mortgaged Property, including BB&T's interest, or the rentals and revenues derived therefrom or hereunder).

4.17. County's Insurance. (a) From and after substantial completion of each principal portion of the Facilities, the County shall, at its own expense, or shall cause the Board of Education to, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to the Mortgaged Property in an amount equal to the estimated replacement cost of such Mortgaged Property. Such property damage insurance shall include standard mortgagee coverage in favor of BB&T. The County shall provide evidence of such coverage to BB&T promptly upon such substantial completion. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 6.09.

(b) The County shall, at its own expense, or shall cause the Board of Education to, acquire, carry and maintain comprehensive general liability insurance in an amount not less than \$1,000,000 for personal injury or death and \$1,000,000 for property damage and shall include BB&T as an additional insured with respect to occurrences relating to the Mortgaged Property.

(c) The County shall also maintain workers' compensation insurance issued by a responsible carrier authorized under State law to insure the County against liability for compensation under applicable State law as in effect from time to time.

(d) All insurance shall be maintained with generally recognized responsible insurers and may carry reasonable deductible or risk-retention amounts. All such policies shall be deposited with BB&T, provided that in lieu of such policies there may be deposited with BB&T a certificate or certificates of the respective insurers attesting the fact that the insurance required by this Section is in full effect. Prior to the expiration of any such policy, the County shall furnish BB&T evidence satisfactory to BB&T that the policy has been renewed or replaced or is no longer required by this Agreement.

(e) No agent or employee of the County of the Board of Education shall have the power to adjust or settle any property damage loss greater than \$50,000 with respect to the Mortgaged Property, whether or not covered by insurance, without BB&T's prior written consent.

(f) BB&T shall not be responsible for the sufficiency or adequacy of any required insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by BB&T.

(g) The County shall deliver to BB&T annually by June 30 of each year a certificate stating that the risk coverages required by this Agreement are in effect, and stating the carriers, policy numbers, coverage limits and deductible or risk-retention amounts for all such coverages.

4.18. Title Insurance. The County agrees to obtain, at its own cost and expense, an American Land Title Association policy of title insurance, in form satisfactory to BB&T, effective as of the Closing Date, in an amount not less than the Amount Advanced, naming BB&T as insured mortgagee. Such policy shall insure the County's fee title to the Site, subject only to Permitted Encumbrances, and shall be issued by a title insurance company qualified to do business in the State of North Carolina and acceptable to BB&T. On or before the Closing Date, the County shall provide BB&T with a copy of the commitment of the issuer of such policy to issue the policy. Within thirty (30) days after the Closing Date, the County shall provide BB&T with a copy of such policy.

ARTICLE V

TERMS OF CONSTRUCTION

5.01. Construction; Changes. The County shall comply, or shall cause the Board of Education to comply, with the provisions of Article 8 of Chapter 143 of the North Carolina General Statutes and enter into the Construction Agreements. The County shall cause the construction to be carried on continuously in accordance with the Plans and Specifications and all applicable State and local laws and regulations. The County shall insure that the portion of the Facilities to be constructed on the Site (i) shall not encroach upon nor overhang any easement or right-of-way and (ii) when erected, will be wholly within any applicable building restriction lines, however established, and will not violate applicable use or other restrictions contained in prior conveyances or applicable protective covenants or restrictions. The County shall cause all utility lines, septic systems and streets serving the Site to be completed in accordance with health department standards and other applicable regulations of any governmental agency having jurisdiction.

5.02. Construction within Funds Available. The County represents that, based upon its examination of the Site and of the Plans and Specifications, estimated construction and equipment costs provided by licensed architects and engineers and the Facilities' anticipated configuration, the Facilities can be constructed, acquired and equipped for a total price within the total amount of funds to be available therefor in the Project Fund, income anticipated to be derived from the investment thereof and other funds previously identified and designated for such purposes. If the total amount available for such purposes in the Project Fund shall be insufficient to pay the entire cost of constructing, acquiring and equipping the Facilities, the County promises to pay any such excess costs, with no resulting reduction or offset in the amounts otherwise payable by the County under this Agreement.

5.03. Contractors' Performance and Payment Bonds. The County or the Board of Education shall require each contractor entering into a Construction Agreement to furnish a performance bond and a separate labor and material payment bond as required by Article 3, Chapter 44A of the North Carolina General Statutes. Each bond shall include BB&T as a dual obligee.

Upon any material default by a contractor under any Construction Agreement, or upon any material breach of warranty with respect to any materials, workmanship or performance, the County shall promptly proceed, or shall cause the Board of Education to promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor or against the surety of any bond securing the performance of such Construction Agreement.

5.04. Contractors' General Public Liability and Property Damage Insurance. The County shall require, or shall cause the Board of Education to require, each contractor entering into a Construction Agreement to procure and maintain standard form (a) comprehensive general public liability and property damage insurance, at such contractor's own cost and expense, during the duration of such contractor's construction contract, in the amount of at least \$2,000,000, and (b) comprehensive automobile liability insurance on owned, hired and non-owned vehicles for

not less than \$2,000,000. Such insurance shall provide protection from all claims for bodily injury, including death, property damage and contractual liability, products/completed operations, broad form property damage and XCU (explosive, collapse and underground damage), where applicable.

5.05. Contractors' Builder's Risk Completed Value Insurance. The County shall require, or shall cause the Board of Education to require, each contractor entering into a Construction Agreement to purchase and maintain property insurance (builder's risk) upon all construction, acquisition, renovation, installation and equipping of the Facilities (excluding contractor's tools and equipment) at the site thereof at the full insurable value thereof. This insurance shall include a lender's loss payable endorsement in favor of BB&T and shall insure against "all risk" subject to standard policy conditions and exclusions. The contractor shall purchase and maintain similar property insurance for portions of the work stored off the Site or in transit when such portions of the work are to be included in an application for payment. The contractor shall be responsible for the payment of any deductible amounts associated with this insurance.

5.06. Contractors' Workers' Compensation Insurance. The County shall require, or shall cause the Board of Education to require, each contractor entering into a Construction Agreement to procure and maintain workers' compensation insurance during the term of such Construction Agreement, covering his or her employees working thereunder. A certificate of insurance evidencing such coverage, in form acceptable to BB&T, shall be provided to the County with respect to each contractor entering into a Construction Agreement. Each Construction Agreement shall also provide that each subcontractor of any contractor who is a party to such Construction Agreement shall be required to furnish similar workers' compensation insurance.

5.07. Disclaimer of Warranties. The County agrees that BB&T has not designed the Facilities, that BB&T has not supplied any plans or specifications with respect thereto and that BB&T (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Facilities or similar facilities, (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Facilities or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Facilities or any component part thereof or any property or rights relating thereto at any stage of the acquisition, construction, renovation and equipping thereof, (c) has not at any time had physical possession of the Facilities or any component part thereof or made any inspection thereof or of any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Facilities or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the County intends therefore, or (iii) is safe in any manner or respect.

BB&T MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE FACILITIES OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE

FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE, and further including the design or condition thereof; the safety, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Facilities' ability to perform any function; that the Amount Advanced will be sufficient to pay all costs of the acquisition, construction, renovation and equipping of the Facilities; or any other characteristic of the Facilities; it being agreed that the County is to bear all risks relating to the Facilities, the completion thereof and the transactions contemplated hereby, and the County hereby waives the benefits of any and all implied warranties and representations of BB&T.

The provisions of this Section shall survive the Agreement's termination.

5.08. Right of Entry and Inspection. BB&T and its representatives and agents shall have the right to enter upon the Site and inspect the Mortgaged Property from time to time during construction and after the completion of construction, and the County shall cause any vendor, contractor or sub-contractor to cooperate with BB&T and its representatives and agents during such inspections.

No right of inspection or approval granted in this Section shall be deemed to impose upon BB&T any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by BB&T shall be deemed to impose upon BB&T any duty or obligation whatsoever to identify or correct any defects in the Facilities or to notify any person with respect thereto, and no liability shall be imposed upon BB&T, and no warranties (either express or implied) are made by BB&T as to the quality or fitness of any improvement, any such inspection and approval being made solely for BB&T's benefit.

ARTICLE VI

CARE AND USE OF FACILITIES

6.01. Compliance with Requirements. (a) The County shall cause the Facilities to be designed and constructed in compliance with all applicable legal requirements, including subdivision, building and zoning regulations. The County shall not initiate or acquiesce in a change in the Site's zoning classification, except with respect to any change that may be appropriate to conform the actual zoning to that appropriate for the use of the Facilities contemplated as of the Closing Date.

(b) The County shall observe and comply, and shall cause the Board of Education to observe and comply, promptly with all current and future requirements relating to the Mortgaged Property's use or condition imposed by (i) any judicial, governmental or regulatory body having jurisdiction over the Facilities or any portion thereof or (ii) any insurance company writing a policy covering the Facilities or any portion thereof, whether or not any such requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

(c) The County shall obtain and maintain, or shall cause the Board of Education to obtain and maintain, in effect all licenses and permits required for the Facilities' operation.

(d) The County shall in no event use the Mortgaged Property or any part thereof, nor allow the same to be used, for any unlawful purpose, or suffer any act to be done or any condition to exist with respect to the Mortgaged Property or any part thereof, nor any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.

6.02. Use and Operation. (a) The County will use and operate the Facilities for their intended public purposes, and for no other purpose unless required by law. The County will be solely responsible for the operation of the Facilities, and will not contract with any other person or entity for such operation except as provided in subsection (b) of this Section without the prior written consent of BB&T.

(b) Notwithstanding the provisions of subsection (a) of this Section, the parties acknowledge that the County intends to lease the Facilities to the Board of Education, or may otherwise provide for the Board of Education's use of the Facilities. In addition, the County and the Board of Education may agree that the Board of Education will assume some of the County's responsibilities under this Agreement, including obligations with respect to entering into and monitoring Construction Agreements. Notwithstanding any other provision of this Agreement to the contrary, the parties agree that any such lease or other arrangements between the County and the Board of Education will not violate any provision of this Agreement. No such lease or other arrangement, however, will in any way reduce the County's responsibilities to BB&T for the use and operation of the Facilities under this Agreement.

6.03. Maintenance and Repairs; Additions. (a) The County shall keep, or shall cause the Board of Education to keep, the Mortgaged Property in good order and repair (reasonable

wear and tear excepted) and in good operating condition, shall not commit or permit any waste or any other thing to occur whereby the value or usefulness of the Mortgaged Property might be impaired, and shall make from time to time all necessary or appropriate repairs, replacements and renewals.

(b) The County or the Board of Education may, at its own expense, make from time to time any additions, modifications or improvements to the Mortgaged Property that it may deem desirable for its governmental or proprietary purposes and that do not materially impair the effective use, nor materially decrease the value or substantially alter the intended use, of the Mortgaged Property. The County shall do, or cause to be done, all such things as may be required by law in order fully to protect the security of and all BB&T's rights under this Agreement.

(c) Any and all additions to or replacements of the Facilities and all parts thereof shall constitute accessions to the Facilities and shall be subject to all the terms and conditions of this Agreement and included in the Mortgaged Property for the purposes of this Agreement.

(d) Notwithstanding the provisions of subsection (c) of this Section, however, the County or the Board of Education may, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Facilities. All such property shall remain the sole property of the County or the Board of Education in which BB&T shall have no interest; provided, however, that any such property which becomes permanently affixed to the Mortgaged Property shall be subject to the lien and security interest arising under this Agreement if BB&T shall reasonably determine that the Mortgaged Property would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

6.04. Utilities. The County shall pay, or shall cause the Board of Education to pay, all charges for utility services furnished to or used on or in connection with the Site and the Facilities.

6.05. Risk of Loss. The County shall bear all risk of loss to and condemnation of the Site and the Facilities.

6.06. Condemnation. (a) The County shall immediately notify BB&T if any governmental authority shall institute, or shall notify the County of any intent to institute, any action or proceeding for the taking of, or damages to, all or any part of the Mortgaged Property or any interest therein under the power of eminent domain, or if there shall be any damage to the Mortgaged Property due to governmental action, but not resulting in a taking of any portion of the Mortgaged Property. The County shall file and prosecute its claims for any such awards or payments in good faith and with due diligence and cause the same to be collected and paid over to BB&T to the extent required by Section 6.09, and to the extent permitted by law, hereby irrevocably authorizes and empowers BB&T or the Deed of Trust Trustee, in the County's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the County receives any Net Proceeds arising from any such action, the County shall apply such Net Proceeds as provided in Section 6.09.

(b) If any of the real or personal property acquired or improved by the County (in whole or in part) using any portion of the Amount Advanced consists of or is located on any real property acquired by the County through the exercise of the power of eminent domain, or through the threat of the exercise of the power of eminent domain, then during the term of this Agreement the County may not transfer any interest in such real property to any entity other than a local governmental unit without BB&T's prior express written consent.

6.07. Title. Title to the Mortgaged Property and any and all additions, repairs, replacements or modifications thereto shall at all times be in the County, subject to the lien of this Agreement. Upon the County's payment in full of all Required Payments, BB&T, at the County's expense and request, shall cancel this Agreement.

6.08. No Encumbrance, Mortgage or Pledge of Mortgaged Property. (a) The County shall not directly or indirectly sell, transfer, convey or create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics' and materialmen's liens), charge, encumbrance or other claim in the nature of a lien on or with respect to any part of, or any interest in, the Mortgaged Property, except Permitted Encumbrances. The County shall promptly, at its own expense, take such action as may be duly necessary to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it shall have created, incurred or suffered to exist.

(b) This restriction on the County applies whether any such sale, transfer, conveyance or encumbrance is voluntary, involuntary, by operation of law or otherwise, and includes (i) any creation of any lien or encumbrance, whether or not subordinate to the lien created pursuant to this Agreement, (ii) the creation of any easement, right-of-way or similar interest other than such as would constitute a Permitted Encumbrance, or (iii) the grant of any leasehold or similar interest or any option to purchase, right of first refusal or similar interest.

(c) The County shall reimburse BB&T for any expense incurred by BB&T to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, with interest thereon at the Prime Rate.

6.09. Damage and Destruction; Use of Net Proceeds. (a) The County shall promptly notify BB&T if (i) the Mortgaged Property or any portion thereof is stolen or is destroyed or damaged by fire or other casualty, (ii) a material defect in the construction of the Facilities shall become apparent, or (iii) title to or the use of all or any portion of the Mortgaged Property shall be lost by reason of a defect in title. Each notice shall describe generally the nature and extent of such damage, destruction or taking.

(b) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is not more than \$50,000, the County shall retain such Net Proceeds and apply the same to the prompt completion, repair or restoration of the Mortgaged Property, and shall promptly thereafter report to BB&T regarding the use of such Net Proceeds.

(c) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is more than \$50,000, then the County shall cause such Net Proceeds to be paid to an escrow agent (which shall be a bank, trust company or similar entity exercising

fiduciary responsibilities) and deposited in a special escrow fund to be held by such escrow agent. The County shall thereafter provide for the application of all Net Proceeds to the prompt completion, repair or restoration of the Facilities, as the case may be. The escrow agent shall disburse Net Proceeds for the payment of such costs upon receipt of requisitions in substantially the form of Exhibit A to the Project Fund Agreement. If the Net Proceeds shall be insufficient to pay in full the cost of completion, repair or restoration, the County shall either (i) complete the work and pay any cost in excess of the Net Proceeds or (ii) not carry out such completion, repair or restoration, and instead apply the Net Proceeds, together with other available funds as may be necessary, to the prepayment of all outstanding Required Payments to the extent permitted by Section 3.03.

(d) Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of Net Proceeds shall be the County's property and shall be part of the Mortgaged Property.

ARTICLE VII

THE DEED OF TRUST TRUSTEE

7.01. Deed of Trust Trustee's Liability. The Deed of Trust Trustee shall suffer no liability by virtue of his acceptance of this trust except such as may be incurred as a result of the Deed of Trust Trustee's failure to account for the proceeds of any sale under this Agreement.

7.02. Substitute Trustees. If the Deed of Trust Trustee, or any successor, shall die, become incapable of acting or renounce his trust, or if for any reason BB&T desires to replace the Deed of Trust Trustee, then BB&T shall have the unqualified right to appoint one or more substitute or successor Deed of Trust Trustees by instruments filed for registration in the office of the Register of Deeds where this Agreement is recorded. Any such removal or appointment may be made at any time without notice, without specifying any reason therefor and without any court approval. Any such appointee shall become vested with title to the Mortgaged Property and with all rights, powers and duties conferred upon the Deed of Trust Trustee by this Agreement in the same manner and to the same effect as though such Deed of Trust Trustee were named as the original Deed of Trust Trustee.

ARTICLE VIII

DEFAULTS AND REMEDIES; FORECLOSURE

8.01. Events of Default. An “Event of Default” is any of the following:

(a) The County's failing to make any Installment Payment when due.

(b) The occurrence of an Event of Nonappropriation.

(c) The County's breaching or failing to perform or observe any term, condition or covenant of this Agreement on its part to be observed or performed, other than as provided in subsections (a) or (b) above, including payment of any Additional Payment, for a period of 15 days after written notice specifying such failure and requesting that it be remedied shall have been given to the County by BB&T, unless BB&T shall agree in writing to an extension of such time prior to its expiration.

(d) The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law by or against the County as a debtor, or the appointment of a receiver, custodian or similar officer for the County or any of its property, and the failure of such proceedings or appointments to be vacated or fully stayed within 30 days after the institution or occurrence thereof.

(e) Any warranty, representation or statement made by the County in this Agreement is found to be incorrect or misleading in any material respect on the Closing Date (or, if later, on the date made).

(f) Any lien, charge or encumbrance (other than Permitted Encumbrances) prior to or affecting the validity of the Agreement is found to exist, or proceedings are instituted against the County to enforce any lien, charge or encumbrance against the Mortgaged Property and such lien, charge or encumbrance would be prior to the lien of this Agreement.

(g) The County's failing to pay when due any principal of or interest on any of its general obligation debt.

8.02. Remedies on Default. Upon the continuation of any Event of Default, BB&T may, without any further demand or notice, exercise any one or more of the following remedies:

(a) Declare the unpaid principal components of the Installment Payments immediately due and payable;

(b) Proceed by appropriate court action to enforce the County's performance of the applicable covenants of this Agreement or to recover for the breach thereof;

(c) As provided in the Project Fund Agreement, pay over any balance remaining in the Project Fund to be applied against outstanding Required Payments in any manner BB&T may reasonably deem appropriate; and

(d) Avail itself of all available remedies under this Agreement, including execution and foreclosure as provided in Sections 8.03 and 8.04, and recovery of reasonable attorneys' fees and other expenses.

Notwithstanding any other provision of this Agreement, County, the Deed of Trust Trustee and BB&T intend to comply with Section 160A-20. No deficiency judgment may be entered against the County in violation of Section 160A-20.

8.03. Foreclosure; Sale under Power of Sale. (a) Right to foreclosure or sale. Upon the occurrence and continuation of an Event of Default, at BB&T's request, the Deed of Trust Trustee shall foreclose Mortgaged Property by judicial proceedings or, at BB&T's option, the Deed of Trust Trustee shall sell (and is hereby empowered to sell) all or any part of the Mortgaged Property (and if in part, any such sale shall in no way adversely affect the lien created hereby against the remainder) at public sale to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, curtesy or other exemption, all of which the County expressly waives to the extent permitted by law) after compliance with applicable State laws relating to foreclosure sales under power of sale. The Deed of Trust Trustee shall, at BB&T's request, execute a proper deed or deeds to the successful purchaser at such sale.

(b) Bank's bid. BB&T may bid and become the purchaser at any sale under this Agreement, and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Required Payments the proceeds of sale net of sale expenses, including the Deed of Trust Trustee's commission, and after payment of such taxes and assessments as may be a lien on the Mortgaged Property superior to the lien of this Agreement (unless the Mortgaged Property is sold subject to such liens and assessments, as provided by State law).

(c) County's bid. The County may bid for all or any part of the Mortgaged Property at any foreclosure sale; provided, however, that the price bid by the County may not be less than an amount sufficient to provide for full payment of the Required Payments.

(d) Successful bidder's deposit. At any such sale the Deed of Trust Trustee may, at its option, require any successful bidder (other than BB&T) immediately to deposit with the Deed of Trust Trustee cash or a certified check in an amount equal to all or any part of the successful bid, and notice of any such requirement need not be included in the advertisement of the notice of such sale.

(e) Application of sale proceeds. The proceeds of any foreclosure sale shall be applied in the manner and in the order prescribed by State law, it being agreed that the expenses of any such sale shall include a commission to the Deed of Trust Trustee of five percent (5%) of the gross sales price for making such sale and for all services performed under this Agreement. Any proceeds of any such sale remaining after the payment of all Required Payments and the prior application thereof in accordance with State law shall be paid to the County.

8.04 Possession of Mortgaged Property. After a foreclosure sale, the County shall immediately lose the right to possess, use and enjoy the Mortgaged Property (but may remain in possession of the Mortgaged Property as a tenant at will of the purchaser of the Mortgaged Property at foreclosure), and thereupon the County (a) shall pay monthly in advance to such

purchaser a fair and reasonable rental value for the use and occupation of the Mortgaged Property (in an amount such purchaser shall determine in its reasonable judgment), and (b) upon BB&T's demand, shall deliver possession of the Mortgaged Property to BB&T or, at BB&T's direction, to the purchaser of the Mortgaged Property at any judicial or foreclosure sale under this Agreement.

In addition, upon the occurrence and continuation of any Event of Default, BB&T, to the extent permitted by law, is hereby authorized to (i) take possession of the Mortgaged Property, with or without legal action, (ii) lease the Mortgaged Property, (iii) collect all rents and profits therefrom, with or without taking possession of the Mortgaged Property, and (iv) after deducting all costs of collection and administration expenses, apply the net rents and profits first to the payment of necessary maintenance and insurance costs, and then to the County's account and in reduction of the County's corresponding Required Payments in such fashion as BB&T shall reasonably deem appropriate. BB&T shall be liable to account only for rents and profits it actually receives.

8.05. No Remedy Exclusive; Delay Not Waiver. All remedies under this Agreement are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. If any Event of Default shall occur and thereafter be waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any other breach under this Agreement.

8.06. Payment of Costs and Attorney's Fees. If BB&T employs an attorney to assist in the enforcement or collection of Required Payments, or if the Deed of Trust Trustee or BB&T voluntarily or otherwise shall become a party or parties to any suit or legal proceeding (including a proceeding conducted under any state or federal bankruptcy or insolvency statute) to protect the Mortgaged Property, to protect the lien of this Agreement, to enforce collection of the Required Payments or to enforce compliance by the County with any of the provisions of this Agreement, the County agrees to pay reasonable attorneys' fees and all of the costs that may reasonably be incurred (whether or not any suit or proceeding is commenced), and such fees and costs (together with interest at the Prime Rate) shall be secured as Required Payments.

ARTICLE IX

MISCELLANEOUS

9.01. Notices. (a) Any communication required or permitted by this Agreement must be in writing.

(b) Any communication under this Agreement shall be sufficiently given and deemed given when delivered by hand or on the date shown or a certified mail receipt, or a delivery receipt from a national commercial package delivery service, if addressed as follows:

(i) if to the County, to Vance County Administration Building, 122 Young Street, Henderson, NC 27536, Attention: County Manager;

(ii) if to the Deed of Trust Trustee, to 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217; or

(iii) if to BB&T, to 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217, Attention: Account Administration/Municipal.

(c) Any communication to the Deed of Trust Trustee shall also be sent to BB&T.

(d) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

9.02. No Assignments by County. The County shall not sell or assign any interest in this Agreement.

9.03. Assignments by BB&T. BB&T may, at any time and from time to time, assign all or any part of its interest in the Site, the Facilities or this Agreement, including, without limitation, BB&T's rights to receive Required Payments. Any assignment made by BB&T or any subsequent assignee shall not purport to convey any greater interest or rights than those held by BB&T pursuant to this Agreement.

The County agrees that this Agreement may become part of a pool of obligations at BB&T's or its assignee's option. BB&T or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement. Any assignment by BB&T may be only to a bank, insurance company, or similar financial institution or any other entity approved by the LGC. Notwithstanding the foregoing, no assignment or reassignment of BB&T's interest in the Mortgaged Property or this Agreement shall be effective unless and until the County shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

The County further agrees that BB&T's interest in this Agreement may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Agreement, provided the County receives a copy of such agency contract and such collection and paying

agent covenants and agrees to maintain for the full remaining term of this Agreement a written record of each assignment and reassignment of such certificates of participation.

The County agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the County, and the County shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the County shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

BB&T covenants that any disclosure document circulated by it or an assignee in connection with the sale of BB&T's rights hereunder will contain a statement to the effect that the County has not reviewed and is not responsible for the disclosure document. BB&T covenants to defend, indemnify and hold harmless the County and its officers, employees and agents against any and losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such indemnified party may become subject on account of any statement included in a disclosure document, or failure to include in a disclosure document, unless the County shall have expressly approved the use of such disclosure document.

9.04. Amendments. No term or provision of this Agreement may be amended, modified or waived without the prior written consent of the County and BB&T.

9.05. No Marshalling. The County hereby waives any and all rights to require marshalling of assets in connection with the exercise of any remedies provided in this Agreement or as permitted by law.

9.06. Governing Law. The County, BB&T and the Deed of Trust Trustee intend that State law shall govern this Agreement.

9.07. Liability of Officers and Agents. No officer, agent or employee of the County shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers or agents shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve an officer, agent or employee of the County from the performance of any official duty provided by law.

9.08. Covenants Running with the Land. All covenants contained in this Agreement shall run with the real estate encumbered by this Agreement.

9.09. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

9.10. Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

9.11. Entire Agreement. This Agreement, together with the Project Fund Agreement, constitutes the County's entire agreement with respect to the general subject matter covered hereby and thereby.

9.12. Binding Effect. Subject to the specific provisions of this Agreement, and in particular Section 9.03, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the County has caused this instrument to be executed as of the day and year first above written by its duly authorized officers.

COUNTY OF VANCE, NORTH CAROLINA

[SEAL]

By: _____
Thomas Hester, Jr.
Chairman of the Board of Commissioners

Attest:

Kelly H. Grissom
Deputy Clerk to the Board of Commissioners

STATE OF NORTH CAROLINA

VANCE COUNTY

I, a Notary Public of such County and State, certify that Thomas Hester, Jr. and Kelly H. Grissom personally came before me this day and acknowledged that they are the Chairman of the Board of Commissioners and the Clerk to the Board of Commissioners, respectively, of the County of Vance, North Carolina, and that by authority duly given and as the act of the County of Vance, North Carolina, the foregoing instrument was signed in the County's name by such Chairman of the Board of Commissioners, sealed with its corporate seal and attested by such Deputy Clerk to the Board of Commissioners.

WITNESS my hand and official stamp or seal, this ____ day of June, 2013.

[SEAL]

Notary Public

My commission expires: _____

* * * * *

This Financing Agreement and Deed of Trust has been approved under the provisions of Article 8, Chapter 159 of the General Statutes of North Carolina.

T. Vance Holloman
Secretary
North Carolina Local Government Commission

By: _____
[T. Vance Holloman or
Designated Assistant]

[Financing Agreement and Deed of Trust for \$2,000,000 from the County of Vance, North Carolina to trustee named therein for the benefit of Branch Banking and Trust Company]

EXHIBIT A -- SITE DESCRIPTION

Legal Description of L.B. Yancey Elementary School Site.

EXHIBIT B -- IMPROVEMENTS DESCRIPTION

The Facilities consists of the following improvements to public schools located in the County and owned and operated known as Aycock Elementary School, Dabney Elementary School, Zeb Vance Elementary School, E.O. Young Elementary School, Carver Elementary School, L.B. Yancey Elementary School, Eaton-Johnson Middle School, Henderson Middle School, Northern Vance High School, Western Vance High School and Southern Vance High School.

EXHIBIT C -- EXISTING ENCUMBRANCES

EXHIBIT D-- PAYMENT SCHEDULES

Payment Schedule to Financing Agreement and Deed of Trust, dated as of June __, 2013 (the "Financing Agreement"), granted by the County of Vance, North Carolina, to F. Louis Loyd, III, Deed of Trust Trustee, for the benefit of Branch Banking and Trust Company.

Loan Number: _____
Loan Description: \$2,000,000 QZAB
Project Fund Account Name: 2013 Vance Co. QZAB Project Fund
Project Fund Account Number: _____

Period
Ending

Debt Service

Total

Kelly Grissom

From: Gwen Wright <gwright@kerrtarcog.org>
Sent: Monday, June 10, 2013 12:40 PM
To: Kelly Grissom
Cc: Karen Foster
Subject: Debarment Certification - CDBG
Attachments: VC DebarmentCertification08-N-1892 NSP.doc; VC DebarmentCertification09-C-2077 Julia Ave.doc; VC DebarmentCertification201310-C-2131.doc

Good Afternoon Kelly,

Attached are the debarment certifications for Vance County for the open grants. The existing debarment certifications expire June 30, 2013. The certifications have to be submitted annually and are due to DCA by the 30th of this month. We were informed by DCA that the certifications should be adopted by the Board and signed by the CEO. Would you please include this on your agenda for the special session in June? Thanks.

*Gwendolyn G. Wright
Community Development Specialist
Kerr Tar Regional Council of Governments
PO Box 709/1724 Graham Avenue
Henderson, NC 27536
252-436-6545 Phone
252-436-2055 Fax*

CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Applicants should refer to the regulations cited below. Applicants should also review the instructions for certification included in the regulations before completing this form, signature on this form provides for compliance with certification requirements implementing Federal Executive Order 12549 and guidance issued in the *Federal Register*, Volume 70, No. 168, pages 51863 through 51880 for “Government wide Debarment and Suspension (Nonprocurement).” The certification shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant or cooperative agreement.

DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, for prospective participants in primary covered transactions:

- 1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification(s).

Name of Applicant/Grantee Vance County	Grant Number and Project Name 08-N-1892 NSP
Printed Name and Title of Authorized Representative	Thomas S. Hester, Jr.
Signature	Date

Instructions for Debarment Certifications

1. By signing and submitting this form, the prospective participant is providing the certification set out on the “Certification Regarding Debarment, Suspension and Other Responsibility Matters” in accordance with these instructions.
2. Consequences of False Certification - The certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. Errors in Certifying. - The prospective participant shall provide immediate written notice to the person to which this proposal is submitted if, at any time, the prospective participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. Definitions and Further Guidance - The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause have the meanings set out in the Definitions and Coverage section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations or you may refer to the *Federal Register*, Vol. 70, No. 168, pages 51863 –51880.
5. Certification Extends to Subcontractors - The prospective participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. Certification Included in Subcontracts - The prospective participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. Reliance on Certification - A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transition, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it

determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. New System of Records Not Required - Nothing contained in the foregoing should be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Consequences for Use of Ineligible Subgrantees - Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment

CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Applicants should refer to the regulations cited below. Applicants should also review the instructions for certification included in the regulations before completing this form, signature on this form provides for compliance with certification requirements implementing Federal Executive Order 12549 and guidance issued in the *Federal Register*, Volume 70, No. 168, pages 51863 through 51880 for “Government wide Debarment and Suspension (Nonprocurement).” The certification shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant or cooperative agreement.

DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, for prospective participants in primary covered transactions:

- 1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification(s).

Name of Applicant/Grantee Vance County	Grant Number and Project Name 09-C-2077 Julia Avenue Project
Printed Name and Title of Authorized Representative	Thomas S. Hester, Jr.
Signature	Date

Instructions for Debarment Certifications

1. By signing and submitting this form, the prospective participant is providing the certification set out on the “Certification Regarding Debarment, Suspension and Other Responsibility Matters” in accordance with these instructions.
2. Consequences of False Certification - The certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. Errors in Certifying. - The prospective participant shall provide immediate written notice to the person to which this proposal is submitted if, at any time, the prospective participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. Definitions and Further Guidance - The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause have the meanings set out in the Definitions and Coverage section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations or you may refer to the *Federal Register*, Vol. 70, No. 168, pages 51863 –51880.
5. Certification Extends to Subcontractors - The prospective participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. Certification Included in Subcontracts - The prospective participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. Reliance on Certification - A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transition, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it

determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. New System of Records Not Required - Nothing contained in the foregoing should be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Consequences for Use of Ineligible Subgrantees - Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment

CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Applicants should refer to the regulations cited below. Applicants should also review the instructions for certification included in the regulations before completing this form, signature on this form provides for compliance with certification requirements implementing Federal Executive Order 12549 and guidance issued in the *Federal Register*, Volume 70, No. 168, pages 51863 through 51880 for “Government wide Debarment and Suspension (Nonprocurement).” The certification shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant or cooperative agreement.

DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, for prospective participants in primary covered transactions:

- 1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification(s).

Name of Applicant/Grantee Vance County	Grant Number and Project Name 10-C-2131 Scattered Site Rehab
Printed Name and Title of Authorized Representative	Thomas S. Hester, Jr.
Signature	Date

Instructions for Debarment Certifications

1. By signing and submitting this form, the prospective participant is providing the certification set out on the “Certification Regarding Debarment, Suspension and Other Responsibility Matters” in accordance with these instructions.
2. Consequences of False Certification - The certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. Errors in Certifying. - The prospective participant shall provide immediate written notice to the person to which this proposal is submitted if, at any time, the prospective participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. Definitions and Further Guidance - The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause have the meanings set out in the Definitions and Coverage section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations or you may refer to the *Federal Register*, Vol. 70, No. 168, pages 51863 –51880.
5. Certification Extends to Subcontractors - The prospective participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. Certification Included in Subcontracts - The prospective participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. Reliance on Certification - A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transition, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it

determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. New System of Records Not Required - Nothing contained in the foregoing should be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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RESOLUTION
By the Vance County Board of Commissioners

Authorizing the lease of Additional County owned property to
Henderson Collegiate, Inc pursuant to N.C.G.S. 160A-272.

WHEREAS, the Vance County Board of County Commissioners has been requested to lease additional land directly adjacent to the 1.950 acre, vacant parcel of land as shown in Plat Book X, Page 943, Vance County Registry, to Henderson Collegiate, Inc.; and,

WHEREAS, the proposed lease would be for a term in excess of one year; and,

WHEREAS, notice of the proposed lease has been published in the Henderson Daily Dispatch in excess of ten (10) days of the date of this meeting; and

WHEREAS, the proposed amendment to the lease, attached hereto, are the terms and conditions upon which Henderson Collegiate shall be bound under the terms of the lease.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners for the County of Vance as follows:

1. The attached amendment to the lease is hereby approved and the Chairman of the Board of Commissioners shall be authorized to execute the same on behalf of the Board.
2. This resolution shall be effective upon its adoption.

ADOPTED this the ___ day of June, 2013.

Thomas S. Hester, Jr., Chairman
Vance County Board of Commissioners

Attest:

Kelly H. Grissom
Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF VANCE

SECOND LEASE AMENDMENT

THIS LEASE AMENDMENT, made and entered into effective the 1st day of July, 2013, by and between the **VANCE COUNTY BOARD OF COMMISSIONERS** (hereinafter sometimes referred to as “Lessor”) a body politic organized and existing under the laws of the State of North Carolina, party of the first part, and **HENDERSON COLLEGIATE, INC.** (hereinafter sometimes called the “Lessee”) a North Carolina Charter School, organized and existing under the laws of the State of North Carolina, party of the second part;

WITNESSETH:

WHEREAS, the parties hereto have previously entered into a lease agreement dated June 1, 2010, and amended by the first Lease Amendment effective October 1, 2012; and

WHEREAS, the Lessee has previously requested to exercise their right to two one year extension terms, thereby extending the term of the lease to June 30, 2015, which such request was agreed to by the Lessor; and,

WHEREAS, the Lessee has requested to add additional real property to the current Lease agreement to allow further expansion of their school facilities.

NOW THEREFORE, in consideration of One (\$1.00) Dollar in hand paid, the receipt of which is hereby acknowledged, the parties hereto do agree to this Second Lease Amendment as follows;

In addition to the current real property leased therein, the following real property shall be added to, included and recombined with the existing real property (also referred to hereinafter as Premises); The real property, after this amendment, subject to the lease shall be as shown on the map of real property prepared by John L. Hamme, Civil Engineer & Land Surveyor, for Vance County, dated October 1, 1979, showing a total of 5.58 acres (which includes the land previously leased to Lessee and as shown on Plat Book “X”, Page 943)

Also included in the amended lease are the following terms.

1. Prior to any alterations or constructing any improvements, the Lessee shall provide to-scale plans for approval by the Lessor of all plans of construction, improvements and alterations to the lease Premises.
2. Lessee shall ensure that the Old Vance Manor building and the surrounding grounds are not accessible to the school’s students, invitees or general public and shall ensure that those improvements are maintained to prevent access or injury to the school’s students, invitees or the general public.
3. Lessee shall have a survey prepared in order to recombine the two properties described above (the Original Property and the Vance Manor Property) and shall record said survey with the Vance County Register of Deeds.

4. Lessee shall insure an updated copy of all required insurance policies are provided to Lessor before the expiration of the then current policy.
5. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally in hand, or when mailed by certified or registered mail, return receipt requested with proper postage prepaid, addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

If to the County:

Jerry L. Ayscue
County Manager
122 Young Street, Suite B
Henderson, NC 27536

If to Henderson Collegiate:

Eric Sanchez
906 Health Center Road
Henderson, NC 27536

All other terms, conditions and amendments of the Lease are hereby reaffirmed.

IN TESTIMONY WHEREOF, the parties hereunto set its hand and seal and caused this Lease to be executed by its Chairman, this the day and year first above written.

VANCE COUNTY BOARD OF COMMISSIONERS:

BY: _____
Thomas S. Hester, Jr, Chairman

ATTEST:

Kelly Grissom, County Clerk

HENDERSON COLLEGIATE, INC.

BY: _____
Erica Shoulders-Royster, President

NORTH CAROLINA

VANCE COUNTY

I, the undersigned Notary Public in and for the State and County aforesaid, hereby certify Thomas S. Hester, Jr, personally came before me this day and acknowledged that he is Chairman

of the Board of Commissioners of Vance County and that by authority duly given and as the act of Vance County, the foregoing instrument was signed in its name by himself as the Chairman of the Board of Commissioners, attested by Kelly Grissom as County Clerk to the Board of Commissioners, and the official seal of Vance County affixed thereto, all by authority of the Board of Commissioners of Vance County duly given.

WITNESS my hand and notarial seal, this the ____ day of June 2013.

Notary Public
My commission expires: _____

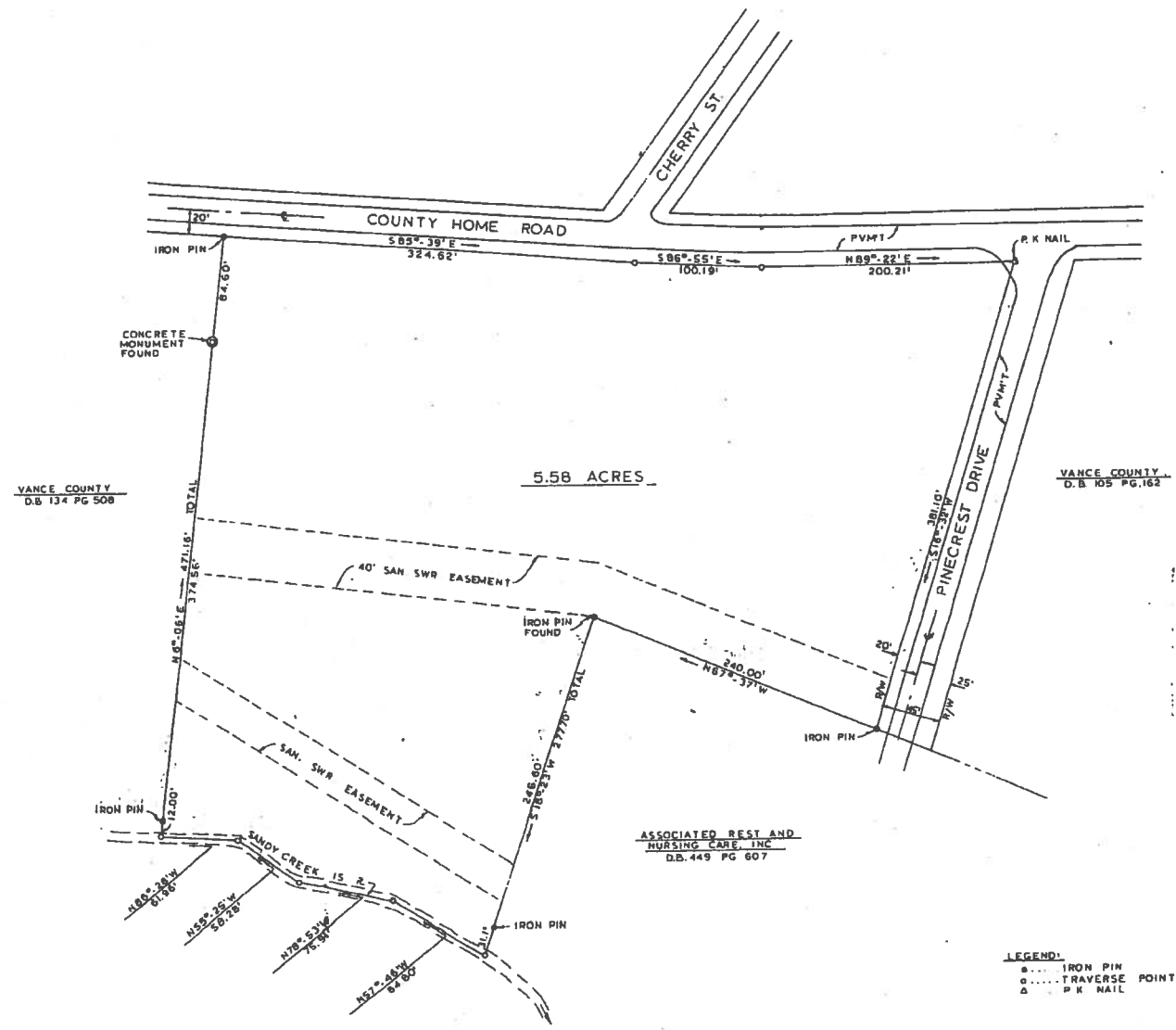
NORTH CAROLINA

VANCE COUNTY

I, the undersigned Notary Public in and for the State and County aforesaid, hereby certify that **Erica Shoulders-Royster** personally came before me this day and acknowledged that she is President of Henderson Collegiate, Inc. and that by authority duly given and as the act of said corporation, the foregoing instrument was signed in its name by herself as the President, all by authority of said corporation duly given.

WITNESS my hand and notarial seal, this the ____ day of June, 2013.

Notary Public
My commission expires: _____



NOTE
THIS PROPERTY IS A PART OF THE PROPERTY DESCRIBED
IN D.B. 105 PG. 162 VANCE COUNTY REGISTRY.

JOHN L. HAMME
CIVIL ENGINEER & LAND SURVEYOR
HENDERSON, N.C.

DRAWN BY <u>J.L.H.</u>	PLAT OF PROPERTY OF <hr/> VANCE COUNTY <hr/> LOCATED IN THE CITY OF HENDERSON VANCE COUNTY, N.C.
DATE <u>OCTOBER 1, 1979</u>	
SCALE <u>1 INCH = 60 FEET</u>	

STATE OF NORTH CAROLINA

COUNTY OF VANCE

LEASE

THIS LEASE, made and entered into effective the 1st day of June, 2010, by and between the **VANCE COUNTY BOARD OF COMMISSIONERS** (hereinafter sometimes referred to as "Lessor") a body politic organized and existing under the laws of the State of North Carolina, party of the first part, and **HENDERSON COLLEGIATE, INC.** (hereinafter sometimes called the "Lessee") a North Carolina Charter School, organized and existing under the laws of the State of North Carolina, party of the second part;

WITNESSETH:

WHEREAS, the Lessor is the owner of real property commonly known as Vance Manor and surrounding acreage and more specifically described in that certain plat entitled Final Plat Division of Land for County of Vance, dated February 1, 2010 by Nathan R. Hymiller, Jr. and recorded in Plat Book X, Page 943 ; and

WHEREAS, the Lessee has the duty and obligation of providing education to the citizens of North Carolina in conforming with the North Carolina Constitution and the General Statutes of North Carolina; and

WHEREAS, the Lessor and the Lessee have agreed that the Lessee should be able to lease the vacant land as shown on said plat for the purpose of carrying out its responsibilities and duties relating to providing a free, appropriate, public education to the citizenry of Vance County and surrounding Counties, and to use said premises for said purposes and to maintain said premises at all times hereafter; and

WHEREAS, the Vance County Board of Commissioners has agreed to lease unto Henderson Collegiate, Inc. the property hereinafter described for the purposes set forth herein, and Henderson Collegiate, Inc. has agreed to hereafter use, maintain, and operate any schools or facilities which may hereafter be located upon said premises hereinafter described only for purposes of providing educational services.

NOW THEREFORE, the Lessor, in consideration of One (\$1.00) Dollar in hand paid, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter mentioned to be kept and preformed by the Lessee, does hereby lease and rent unto the Lessee for a period of three (3) years and one month, commencing on the first day of June 1, 2010 and ending on June 30, 2013, that certain tract or parcel of land lying and being in Henderson Township, Vance County, North Carolina, being more particularly described as follows:

That certain 1.950 acre parcel as shown on that certain plat entitled Final Plat Division of Land for County of Vance, dated February 1, 2010 by Nathan R. Hymiller, Jr. and recorded in Plat Book X, Page 943, Vance County Registry.

TO HAVE AND TO HOLD the above-described premises, together with the privileges and appurtenances thereunto belonging unto the Lessee for the period hereinabove mentioned, upon the following terms and conditions:

1. The rent during said period shall be One (\$1.00) Dollar per year, which the Lessee agrees to pay in advance on or before the first day of July each and every year hereafter.

2. The Lessee may, with the consent of the Lessor, make alterations and additions to said premises which it may deem necessary for its proper use and enjoyment thereof, provided such alterations are performed and completed in compliance with all applicable Federal, State and local building codes, accommodations and regulations. Further such alterations and additions shall be removed and the premises returned to as good or better condition as the pre-leased condition, except that any utility connections located in the ground may remain so long as they are capped and terminated in a commercially reasonable manner. Any removal of trees shall not be required to be replaced. All parking areas shall have adequate coverage of gravel, and such shall be maintained during the term of this lease.

3. The Lessee agrees to make no unlawful or offensive use of the premises, to only use the premises for a school and related educational activities associated with the operations of the school, to pay all rents as and when the same shall become due, and to deliver up the same at the end of the term or the sooner termination thereof, in good order and condition, reasonable wear and tear excepted. The storage of hazardous or environmentally damaging materials and substances shall be prohibited. Any environmental condition or damage shall be remediated or cleaned prior to the termination of this agreement.

4. During the term of the Lease, the Lessee shall keep the premises which are to be mobile classroom trailer units set-up upon the subject property in good repair for the purpose of providing a quality educational learning environment, such to include both the exterior and interior of any units to be located thereon.

5. This Lease shall not be transferred or assigned, or the premises or any part thereof sublet by the Lessee except with the written consent of the Lessor first being obtained.

6. The Lessor covenants and agrees with the Lessee that subject to the terms and conditions hereinafter set forth the Lessee shall have the right to use and enjoy said premises during the term herein provided for free from any adverse claims from any and all other persons whomsoever, but subject to the use of common areas and roadways on or about the property, as may be used by other parties.

7. Lessee agrees to conduct its activities in such a manner as to cause no interference with the neighboring properties.

8. It is understood and agreed that the Lessee shall have the right to extend the term of this Lease for two additional periods of one (1) year at a time, beginning on the first day of July, 2013, provided the Lessee notifies, in writing, the said Lessor of its intention to extend same, said notice to be given at least ninety (90) days prior to the first day of July 2013, and provided, further, that during each extended period of one (1) year, the rent to be paid by the Lessee to the Lessor shall be One (\$1.00) Dollar per year.

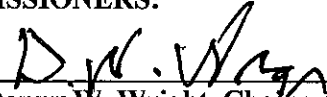
9. Lessee shall maintain the premises in such a manner so as to avoid creating any open attractive nuisances, premises liability or other liabilities associated with their operations. Lessee shall maintain Workers Compensation insurance as required by North Carolina law, and agrees to procure and maintain, or cause to be procured and maintained, liability insurance, which includes premises liability, covering claims, causes of actions, actions, losses, liabilities, damages, and expenses arising out of, caused by or otherwise resulting from the negligence or otherwise wrongful acts or omissions of Lessee, its employees and agents, occurring while each is engaged in activities pursuant to this lease.

The limits of liability of said insurance shall be at least one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) per aggregate. The insurance shall be provided by an insurance company licensed to do business in North Carolina or a company approved in advance by Lessor. Lessee shall ensure that a current certificate of insurance is supplied to Lessor at all times this Agreement is in effect. Lessee shall provide to Lessor with thirty (30) days advance written notice of any cancellation, change in policy limits, or other material modification of the aforesaid policy. Further, Lessee shall indemnify Lessor from any and all claims against the Lessor arising out of or connected to the subject property, including investigation expenses and reasonable attorney fees incurred by Lessor.

10. This Lease shall inure to the benefit of and be binding upon the parties hereto, their successors in interest and assigns.

IN TESTIMONY WHEREOF, the Lessor hereunto set its hand and seal and caused this Lease to be executed by its Chairman and attested by its Secretary, all in duplicate originals this the day and year first above written.


VANCE COUNTY BOARD OF COMMISSIONERS:

BY: 
Danny W. Wright, Chairman

ATTEST:


Kelly Grissom, County Clerk

HENDERSON COLLEGIATE, INC.

BY: 
Nancy J. Smith, President

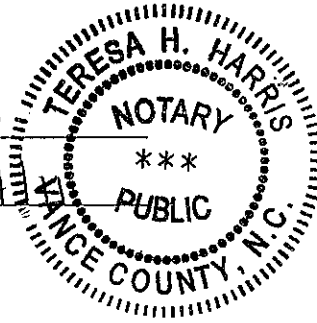
NORTH CAROLINA

VANCE COUNTY

I, the undersigned Notary Public in and for the State and County aforesaid, hereby certify that **Danny W. Wright**, personally came before me this day and acknowledged that he is Chairman of the Board of Commissioners of Vance County and that by authority duly given and as the act of Vance County, the foregoing instrument was signed in its name by himself as the Chairman of the Board of Commissioners, attested by **Kelly Grissom** as County Clerk to the Board of Commissioners, and the official seal of Vance County affixed thereto, all by authority of the Board of Commissioners of Vance County duly given.

WITNESS my hand and notarial seal, this the 17th day of June, 2010.

Teresa H. Harris
Notary Public
My commission expires: 9/24

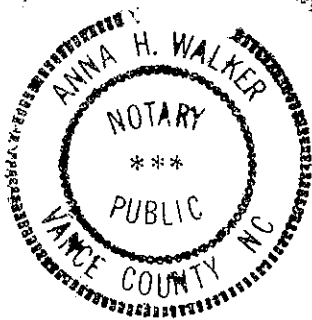


NORTH CAROLINA

VANCE COUNTY

I, the undersigned Notary Public in and for the State and County aforesaid, hereby certify that **Nancy J. Smith** personally came before me this day and acknowledged that she is President of Henderson Collegiate, Inc. and that by authority duly given and as the act of said corporation, the foregoing instrument was signed in its name by herself as the President, all by authority of said corporation duly given.

WITNESS my hand and notarial seal, this the 8 day of June, 2010.



Anna H. Walker
Notary Public
My commission expires: 10-16-11

