

Approved
4/19/18
JLW

The Lee County Board of Education met in a regular meeting in the Board of Education Chambers in the Core Curricular Building on the Lee County High School Campus located at 1708 Nash Street in Sanford, North Carolina, at 6:00 p.m. on April 10, 2018.

Present: Chairman Mark Akinosho, Vice-Chairman Patrick Kelly, Sandra Bowen, Dr. Stephen Coble, Dr. Ophelia Livingston, Dr. Lynn Smith, Sherry Lynn Womack

Absent: None

* * * * *

Superintendent-Dr. Andy Bryan introduced the following resolution, the title of which was read and a copy of which had been previously distributed to each Board Member:

RESOLUTION APPROVING THE LEASING BY THE COUNTY OF LEE, NORTH CAROLINA OF CERTAIN SCHOOL FACILITIES TO THE LEE COUNTY BOARD OF EDUCATION, REQUESTING SAID COUNTY TO PROVIDE FINANCING FOR THE CONSTRUCTION, RENOVATION AND IMPROVEMENT OF AN ELEMENTARY SCHOOL AND AUTHORIZING AND APPROVING A CONSTRUCTION AND ACQUISITION AGREEMENT AND LEASE AGREEMENT IN CONNECTION THEREWITH

BE IT RESOLVED by the Lee County Board of Education (the "Board") as follows:

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

(a) There exists in the Lee County Schools Administrative Unit a need to acquire, construct, renovate, improve and equip an elementary school for the Lee County Schools Administrative Unit (the "2018 School Project").

(b) The County of Lee, North Carolina (the "County") intends to provide for the financing of the 2018 School Project, among other projects, by issuing its limited obligation bonds (the "Bonds") pursuant to a Master Trust Agreement and a First Supplemental Trust Agreement, each to be dated as of May 1, 2018 (collectively, the "Trust Agreement"), each between the County and U.S. Bank National Association, as trustee;

(c) To secure its obligations with respect to the Bonds and Trust Agreement, the County intends to execute and deliver a deed of trust granting a first lien of record on the site of the 2018 School Project being financed with the proceeds of the Bonds, together with all improvements and fixtures located or to be located thereon;

(d) In order to facilitate such financing, it is necessary for the County to own the site of the 2018 School Project for the term of the Bonds and the Trust Agreement.

(e) In order to facilitate such financing and to ensure that the 2018 School Project is constructed and operated in a manner required by the Constitution and laws of the State of North Carolina and the Trust Agreement, the Board desires to enter into (i) a Construction and Acquisition Agreement, to be dated as of May 1, 2018 (the "Construction Agreement"), between the County and the Board and (ii) a Lease Agreement, to be dated as of May 1, 2018 (the "Lease Agreement"), between the County and the Board, the forms of which have been presented at this meeting.

Section 2. Pursuant to Section 153A-158.1 of the General Statutes of North Carolina, the Board hereby requests the County to issue the Bonds and enter into the Trust Agreement for the purpose of providing funds, together with any other available funds, to pay the costs of the 2018 School Project. The site of the 2018 School Project will be leased back to the Board pursuant to the Lease Agreement. The Lease Agreement shall be subordinate to the deed of trust securing the performance by the County of its obligations under the Bonds and the Trust Agreement.

Section 3. The Board hereby approves the forms of the Construction Agreement and Lease Agreement. The Chair and the Vice Chair of the Board are each hereby authorized to execute and deliver on behalf of the Board each of said documents in substantially the forms presented at this meeting, containing such modifications as the person executing such documents shall approve, such execution and delivery to be conclusive evidence of approval by the Board of any such changes. The Secretary or any Assistant Secretary of the Board is hereby directed to affix the official seal of the Board to each of said documents and to attest the same to the extent so required.

Section 4. The Chair, the Vice Chair, the Secretary and any Assistant Secretary of the Board and the attorney to the Board, and any other officers, agents and employees of the Board, are hereby authorized and directed to execute and deliver such deeds, instruments, agreements, certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions described above.

Section 5. This resolution shall take effect immediately upon its adoption.

Upon motion of Board Member Dr. Lynn Smith, seconded by Board Member Dr. Ophelia Livingston, the foregoing resolution entitled "RESOLUTION APPROVING THE LEASING BY THE COUNTY OF LEE, NORTH CAROLINA OF CERTAIN SCHOOL FACILITIES TO THE LEE COUNTY BOARD OF EDUCATION, REQUESTING SAID COUNTY TO PROVIDE FINANCING FOR THE CONSTRUCTION, RENOVATION AND IMPROVEMENT OF AN ELEMENTARY SCHOOL AND AUTHORIZING AND APPROVING A CONSTRUCTION AND ACQUISITION AGREEMENT AND LEASE AGREEMENT IN CONNECTION THEREWITH" was adopted by the following vote:

Ayes: Mark Akinosho, Patrick Kelly, Sandra Bowen, Dr. Stephen Coble,

Dr. Ophelia Livingston, Dr. Lynn Smith, Sherry Lynn Womack

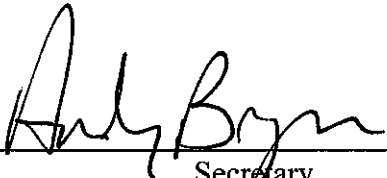
Noes: None

* * * * *

I, Andy Bryan, Ed.D., Secretary of the Lee County Board of Education, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board of Education at a regular meeting held on April 10, 2018, as relates in any way to the adoption of the foregoing resolution and that said proceedings are to be recorded in the minutes of said Board of Education.

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

WITNESS my hand and the official seal of said Board of Education this 10th day of April, 2018.



Secretary
Lee County Board of Education

[SEAL]

Prepared by and return to:

[Paul H. Billow, Esq.
Womble Bond Dickinson (US) LLP
555 Fayetteville Street, Suite 1100
Raleigh, North Carolina 27601]

NORTH CAROLINA

LEE COUNTY

LEASE AGREEMENT

This LEASE AGREEMENT, dated as of May 1, 2018 (the "Lease"), between the COUNTY OF LEE, NORTH CAROLINA, a body politic and corporate and a political subdivision existing under the laws of the State of North Carolina (the "County"), and LEE 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 and a political subdivision 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 Lee County 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 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 153A-158.1 and 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 County has previously acquired a certain parcel of real property more fully described in Schedule I hereto (the "School Land") on which a public elementary school is located;

WHEREAS, the County has arranged to provide such financing through the issuance by the County of its County of Lee, North Carolina Limited Obligation Bonds, Series 2018 (the "Series 2018 Bonds") pursuant to a Master Trust Agreement, dated as of May 1, 2018 (the "Master Trust Agreement"), between the County and U.S. Bank National Association, as trustee (the "Trustee"), as supplemented by a First Supplemental Trust Agreement, dated as of May 1, 2018 (the "First Supplemental Trust Agreement" and, together with the Master Trust Agreement, the "Trust Agreement"), between the County and the Trustee, a portion of the proceeds of which will be used to make certain improvements on the School Land;

WHEREAS, the County's obligations under the Trust Agreement, including the payment of the Series 2018 Bonds, is secured by a certain Deed of Trust, dated as of May 1, 2018 (the "Deed of Trust"), from the County to the deed of trust trustee named therein for the benefit of the Trustee, granting a lien on the School Land, among other parcels, together with all buildings, improvements and fixtures located or to be located thereon, all as more fully described in the Deed of Trust;

WHEREAS, the County desires to lease the Leased Premises (hereinafter defined) to the Board of Education pursuant to this Lease to be used for public school purposes; and

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 School Land and all buildings, improvements and fixtures 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, hereditaments, 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 May __, 2018 and shall terminate, subject to prior termination as hereinafter provided, upon the first to occur of (i) 12:00 midnight, on the date that all of the principal of and interest on the Series 2018 Bonds or any additional Bonds (as defined in the Master Trust Agreement) issued under the Master Trust Agreement is paid or duly provided for as set forth in the Trust Agreement and the Deed of Trust are satisfied and terminated or (ii) the transfer of the fee title to the Leased Premises by foreclosure under the terms of the Deed of Trust or by a deed in lieu of foreclosure resulting from a default by the County under the Trust Agreement or the Deed of Trust. In the event that the Term is terminated as a result of transfer of the fee title to the Leased Premises as provided in clause (ii) of the preceding sentence, the option of the Board of Education to purchase the Leased Premises as provided in Section 14 hereof shall be null and void and of no force and effect, and the transferee of the Leased Premises shall take title to the same free and clear of said option to purchase.

Section 3. Rental. The annual rental for each year of the Term shall be one dollar (\$1.00) payable in advance on the date of delivery of the Trust Agreement and thereafter on May 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.

Section 5. Use and Maintenance of Leased Premises. During the Term, the Leased Premises shall be used solely for the accomplishment of public purposes and, in particular, the administration and operation of public schools in the County; provided, however, that the Board of Education may use the Leased Premises for any other school-related purposes. 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 Trust Agreement or the Deed of Trust.

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. If so requested by the County, the Board of Education shall procure and maintain throughout the term of this Lease such fire, casualty, public liability, property damage and theft insurance as required by Article VI of the Master Trust Agreement, and the County and the Trustee shall be named as a mortgagee/loss payee or additional insured with respect to all such insurance, to the extent provided in the Master Trust Agreement. The policies of insurance required by Article VI of the Master Trust Agreement shall contain such endorsements as required by such Article. The Board of Education shall cooperate fully with the County 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 be applied in accordance with the provisions of Section 507 of the Master Trust 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 School Land 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 Deed of Trust. 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 Leased Premises. The Board of Education agrees that the County and its representative 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 its 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 acceptable to the County, 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 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; provided, however, that the Board of Education shall not be obligated to indemnify the County for any liability arising from any act of negligence or willful misconduct on the part of the County or any of its agents, officers or employees.

As between the Board of Education and the County, the covenant of the Board of Education in this Section is unconditional and absolute except to the extent that it may not be permitted by law. As between the Board of Education and any third-party, the Board of Education hereby reserves the right and defense of sovereign immunity.

Section 12. General Tax Covenant. The Board of Education covenants that it will not use nor permit the use of the Leased Premises in any manner that the Board of Education is advised by the County might result in the Series 2018 Bonds or any additional Bonds issued under the Master Trust Agreement to be a "private activity bond" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended, to the extent that such requirements thereof are, at the time, applicable and in effect, or that would otherwise cause the interest payable on the Series 2018 Bonds or any such additional Bonds to be included in the gross income of the owners thereof for federal income tax purposes.

Section 13. Assignment by the Board of Education. The Board of Education shall not assign its rights under this Lease to any other person, firm or corporation without the prior written consent of the County.

Section 14. Option to Purchase. The County hereby grants to the Board of Education the option to purchase the Leased Premises at the end of the Term of this Lease at a purchase price of \$1.00. The County shall promptly notify the Board of Education of the end of the Term of this Lease. At any time after its receipt of such notice, the Board of Education may exercise this option by notifying the County of its intent to exercise such option. Within forty-five (45) days after receipt of notification by the County from the Board of Education that the Board of Education intends to exercise such option to purchase, the County shall execute and deliver to the Board of Education a general warranty deed and any other documents necessary to convey good and marketable title of the Leased Premises to the Board of Education.

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 Lee 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 Deed of Trust); (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 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 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; provided, however, that the Board of Education shall not be obligated to indemnify the County for any liability arising from any act of negligence or willful misconduct on the part of the County or any of its agents, officers or employees.

As between the Board of Education and the County, the covenant of the Board of Education in this section, except to the extent permitted by law, is unconditional and absolute. As between the Board of Education and any third-party, the Board of Education, to the extent permitted by law, hereby reserves the right and defense of sovereign immunity.

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 Trustee and its successors and assigns, as beneficiary under the Deed of Trust, and the Board of Education shall cooperate with the Deed of Trust trustee and the Trustee, or their respective successors and assigns, in such manner as shall be necessary to assure that the Trustee or its successor and assigns enjoys the full benefits of the rights granted under the Deed of Trust.

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 make any payments hereunder when due;
- (b) 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
- (c) 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 Premises 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 Appraisement, 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 appraisalment, 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.

[Remainder of page intentionally left blank]

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

COUNTY OF LEE, NORTH CAROLINA

[SEAL]

By: _____
Chair of the Board of Commissioners

Attest:

Clerk to the Board of Commissioners

ACKNOWLEDGEMENT FOR COUNTY

STATE OF NORTH CAROLINA

COUNTY OF LEE

I, the undersigned, a Notary Public in and for the said County and State, do hereby certify that Jennifer Gamble, who, being by me duly sworn, says that she is the Clerk to the Board of Commissioners for the County of Lee, North Carolina and by authority duly given and as the act of said County, the foregoing instrument was signed in its name by Amy Dalrymple, as Chair of said Board of Commissioners, sealed with its seal, and attested by herself as the Clerk to said Board of Commissioners.

WITNESS my hand and notarial seal this ____ day of May, 2018.

[NOTARIAL SEAL]

Notary Public

Printed Name: _____

My commission expires:

LEE COUNTY BOARD OF EDUCATION

[SEAL]

By: _____
Chairman

Attest:

Secretary

ACKNOWLEDGEMENT FOR BOARD OF EDUCATION

STATE OF NORTH CAROLINA

COUNTY OF LEE

I, the undersigned, a Notary Public in and for the said County and State, do hereby certify that Andy Bryan, Ed.D., who, being by me duly sworn, says that he is the Secretary of Lee County Board of Education and by authority duly given and as the act of said Board of Education, the foregoing instrument was signed in its name by Mark K. Akinosho, as Chairman of said Board of Education, sealed with its seal, and attested by himself as the Secretary to said Board of Education.

WITNESS my hand and notarial seal this ____ day of May, 2018.

[NOTARIAL SEAL]

Notary Public

Printed Name: _____

My commission expires:

SCHEDULE I

LEGAL DESCRIPTION OF THE SCHOOL LAND

[To be inserted]

CONSTRUCTION AND ACQUISITION AGREEMENT

This CONSTRUCTION AND ACQUISITION AGREEMENT, dated as of May 1, 2018 (the "Agreement"), between the COUNTY OF LEE, NORTH CAROLINA, a body politic and corporate and a political subdivision existing under the laws of the State of North Carolina (the "County") and LEE COUNTY BOARD OF EDUCATION, a body politic and 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 and a political subdivision 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 a body politic and corporate and a political subdivision existing under the laws of the State of North Carolina and is the governing board of The Lee County 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 within its administrative unit 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 County has previously obtained a certain parcel of real property (the "School Land") as more fully described in Schedule A to the Lease (hereinafter defined) for the purpose of renovating and improving such property to be used as an elementary school (the "Project") for the use of the Board of Education pursuant to the terms of the Lease;

WHEREAS, the County has arranged to finance the costs of the Project through the issuance by the County of its County of Lee, North Carolina Limited Obligation Bonds, Series 2018 (the "Series 2018 Bonds") pursuant to a Master Trust Agreement, dated as of May 1, 2018 (the "Master Trust Agreement"), between the County and U.S. Bank National Association, as trustee (the "Trustee"), as supplemented by a First Supplemental Trust Agreement, dated as of May 1, 2018 (the "First Supplemental Trust Agreement" and, together with the Master Trust Agreement, the "Trust Agreement"), between the County and the Trustee;

WHEREAS, the County's obligations under the Trust Agreement, including the payment of the Series 2018 Bonds, are secured by a Deed of Trust, dated as of May 1, 2018 (the "Deed of Trust"), from the County to the deed of trust trustee named therein for the benefit of the Trustee, granting a lien on the School Land, among other parcels, together with all buildings, improvements and fixtures located or to be located thereon, all as more fully described in the Deed of Trust;

WHEREAS, the County, as lessor, and the Board of Education, as lessee, have entered into a Lease Agreement, of even date herewith (the "Lease"), pursuant to which the County has agreed to lease the School Land and all buildings, improvements and fixtures located and to be located thereon to the Board of Education;

WHEREAS, pursuant to Section 153A-158.1, as amended, of the General Statutes of North Carolina, as the same applies to the County, the Board of Education may enter into contracts and agreements for the erection and repair of school buildings owned in fee simple by the County; and

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 hereof, in connection with the Project. The Board of Education shall use its best efforts to cause the acquisition, construction, renovation and equipping of the Project in accordance with the plans and specifications therefor and in accordance with the Trust Agreement and any applicable requirements of governmental authorities and law.

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 acquisition, construction, renovation 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, construction, renovation and equipping 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 elementary school for The Lee County School Administrative Unit. The Board of Education shall cause the acquisition, construction, renovation and equipping 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. The Board of Education shall cause the Project to be located entirely on the School Land subject to the lien of the Deed of Trust and will ensure that (a) the Project does not encroach upon nor overhang any easement or right of way and (b) the Project, when erected, will be wholly within the building restriction lines, however established, and will not violate applicable use or other restrictions contained in prior conveyances or applicable protective covenants or restrictions.

(b) The Board of Education shall comply will all provisions of the Trust Agreement and the Deed of Trust relating to the acquisition, construction, renovation and equipping of the Project.

(c) The County, the Trustee and their respective representatives and agents shall have the right to enter upon and inspect the School Land 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 Trustee and their respective representatives and agents during such inspections.

(d) Payment or reimbursement of the Project costs shall be made from the proceeds of the Series 2018 Bonds for such purpose in accordance with the Trust Agreement. The Board of Education shall submit requests to the County for payment of costs of the Project, and the Board of Education covenants that it will not submit any such requests for any costs other than Project costs. The proceeds of the Series 2018 Bonds shall be used solely by the Board of Education for the purpose of payment of the Project costs. The Board of Education and the County shall make appropriate arrangements to ensure that such funds are applied only for such purpose.

(e) The Board of Education shall use its best efforts to cause the acquisition, construction, renovation and equipping of the Project to be completed. In the event that (i) the amount of proceeds of the Series 2018 Bonds provided for the Project, together with any other funds to be provided by the County or the Board of Education, to complete the Project as mutually agreed to by the County and the Board of Education, is not sufficient to complete the Project and (ii) the County chooses to cause the Board of Education to revise the plans and specifications for the Project to the end that the Project will have a cost not in excess of such amount, then the Board of Education agrees to revise the plans and specifications for the Project to the end that such alternative project having a cost not in excess of such amount.

Section 3. Consent of the County. 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 in accordance with the Trust Agreement; provided, however, that any such change shall not alter the purpose of the Project as a public elementary school.

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, renovation 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 Agreements. The Board of Education shall have the right to enforce in its own name or in the name of the County such purchase orders or construction agreements 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, renovation 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 acquisition, construction, renovation and equipping 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, renovated 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 agreement pertaining thereto; any latent defect; the ability thereof to perform any function; that the proceeds of the Series 2018 Bonds will be sufficient (together with other available funds of the County and the Board of Education) to pay or reimburse 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 Trust 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, renovation and equipping of the Project; provided, however, that the Board of Education shall not be obligated to pay the principal or interest on the Series 2018 Bonds or to indemnify (a) any party to the Trust Agreement for any third-party claims asserted against any such party relating to the payment of principal and interest on the Series 2018 Bonds or (b) the County for any liability arising from any act of negligence or willful misconduct on the part of the County or any of its agents, officers or employees. 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, renovation and equipping of the Project.

As between the Board of Education and the County, the covenant of the Board of Education in this Section, except to the extent permitted by law, is unconditional and absolute. As between the Board of Education and any third-party, the Board of Education, to the extent permitted by law, hereby reserves the right and defense of sovereign immunity.

Section 11. Amendments and Further Instruments. The County and the Board of Education may, from time to time, 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 representatives as of the day and year first written above.

COUNTY OF LEE, NORTH CAROLINA

By: _____
Chair

LEE COUNTY BOARD OF EDUCATION

By: _____
Chairman