

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WAKE

THIS LEASE AGREEMENT, made this the 30th day of April, 201~~3~~⁴ by and between, **Wake County**, a political subdivision of the State of North Carolina, hereinafter referred to as ("**Wake County**" or "**Landlord**") and **Wake County Board of Education**, a county board of education organized and existing pursuant to N.C.G.S. Chapter 115C *et seq.* hereinafter referred to as ("**Board of Education**" or "**Tenant**").

WITNESSETH:

WHEREAS, Wake County is the owner of a certain property located at 2200 S. Wilmington Street, Raleigh, North Carolina (the "Property"); and

WHEREAS, the Board of Education has identified the Property as a suitable location for a new high school with a career and technical education focus (CTEHS), which will be known as Vernon Malone College and Career Academy High School; and

WHEREAS, Wake County believes that it will promote the interests and welfare of Wake County citizens to allow the Board of Education to utilize the Property as a cost effective option for the site of the CTEHS and/or other public school purposes; and

WHEREAS, pursuant to N.C.G.S. 153A -158.1, a County may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county; and

WHEREAS, Wake County is willing to offer and the Board of Education is willing to accept a lease of the Property upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Demised Premises:** The Demised Premises consist of the property located at 2200 S. Wilmington Street, Raleigh, NC, described more particularly in the attached Exhibit A, which is herein incorporated by reference and being further identified as having Wake County PIN#1702-58-6912 and Wake County REID #0011399.
2. **Term:** The term of this Lease shall be effective for a period of twenty (20) years, taking into account that the first year of the Term shall begin on July 1, 2014 and end on June 30, 2034, unless sooner terminated in accordance with the Provisions of this Lease. Tenant shall have the right to extend this lease Term for an additional ten (10) years by giving written notice to Landlord within sixty (60) days of the expiration of the initial Term.

3. **Use of the Premises:** The Demised Premises may be used only for educational purposes associated with the operation of the CTEHS and/or other public school purposes, but for no other purpose without Landlord's prior written consent. To the extent that the Premises are used for alternate purposes, the Landlord may at its option, terminate this Lease upon sixty (60) days' notice.

Notwithstanding the above, the termination provision stated herein shall not apply for uses necessitated by the North Carolina Emergency Management Act or other uses or needs contemplated by Article 36A of Chapter 14 of the North Carolina General Statutes. Tenant shall not use the Premises or suffer, or knowingly permit the Premises to be used in violation of any applicable law, ordinance, regulation, or order of any governmental authority (including, but not limited to, zoning ordinances, building codes, environmental laws), or in any manner that will constitute a nuisance. Tenant shall make all changes to the Premises required for compliance with existing or future laws, ordinances, regulations and orders that are not directly related to additions to the property or construction efforts made by the Landlord.

4. **Rent:** The rental to be paid by Tenant for said the Premises shall be one dollar and no cents (\$1.00) per year, payable as a lump sum of twenty dollars and no cents (\$20.00) in advance for the twenty (20) year lease term.
5. **Delivery and Condition of Demised Premises:** Upon complete execution hereof, Landlord shall have delivered the Premises to Tenant, and Tenant shall have accepted delivery thereof. Tenant has accepted delivery of the Premises in its current condition "as-is" and with all faults and defects. Landlord does not hereby make any express or implied representations or warranties regarding or relating to (i) the condition, suitability, value, marketability, or zoning of the Premises, (ii) the right to use the Premises for any particular purpose or in any particular manner, or (iii) the compliance of the Premises with applicable laws, ordinances, regulations, or orders of any governmental authority.

Tenant agrees to take good care of the Demised Premises and at the end of this Lease, shall surrender the Demised Premises, including any improvements made thereon during the Term of this Lease, in good condition, ordinary wear and tear excepted. Any improvements shall become the property of the Landlord with no additional consideration due from Landlord .

6. **Agency Created.** Wake County irrevocably appoints the Board of Education as its sole agent to carry out all phases of any renovation or construction project undertaken on the Premises during the Term of this Lease (herein the "Construction"); provided that nothing herein shall be construed to make Wake County primarily or secondarily liable for any debt or obligation incurred by the Board of Education. The Board of Education, as Wake County's agent, assumes

all of Wake County's rights, duties, and responsibilities regarding the Premises for the Term of this Lease, including but not limited to the right to:

- a. Negotiate and Execute Contracts. The Board of Education shall have sole and exclusive authority to negotiate and execute all contracts for the Construction undertaken pursuant to this Agreement, as long as the funds to be expended pursuant to those contracts are within the project budget established by the Board of Education and approved by the Wake County Commissioners.
- b. Supervise Construction and Projects. The Board of Education, as agent for Wake County, shall be solely responsible for determining the need for, carrying out, and maintaining the Construction, and the Board of Education shall have all rights to supervise the Construction. The County shall have no supervisory authority for any of the Construction.
- c. Administer Contracts. The Board of Education shall issue any required purchase orders and pre-audit certification for the Construction. The Board of Education shall have authority to approve and enter into any change orders for any and all Construction as long as the funds are within the project budget established by the Board of Education and approved by the Wake County Commissioners, including change orders establishing the Guaranteed Maximum Price on CM At Risk projects. The Board of Education shall have exclusive control of the content of such contracts. The Board of Education shall act as Wake County's designated representative for administering the contracts, and all contracts shall comply with the public procurement laws and any other State laws applicable to either the Board of Education or the County. The Board of Education shall ensure that all contractors provide applicable sales and use tax certificates. The Board of Education shall approve all requests for payment and pay the contractors from the funds provided by Wake County.
- d. Enforce Contracts. The Board of Education shall have the right to enforce such purchase orders, contracts, or change orders entered into for the identified Construction.
- e. Pre-Audit Certification. Wake County hereby authorizes the Finance Officer of the Board of Education to act as the Finance Officer of Wake County for the limited purpose of pre-auditing as required by State law, on behalf of Wake County, contracts and change orders executed for the Construction pursuant to this Agreement.
- f. Easements, Roadway Dedications, and Rights of Way. The Board of Education, as agent for Wake County, shall have the authority to execute any easements, rights of way, and roadway dedications it deems necessary to permit the construction of any properties identified pursuant to Paragraph 3 of this

Agreement. Wake County shall approve and execute any easements, rights of way, and roadway dedications that are not necessary to permit the Construction.

7. **Sales Tax Refunds.** The County Commissioners shall promptly take all steps to obtain the sales and use tax refund from the State of North Carolina, and further, shall, upon request, provide the Board of Education with timely notice of its efforts and receipts. Any sales and use tax refunds received by the County as a result of the construction projects shall be utilized exclusively to provide supplemental funding for school capital building and renovation projects approved by the County Commissioners. The intent of this Agreement is to provide additional resources for the Board of Education and the County Commissioners for use in the construction and maintenance of school buildings.
8. **Implementation of Agreement.** The County Manager and Superintendent or their designees shall establish policies and procedures to implement this Agreement not inconsistent with the terms of this Agreement.
9. **Maintenance.** Tenant shall, at its own expense, keep and maintain the Premises in good order and repair and clean, safe and sanitary condition.
10. **Utilities.** Tenant shall arrange and pay for, or cause to be paid for, all electricity, gas, water, sewerage, waste disposal, janitorial service and other utilities and services required in connection with the use and maintenance of the Premises. 11.
11. **Insurance/Indemnification:**

A. INSURANCE.

Board of Education shall maintain in force and effect the following insurance, and require any contractors performing the Construction to maintain in full force and effect, in standard form generally in use in the State of North Carolina, with a responsible insurance company or companies authorized to do business in that State, and furnish true and complete copies of the policies to Wake County:

Liability Insurance. Commercial general liability insurance covering bodily injury, death and property damage with a single limit of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate. The insurance required by this subparagraph shall (i) name Wake County as an additional insured, (ii) contain a contractual liability endorsement, (iii) contain an endorsement requiring thirty (30) days written notice from the insurance company to Wake County prior to the cancellation of the insurance or any change in coverage, scope, or limits.

Workers Compensation Insurance. Workers compensation insurance sufficient to comply with the applicable laws of the State of North Carolina.

Property Insurance. Upon execution hereof with respect to the Premises and prior to occupancy of any future Improvements to the Premises, "all risk" insurance covering the Premises and any Improvements for the full replacement cost thereof (less the cost of foundations, footings, excavation and paving). The insurance required by this subparagraph shall contain an endorsement requiring thirty (30) days written notice from the insurance company to Wake County prior to the cancellation of the insurance or any change in coverage, scope, or limits.

Board of Education may also elect at any time during the term of this Lease not to carry the insurance required by this Section, and to "self-insure" against such risks provided that (i) Board of Education has in effect for the benefit of its offices a program of "self-insurance" against such risks, (ii) Board of Education has and maintains a Moody's Investors Service bond rating of "AAA", (iii) the failure to carry such insurance does not violate any law, statute, code, act, ordinance, order, judgment, decree, injunction, rule, regulation, permit, license, authorization or other requirement which is issued by any government or governmental agency with jurisdiction over the Premises or which is applicable to Board of Education in the conduct of its business, and (iv) the shift to "self-insurance" would not materially reduce the monetary amounts of protection available to Wake County set forth in this Section.

B. INDEMNIFICATION.

If allowed by North Carolina law and only to the extent it does not operate as a waiver of governmental, statutory, or common law immunity, the Board of Education shall indemnify and hold harmless Wake County from and against all claims, damages, or expenses due to claims for injuries to persons or property or administrative or criminal action by a governmental authority, where such claims, damages, or expenses result from the sole negligence, misconduct, or breach of any provision of this Lease by the Board of Education, its agents, employees, or invitees. The indemnification provided for herein shall not be construed as a waiver of any applicable defense of governmental, statutory, or common law immunity, and shall not prevent the Board of Education from asserting any defense of such immunity; provided that if a court of competent jurisdiction determines that no such immunity applies, then the indemnity provided for herein shall apply.

If allowed by North Carolina law and only to the extent it does not operate as a waiver of sovereign immunity and is not inconsistent with Wake County's "Resolution Regarding Limited Waiver of Sovereign Immunity", Wake County shall indemnify and hold harmless the Board of Education from and against all claims, damages, or expenses due to claims for injuries to persons or property or administrative or criminal action by a governmental authority, where such claims, damages, or expenses result from the sole negligence, misconduct, or breach of

any provision of this Lease by Wake County, its agents, employees, or invitees. The indemnification provided for herein shall not be construed as a waiver of any applicable defense of governmental, statutory, or common law immunity, and shall not prevent Wake County from asserting any defense of such immunity; provided that if a court of competent jurisdiction determines that no such immunity applies, then the indemnity provided for herein shall apply.

12. **Subletting:** Tenant shall not assign this Lease nor sublease said Premises without the advance written approval of Landlord. Provided, however, that nothing in this Lease shall be construed to prevent Tenant from authorizing temporary third-party use of the Premises consistent with Tenant's policies and procedures governing third-party access to and use of school facilities. Notwithstanding the foregoing, Tenant may contract with Wake Technical Community College (WTCC) without advance written approval of Landlord for shared use of school facilities on the Property outside of normal school hours.
13. **Inspections:** Landlord shall have the right, but not the obligation, upon reasonable notice, to enter and inspect said Premises at such times and in such a manner that will not disrupt school operations.
14. **Default:** If Tenant defaults in the performance of any material term, covenant, or condition of this lease (other than the covenant to pay rent) and if such default continues for fifteen (15) days after written notice thereof by Landlord to Tenant, Landlord has the right, at its option, to terminate this lease. If Landlord exercises this right of termination, such termination will become effective sixty (60) days after the last day of the then-current school year if written notice of termination is provided at least one hundred eighty (180) days before the last day of the then-current school year or sixty (60) days after the last day of the first semester in the subsequent school year if written notice of termination is not provided at least one hundred eighty (180) days before the last day of the then-current school year. Provided, however, that Landlord may terminate this Lease immediately and without prior notice to Tenant if Landlord reasonably determines that the Premises are unsafe for use and occupancy, that Tenant's continued use and occupancy of the Premises violates applicable zoning ordinances or other land use laws or regulations, or that the structural integrity of the Premises is compromised to the point that immediate evacuation of the Premises is necessary in order to implement effective repairs.
15. **Damage by Fire or Other Casualty.** If the Premises or any of the Improvements are damaged or destroyed by fire, earthquake, act of God, or other casualty (a "Casualty"), all property insurance proceeds payable with respect to the Improvements shall belong to and be the exclusive property of Wake County. Wake County shall at its sole option shall either repair and restore the affected Improvements to substantially the same condition as existed immediately prior to the Casualty or terminate the Lease.

16. **Notice:** All notices, requests, approvals or consents required to be given hereunder shall be in writing and hand delivered or sent by U.S. mail, postage prepaid, and addressed as follows:

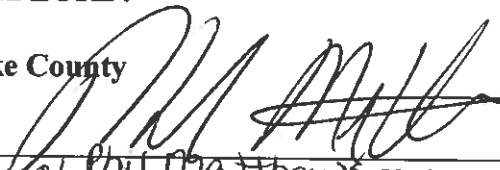
County: Wake County
P.O. Box 550
Raleigh, NC 27602
Attention: Director, General Services Administration

Board: Wake County Board of Education
Wake County Public School System
5625 Dillard Drive
Cary, NC 27518
Attention: Director, Real Estate Services

IN WITNESS WHEREOF, the parties sign and seal this instrument as of the date first written above.

LANDLORD:

Wake County


By: Phil Matthews, Chairman
Wake County Board of Commissioners

Attest: Susan J. Banks
Susan J. Banks, Clerk to the Board



TENANT:

Wake County Board of Education

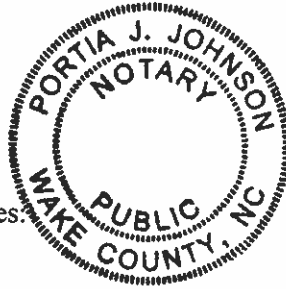

By: KEITH A. SUTTON, Chairman

Attest: James G. Merrill
JAMES G. MERRILL, Secretary to the Board

STATE OF NORTH CAROLINA
WAKE COUNTY

I, Portia J. Johnson, a Notary Public of Said State and County, do hereby certify that Phil Matthews and Susan J. Banks personally came before me this day and acknowledged that they are the Chairman and Clerk, respectively, of the Board of Commissioners of Wake County, North Carolina, and that by authority duly given and as the act of The County of Wake, the foregoing instrument was signed in the County's name by the Chairman of its Board of Commissioners, sealed with its corporate seal and attested by such Clerk.

Witness my hand and official seal this 30th day of April, 2014, 2013.



Portia J. Johnson
Notary Public

Portia J. Johnson
(Printed Name of Notary)

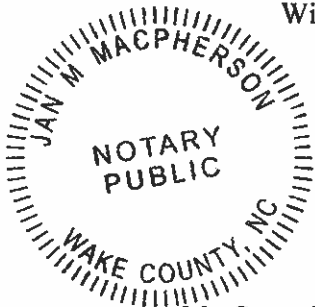
My Commission expires:

9-5-2016.

STATE OF NORTH CAROLINA
WAKE COUNTY

I, JAN M. MACPHERSON, a Notary Public of said State and County, do hereby certify that JAMES G. MERRILL, with whom I am personally acquainted, who, being by me duly sworn, says that he is the Secretary of The Wake County Board of Education and that KEITH A. SUTTON is the Chair of such Board of Education, the Board described in and which executed the foregoing instrument; that he knows the common seal of said Board; that the seal affixed to the foregoing instrument is said common seal, and the name of the Board was subscribed thereto by the said Chair; and that said Chair and Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board and that the said instrument is the act and deed of said Board.

Witness my hand and official seal this 29th day of OCTOBER, 2013.



Jan M. MacPherson
Notary Public

JAN M. MACPHERSON
(Printed Name of Notary)

My Commission expires: May 11, 2018

Exhibit A

PROPERTY DESCRIPTION

Being all of that certain tract located at 2200 S. Wilmington Street, Raleigh, NC, together with all improvements and appurtenances thereto, having Wake County- PIN # 1702-58-6912, and REID # 0011399, and being more particularly described as follows:

Lying and being Beginning at an existing right-of-way monument located in the southern right-of-way of Interstate 40 & 440 (Variable ROW) and the western right-of-way of S. Wilmington Street (200' ROW), having NC Grid Coordinates (NAD 83 - NSRS2007): N 729379.57 & 2106183.58, the Point of Beginning, thence along that latter right-of-way S 15° 20' 50" W 796.06 feet to a point in the common property line with lands now or formerly owned by Baldrige Enterprises, Inc. (PIN 1702-58-8541); thence along that common property line and continuing along the common property line of other lands now or formerly owned by Baldrige Enterprises, Inc. (PIN 1702-58-6406) the following courses and distances: (i) S 84° 40' 09" W 198.00 feet to a point; (ii) S 84° 40' 09" W 339.27 feet to a point; (iii) S 05° 19' 52" E 209.93 feet to a point; and (iv) S 33° 22' 38" E 8.52 feet to a point in the northern right-of-way of Renfrow Road (60' ROW); thence along that right-of-way S 68° 52' 14" W 6.75 feet to a point in the common property line with lands now or formerly owned by Sam's Real Estate Business Trust (PIN: 1702-48-7225); thence along that common property line the following courses and distances: (i) N 53° 32' 32" W 606.72 feet to an existing iron pipe; and (ii) N 06° 32' 31" W 82.82 feet to a point in the southern right-of-way of Interstate 40 & 440 (Variable ROW); thence along that right-of-way the following courses and distances: (i) N 47° 06' 07" E 130.83 feet to a point; (ii) N 48° 27' 58" E 189.59 feet to a point; (iii) N 44° 42' 27" E 169.56 feet to an existing right-of-way monument; (iv) N 62° 34' 24" E 183.13 feet to an existing right-of-way monument; (v) N 60° 41' 54" E 218.84 feet to an existing right-of-way monument; (vi) N 70° 33' 23" E 78.74 feet to an existing right-of-way monument; (vii) N 84° 34' 45" E 322.31 feet to an existing right-of-way monument; and (viii) N 85° 14' 22" E 120.02 feet to the Point of Beginning, containing approximately 15.8020 acres, more or less, as shown on that survey prepared by Bass, Nixon, and Kennedy entitled "Boundary Survey Property To Be Acquired By Keystone Development Associates, LLC" dated 12-28-11.