

Execution Version

---

**LEASE AGREEMENT**

**Dated November 1, 2004**

**Between**

**SHELBY COUNTY**

**and the**

**COUNTY BOARD OF EDUCATION OF SHELBY COUNTY**

**Relating to the issuance of  
\$21,295,000  
Limited Obligation School Warrants, Series 2004  
by  
Shelby County**

---

## TABLE OF CONTENTS

	Page
Parties.....	1
Recitals.....	1
ARTICLE 1 Definitions and Other Provisions of General Application .....	1
SECTION 1.1    Definitions .....	1
SECTION 1.2    General Rules of Construction .....	1
SECTION 1.3    Effect of Headings and Table of Contents.....	2
SECTION 1.4    Date of Lease Agreement .....	2
SECTION 1.5    Separability Clause .....	2
SECTION 1.6    Governing Law .....	2
SECTION 1.7    Counterparts .....	2
ARTICLE 2 Demising Clause .....	2
ARTICLE 3 Acquisition of the Leased Facilities .....	3
SECTION 3.1    Agreement to Acquire .....	3
SECTION 3.2    No Warranty .....	3
SECTION 3.3    Withdrawals From Costs of Issuance Fund .....	3
ARTICLE 4 Lease Term and Rental Payments .....	4
SECTION 4.1    Lease Term .....	4
SECTION 4.2    Basic Rental Payments .....	4
SECTION 4.3    Additional Rental Payments .....	5
SECTION 4.4    Overdue Payments.....	6
SECTION 4.5    Unconditional Obligation of the Board .....	6
SECTION 4.6    Special Tax Proceeds and Additional Board Obligations.....	6
ARTICLE 5 Concerning the Warrants, the Indenture and the Trustee.....	7
SECTION 5.1    Assignment of Lease Agreement and Rental Payments by County .....	7
SECTION 5.2    Redemption of Warrants.....	7
SECTION 5.3    Amendment of Warrant Documents.....	7
SECTION 5.4    The Special Funds .....	7
SECTION 5.5    Effect of Full Payment of Indebtedness .....	8
ARTICLE 6 The Leased Facilities .....	8
SECTION 6.1    Possession and Use of Leased Facilities.....	8
SECTION 6.2    Maintenance and Other Operating Expenses.....	8
SECTION 6.3    Taxes, Assessments, Etc. ....	8
SECTION 6.4    Improvements, Alterations, Etc. ....	8
SECTION 6.5    Utility Easements.....	9
SECTION 6.6    Transfer or Encumbrance Created by County .....	9
SECTION 6.7    Assignment, etc. of Leasehold Interest.....	9

SECTION 6.8	The Board's Personal Property and Fixtures .....	9
SECTION 6.9	Insurance.....	10
SECTION 6.10	Damage and Destruction .....	10
SECTION 6.11	Condemnation.....	10
ARTICLE 7 Representations and Covenants .....		11
SECTION 7.1	General Representations.....	11
SECTION 7.2	Eligibility of Leased Facilities for Financing .....	11
SECTION 7.3	Advances by County or Trustee .....	11
SECTION 7.4	Indemnity of County and Trustee.....	12
SECTION 7.5	Compliance with Tax Certificate and Agreement .....	12
ARTICLE 8 Remedies.....		12
SECTION 8.1	Events of Default.....	12
SECTION 8.2	Remedies on Default .....	13
SECTION 8.3	No Remedy Exclusive .....	13
SECTION 8.4	Agreement to Pay Attorneys' Fees and Expenses .....	14
SECTION 8.5	No Additional Waiver Implied by One Waiver.....	14
SECTION 8.6	Remedies Subject to Applicable Law.....	14
ARTICLE 9 Options.....		14
SECTION 9.1	Option to Terminate .....	14
SECTION 9.2	Option to Purchase Leased Facilities.....	14
SECTION 9.3	Disposition of Portions of Leased Facilities While Warrants are Outstanding .....	14
SECTION 9.4	Conveyance on Exercise of Option to Purchase.....	15
ARTICLE 10 Miscellaneous .....		15
SECTION 10.1	County's Liabilities Limited.....	15
SECTION 10.2	Notices.....	16
SECTION 10.3	Successors and Assigns .....	16
SECTION 10.4	Benefits of Lease Agreement .....	16
Testimonium .....		17
Signatures.....		17
Acknowledgments.....		18
EXHIBIT A - Description of Leased Facilities		
EXHIBIT B - Permitted Encumbrances		
EXHIBIT C - Requisition		

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** dated November 1, 2004 is entered into by **SHELBY COUNTY**, a political subdivision of the State of Alabama (the "County"), and the **COUNTY BOARD OF EDUCATION OF SHELBY COUNTY**, an agency and instrumentality of the State of Alabama (the "Board").

### **Recitals**

This Lease Agreement is being entered into in connection with the issuance by the County of its \$21,295,000 aggregate principal amount of Limited Obligation School Warrants, Series 2004 pursuant to a Trust Indenture dated November 1, 2004 (the "Indenture") between the County and Regions Bank, an Alabama banking corporation (the "Trustee"). The purpose of this Lease Agreement and of related Warrant Documents is described in the recitals to the Indenture.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows:

## **ARTICLE 1**

### **Definitions and Other Provisions of General Application**

#### **SECTION 1.1 Definitions**

For all purposes of this Lease Agreement, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meaning assigned in the Indenture.

#### **SECTION 1.2 General Rules of Construction**

For all purposes of this Lease Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) Defined terms in the singular shall include the plural as well as the singular, and vice versa.
- (b) The definitions in the recitals to this instrument are for convenience only and shall not affect the construction of this instrument.
- (c) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to "generally accepted accounting principles" refer to such principles as they exist at the date of application thereof.
- (d) All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.



(e) The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or other subdivision.

(f) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(g) The term “person” shall include any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization and any government or any agency or political subdivision thereof.

### **SECTION 1.3 Effect of Headings and Table of Contents**

The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

### **SECTION 1.4 Date of Lease Agreement**

The date of this Lease Agreement is intended as and for a date for the convenient identification of this Lease Agreement and is not intended to indicate that this Lease Agreement was executed and delivered on said date.

### **SECTION 1.5 Separability Clause**

If any provision in this Lease Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

### **SECTION 1.6 Governing Law**

This Lease Agreement shall be construed in accordance with and governed by the laws of the State of Alabama.

### **SECTION 1.7 Counterparts**

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

## **ARTICLE 2**

### **Demising Clause**

For and in consideration of the performance and observance by the Board of the agreements and covenants of this Lease Agreement to be performed and observed by the Board, the County does hereby lease and demise to the Board, and the Board does hereby lease, take and hire from the County the following property constituting the Leased Facilities subject to this Lease Agreement:

**I.**

**Real Property**

The real property and interests therein described in Exhibit A attached hereto, together with all easements, permits, licenses, rights-of-way, contracts, leases, tenements, hereditaments, appurtenances, rights, privileges and immunities pertaining or applicable to said real property and interests therein.

**II.**

**Buildings and Structures**

All buildings and structures now or hereafter located on such real property.

**SUBJECT, HOWEVER,** to Permitted Encumbrances, which are described in Exhibit B to this Lease Agreement.

**ARTICLE 3**

**Acquisition of the Leased Facilities**

**SECTION 3.1 Agreement to Acquire**

The County agrees to purchase and the Board agrees to sell the Leased Facilities at a purchase price equal to the net proceeds of the Warrants after payment of the expenses incurred in connection with the issuance of the Warrants, including legal, accounting and underwriting expenses. Simultaneously with the issuance of the Warrants, the County shall pay to the Board such net Warrant proceeds and the Board shall execute and deliver to the County a warranty deed conveying the Leased Facilities to the County.

**SECTION 3.2 No Warranty**

The Board acknowledges that since title to the Leased Facilities has heretofore been in the Board, the County makes no warranty, either express or implied, with respect to the physical condition of the Leased Facilities and does not offer any assurances that the Leased Facilities will be suitable for the Board's purposes or needs.

**SECTION 3.3 Withdrawals From Costs of Issuance Fund**

The Board may cause withdrawals to be made from the Costs of Issuance Fund for the payment of Costs of Issuance (including reimbursement to the Board for any such Costs paid directly by the Board), but only if (1) no Lease Default exists and no event has occurred and is continuing which, with notice or lapse of time or both, would constitute a Lease Default, (2) the Board delivers to the Trustee a duly completed requisition for each such withdrawal in the form attached hereto as Exhibit C, executed on behalf of the Board by an Authorized Board Representative, and (3) such requisition is approved by the Bank.

## **ARTICLE 4**

### **Lease Term and Rental Payments**

#### **SECTION 4.1 Lease Term**

The term of this Lease Agreement shall begin on the date of the delivery of this Lease Agreement and, unless renewed and extended in accordance with the terms of this Lease Agreement, shall continue until midnight of February 1, 2017.

#### **SECTION 4.2 Basic Rental Payments**

(a) The Board shall make payments ("Basic Rental Payments") to the Trustee, for the account of the County, at times and in amounts as follows:

(1) prior to 12:00 noon on each Interest Payment Date, an amount equal to the interest payable on such Interest Payment Date;

(2) prior to 12:00 noon on February 1, 2017, an amount equal to the principal amount of Warrants maturing on February 1, 2017; and

(3) prior to 12:00 noon on each date fixed for the redemption of Warrants, an amount equal to the redemption price of Warrants to be redeemed on such date.

(b) The Board shall receive a credit against the Basic Rental Payments as follows:

(1) The amount of accrued interest, if any, received from the sale of the Warrants to the original purchaser or purchasers thereof and deposited in the Debt Service Fund shall be deducted from the amount of interest due on the first Interest Payment Date for purposes of calculating the required Basic Rental Payments prior to such Interest Payment Date.

(2) Investment income and profits deposited or retained in the Debt Service Fund shall be credited against monthly Basic Rental Payments due after receipt of such income and profits as directed by the Board.

(3) Any other money held by the Trustee and available, under the terms of the Indenture and this Lease Agreement, for the payment of Debt Service on the Warrants shall be credited against Basic Rental Payments as directed by the Board. Such directions must be consistent with any mandatory provision of the Indenture and this Lease Agreement with respect to the required use of such money.

(c) All Basic Rental Payments shall be made in funds immediately available at the Office of the Trustee on the due date of such Payments.

(d) The Board acknowledges that (1) Basic Rental Payments required by this Section have been calculated to provide amounts which will be sufficient to pay Debt Service on the Warrants as the same matures and comes due and (2) money drawn under the Standby Purchase Agreement may not be used to pay Debt Service on Obligor Warrants. If on any Warrant Payment Date the amount on deposit in the Debt Service Fund is not sufficient to pay Debt Service on the Warrants due and payable on such Date, the Board shall immediately deposit the amount of such deficiency in the Debt Service Fund.



(e) Money on deposit in the Debt Service Fund may be used to reimburse the Bank for purchases under the Standby Purchase Agreement of the Warrants, as provided in Section 8.1 of the Indenture.

#### **SECTION 4.3 Additional Rental Payments**

(a) The Board shall make additional payments (“Additional Rental Payments”) as follows:

(1) Prior to 12:00 noon on each Tender Date, the Board shall pay to the Trustee an amount equal to the Purchase Price of Warrants to be tendered for purchase on such Tender Date. Such payments shall be made in funds immediately available at the Office of the Trustee on the related Tender Date.

(2) Within 10 days after receipt by the Board of an invoice therefor, the Board shall pay to the Trustee (A) the acceptance fee of the Trustee, (B) the normal fees, charges and expenses of the Trustee, and (C) any amount to which the Trustee may be entitled under Section 12.7 of the Indenture.

(3) Within 10 days after receipt by the Board of an invoice therefor, the Board shall pay to County the reasonable expenses of the County incurred (A) at the request of the Board, (B) in the performance of the County’s duties under any of the Warrant Documents, (C) in connection with any litigation which may at any time be instituted involving the Leased Facilities or the Warrant Documents, or (D) in the pursuit of any remedies under the Warrant Documents.

(4) The Board shall pay to the Remarketing Agent and the Trustee the fees and expenses due to each of them in accordance with the respective agreements appointing them to serve in such capacities.

(b) The Board shall receive a credit against the Additional Rental Payments required by Section 4.3(a)(1) as follows:

(1) Money received by the Trustee from purchases under the Standby Purchase Agreement with respect to the Purchase Price of Tendered Warrants due on any Tender Date shall be credited against the related Additional Rental Payment due on such Tender Date.

(2) Proceeds from the remarketing of Warrants remaining in the Warrant Purchase Fund on any Tender Date after reimbursement of the Bank for any amounts due to the Bank under the Standby Purchase Agreement shall be credited against the related Additional Rental Payment due on such Tender Date.

(3) Investment income and profits remaining in the Warrant Purchase Fund on any Tender Date after reimbursement of the Bank for any amounts due to the Bank under the Standby Purchase Agreement shall be credited against the related Additional Rental Payment due on such Tender Date.

(c) Money on deposit in the Warrant Purchase Fund may be used to reimburse the Bank for amounts due to the Bank under the Standby Purchase Agreement, as provided in Section 8.2 of the Indenture.



#### **SECTION 4.4     Overdue Payments**

Any overdue Basic Rental Payment shall bear interest from the related Warrant Payment Date until paid at the Post-Default Rate for overdue Debt Service payments. Any overdue Additional Rental Payment shall bear interest from the date due until paid at the Post-Default Rate for such Additional Rental Payments specified in the Indenture.

#### **SECTION 4.5     Unconditional Obligation of the Board**

The Board's obligation to make the payments required by this Lease Agreement and to perform and observe the other agreements and covenants on its part herein contained shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have against the County or any other Financing Participant. The Board will not suspend or discontinue any such Rental Payment or fail to perform and observe any of its other agreements and covenants contained herein or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, (a) failure to complete the Leased Facilities, (b) any acts or circumstances that may constitute an eviction or constructive eviction, (c) failure of consideration or commercial frustration of purpose, (d) the invalidity of any provision of this Lease Agreement, (e) any damage to or destruction of the Leased Facilities or any part thereof, (f) the taking by eminent domain of title to, or the use of, all or any part of the Leased Facilities, (g) any change in the laws or regulations of the United States of America, the State of Alabama or any other governmental authority, or (h) any failure of any of the Financing Participants to perform and observe any agreement or covenant, whether express or implied, to be performed or observed by them under any of the Warrant Documents.

#### **SECTION 4.6     Special Tax Proceeds and Additional Board Obligations**

(a) Although Basic Rental Payments and Additional Rental Payments due under this Lease Agreement may be paid from any Board funds that may be lawfully used for such purpose, the Board expects that such amounts will be paid primarily from the Special Tax Proceeds. The Board agrees to set aside and segregate, from all other funds received by the Board, the Special Tax Proceeds and to use those proceeds for payment of Basic Rental Payments and Additional Rental Payments and any other payments required to be made in accordance with this Lease Agreement. The Board covenants and agrees not to make any contracts, agreements or pledges with respect to the Special Tax Proceeds that would be prior to, or (except in the case of Additional Board Obligations) on parity with, the agreement made in this Lease Agreement for the benefit of the holders of the Warrants.

(b) The Board may issue warrants or other obligations ("Additional Board Obligations") for any lawful purpose, without limit as to aggregate principal amount, payable from and secured by a pledge of the Special Tax Proceeds equally and ratably with the Warrants provided that the amount of Special Tax Proceeds received by the Board during the preceding Fiscal Year is not less than 125% of Maximum Annual Debt Service on the Warrants, any Additional Board Obligations then outstanding, and the Additional Board Obligations proposed to be issued.

## **ARTICLE 5**

### **Concerning the Warrants, the Indenture and the Trustee**

#### **SECTION 5.1 Assignment of Lease Agreement and Rental Payments by County**

(a) Simultaneously with the delivery of this Lease Agreement, the County shall, pursuant to the Indenture, assign and pledge to the Trustee all right, title and interest of the County in and to the Rental Payments and the Lease Agreement. The Board hereby consents to such assignment and pledge.

(b) Until all Indenture Indebtedness has been Fully Paid, the Trustee may exercise all rights and remedies herein accorded to the County, and any references herein to the County shall be deemed, with the necessary changes in detail, to include the Trustee; provided, however, that the Trustee will not exercise any of its remedies under this Lease Agreement without the prior written consent of the Bank (subject to the provisions of Section 16.3 of the Indenture); provided further that the County shall retain the rights to indemnification and reimbursement of expenses granted to it by this Lease Agreement.

#### **SECTION 5.2 Redemption of Warrants**

(a) The County will cause the Trustee to redeem any or all of the Warrants in accordance with the mandatory redemption provisions of the Warrants without any direction from or consent by the Board.

(b) If no Lease Default exists, (1) any right of optional redemption with respect to the Warrants may be exercised only upon the written direction of the Board and (2) the Board may, on behalf of the County, direct the Trustee to effect an optional redemption of Warrants. The Board shall deliver to the County a copy of any such direction. The County will cooperate with the Board in good faith to effect any such optional redemption so directed.

#### **SECTION 5.3 Amendment of Warrant Documents**

The County will not cause or permit the amendment of the Warrant Documents without the prior written consent of the Board.

#### **SECTION 5.4 The Special Funds**

(a) If no Lease Default exists, the County shall cause any money held as part of a Special Fund to be invested or reinvested by the Trustee in accordance with the terms of the Indenture and the instructions of the Board.

(b) The Board shall be solely responsible for (1) determining that any such investment of Special Funds under the Indenture complies with the arbitrage limitations imposed by Section 148 of the Internal Revenue Code, and (2) calculating the amount of, and making payment of, any rebate due to the United States under Section 148(f) of the Internal Revenue Code.

(c) As security for the performance by the Board of the covenants hereunder, the Board hereby signs and pledges to the County, and grants to the County a security interest in, all right, title and interest of the Board in and to all money and investments from time to time on deposit in, or forming a part of, the Special Funds, subject to the provisions of this Lease Agreement and the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein and in the



Indenture. The Board acknowledges that the rights of the County created by this Section shall be assigned by the County to the Trustee pursuant to the Indenture.

#### **SECTION 5.5 Effect of Full Payment of Indebtedness**

(a) After the Indenture Indebtedness is Fully Paid, all references in this Lease Agreement to the Warrants, the Indenture and the Trustee shall be ineffective and neither the Trustee nor the Holders of the Warrants shall thereafter have any rights hereunder, except those rights that shall have theretofore vested.

(b) After all Indebtedness is Fully Paid, any money or investments remaining in the Special Funds shall be delivered to the Board.

(c) If all Indebtedness is Fully Paid prior to the expiration of the term of this Lease Agreement, the Board shall be entitled to the use and occupancy of the Leased Facilities until the expiration of the term of this Lease Agreement without the payment of any further Basic Rental Payments, but otherwise subject to all the terms and conditions hereof, except that the Board shall no longer be required to perform and observe the agreements and covenants of this Lease Agreement that are for the sole benefit of the Bank, the Trustee or the Holders of the Warrants.

### **ARTICLE 6**

#### **The Leased Facilities**

##### **SECTION 6.1 Possession and Use of Leased Facilities**

So long as no Lease Default exists, the Board shall be permitted to possess, use, manage, operate and enjoy the Leased Facilities without hindrance on the part of the County, subject, however, to all the terms and conditions of this Lease Agreement.

##### **SECTION 6.2 Maintenance and Other Operating Expenses**

The Board will, at its own expense, (a) maintain the Leased Facilities in good condition, repair and working order, (b) make all necessary repairs, renewals, replacements and improvements to the Leased Facilities, and (c) pay all gas, electric, water, sewer and other charges for the operation, use and upkeep of the Leased Facilities.

##### **SECTION 6.3 Taxes, Assessments, Etc.**

The Board will pay all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Leased Facilities or any part thereof or upon any income therefrom, and also all taxes, assessments and other governmental charges lawfully levied, assessed or imposed upon the lien or interest of the Trustee or of the Warrantholders in the Trust Estate; provided, however, that the Board shall not be required to pay and discharge any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings.

##### **SECTION 6.4 Improvements, Alterations, Etc.**

The Board may, at its own expense, make additions, improvements or alterations to the buildings and structures constituting a part of the Leased Facilities. At the written request of the Board, the County



will enter into a contract for such additions, improvements, or alterations, subject, however, to the requirements of Section 10.1.

#### **SECTION 6.5     Utility Easements**

The County will, upon request of the Board, grant utility and other similar easements over, across or under the real property constituting part of the Leased Facilities.

#### **SECTION 6.6     Transfer or Encumbrance Created by County**

Without the prior written consent of the Board, the County (a) will not sell, transfer or convey the Leased Facilities or any part thereof, except as provided in this Lease Agreement, and (b) will not create or permit any mortgage, lien, charge or encumbrance on the Leased Facilities or any part thereof.

#### **SECTION 6.7     Assignment, etc. of Leasehold Interest**

The Board may assign its rights under this Lease Agreement or mortgage its leasehold interest in the Leased Facilities, or sublease the Leased Facilities or any part thereof, subject to the following limitations:

(a)     The Board shall continue to be primarily liable for the performance and observance of the agreements and covenants to be performed and observed by it under this Lease Agreement, and no such assignment, mortgage or sublease shall in any way diminish or abate the obligations of the Board hereunder.

(b)     No such assignment, mortgage or sublease shall permit or result in the use of the Leased Facilities for any purpose that would not be permitted for facilities financed under the Enabling Law.

(c)     Within 30 days after the delivery of any such assignment, mortgage or sublease, the Board shall deliver a copy thereof to the County and to the Trustee.

#### **SECTION 6.8     The Board's Personal Property and Fixtures**

(a)     The Board may, at its own expense, install at the Leased Facilities any personal property or fixtures which, in the Board's judgment, are necessary or desirable for the conduct of the business carried on by the Board at the Leased Facilities. Any such personal property or fixtures which are installed at the Board's expense and which do not constitute a part of the personal property and fixtures subject to this Lease Agreement shall be and remain the property of the Board and may be removed by the Board at any time while no Lease Default exists; provided, that any damage to the Leased Facilities occasioned by such removal shall be repaired by the Board at its own expense.

(b)     If any personal property or fixtures described in this Section are leased by the Board or the Board shall have granted a security interest in such property in connection with the acquisition thereof by the Board, then the lessor of such property or the party holding a security interest therein, as the case may be, may remove such property from the Leased Facilities even though a Lease Default shall then exist or this Lease Agreement shall have been terminated following a Lease Default hereunder; provided, that the foregoing permission to remove shall be subject to the agreement by such lessor or secured party to repair at its own expense any damage to the Leased Facilities occasioned by such removal.

## **SECTION 6.9 Insurance**

(a) The County shall not be required to maintain any insurance with respect to damage or destruction of the Leased Facilities. The Board may carry such insurance as it deems necessary or appropriate.

(b) The Board will at all times (whether or not all Indebtedness is Fully Paid) maintain insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Leased Facilities or in any way related to the condition or operation of the Leased Facilities, in the minimum amounts satisfactory to the County. Such insurance shall insure the County, as well as the Board, against such liability.

(c) All insurance required by Section 6.9(b) shall be effected with responsible insurance carriers. All policies or other contracts evidencing such insurance or a certificate of the respective insurers attesting the fact that such insurance is in force and effect, shall be deposited with the County. Prior to the expiration of such insurance, the Board shall furnish to the County evidence that such insurance has been renewed or replaced. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for the benefit of the County for at least 10 days after written notice to the County of cancellation.

## **SECTION 6.10 Damage and Destruction**

If the Leased Facilities are damaged or destroyed by fire or other casualty, the County shall not be required to repair or replace the Leased Facilities damaged or destroyed. The Board may, if it so chooses, repair or replace such Leased Facilities at its own expense. At the request of the Board, the County will enter into contracts or purchase orders for the repair or replacement of the Leased Facilities, provided that (a) the Board shall pay all costs of such repair or replacement with its own funds and (b) the County's liability under any such contract or purchase order shall be limited as provided in Section 10.1. Any property acquired by the County in connection with such repair or replacement shall become a part of the Leased Facilities subject to this Lease Agreement.

## **SECTION 6.11 Condemnation**

(a) If title to, or the use of, the Leased Facilities or any part thereof shall be taken by the exercise of the power of eminent domain, the entire proceeds of any related award shall be paid to the Board. The County shall not be required to replace the property so taken. The Board may, if it so chooses, replace such property at its own expense. At the request of the Board, the County will enter into contracts or purchase orders for replacement of the Leased Facilities so taken, provided that (1) the Board shall pay all costs of such replacement with its own funds and (2) the County's liability under any such contract or purchase order shall be limited as provided in Section 10.1. Any property acquired by the County in connection with such replacement shall become a part of the Leased Facilities subject to this Lease Agreement.

(b) The County shall cooperate in good faith with the Board in the conduct of any condemnation proceeding with respect to the Leased Facilities and will, to the extent it may lawfully do so, permit the Board to appear in such proceeding in the name and on behalf of the County. The County will not settle, or consent to the settlement of, any condemnation proceeding without the prior written consent of the Board.



## **ARTICLE 7**

### **Representations and Covenants**

#### **SECTION 7.1 General Representations**

The Board makes the following representations and warranties as the basis for the undertakings on its part herein contained:

- (a) It is duly organized as an agency and instrumentality of the State of Alabama.
- (b) It has the power to consummate the transactions contemplated by the Warrant Documents to which it is a party.
- (c) It has duly authorized the execution and delivery of the Warrant Documents to which it is a party and the consummation of the transactions contemplated therein.
- (d) It has obtained all consents, approvals, authorizations and orders of governmental authorities that are required to be obtained by it as a condition to the execution and delivery of the Warrant Documents to which it is a party.
- (e) The execution and delivery by it of the Warrant Documents to which it is a party and the consummation by it of the transactions contemplated therein will not (1) conflict with, be in violation of, or constitute (upon notice or lapse of time or both) a default under its charter or bylaws, or any agreement, instrument, order or judgment to which it is a party or is subject, or (2) result in or require the creation or imposition of any lien of any nature upon or with respect to any of its properties now owned or hereafter acquired, except as contemplated by the Warrant Documents.
- (f) The Warrant Documents to which it is a party constitute legal, valid and binding obligations and are enforceable against it in accordance with the terms of such instruments, except as enforcement thereof may be limited by (1) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights and (2) general principles of equity, including the exercise of judicial discretion in appropriate cases.

#### **SECTION 7.2 Eligibility of Leased Facilities for Financing**

The Board represents and warrants that it intends to operate the Leased Facilities as public school facilities for students in the County.

#### **SECTION 7.3 Advances by County or Trustee**

If the Board shall fail to perform any of its covenants in this Lease Agreement, the County or the Trustee may, at any time and from time to time, after written notice to the Board if no Lease Default exists, make advances to effect performance of any such covenant on behalf of the Board. Any money so advanced by the County or the Trustee, together with interest at the Post-Default Rate, shall be repaid upon demand.



#### **SECTION 7.4 Indemnity of County and Trustee**

(a) To the extent permitted by law, the Board agrees to indemnify the County and the Trustee for, and hold each of them harmless against, any loss, liability or expense (including reasonable attorneys' fees) incurred without bad faith or willful misconduct on their part, arising out of or in connection with the issuance of the Warrants, the acceptance of their duties and responsibilities under the Warrant Documents, or their performance or observance of any agreement or covenant on their part to be observed or performed under the Warrant Documents, including without limitation (1) the acquisition or construction of, or other work on, the Leased Facilities, (2) any injury to, or the death of, any person or any damage to property at the Leased Facilities, or in any manner growing out of, or connected with, the use, nonuse, condition or occupation of the Leased Facilities or any part thereof, (3) any damage, loss or destruction of the Leased Facilities, (4) violation or breach by the Board of any contract, agreement or restriction affecting the Leased Facilities or the use thereof or of any law, ordinance or regulation affecting the Leased Facilities or any part thereof or the ownership, occupancy or use thereof, (5) the offer and sale of the Warrants or a subsequent sale or distribution of any of the Warrants, (6) the exercise, or failure to exercise, any right, privilege or power of the County or the Trustee under the Warrant Documents and (7) the administration of the trust established by the Indenture.

(b) The covenant of indemnity by the Board contained in this Section shall survive the termination of this Lease Agreement.

#### **SECTION 7.5 Compliance with Tax Certificate and Agreement**

The County and the Board will comply with the covenants and agreements on their part contained in the Tax Certificate and Agreement.

### **ARTICLE 8**

#### **Remedies**

##### **SECTION 8.1 Events of Default**

Any one or more of the following shall constitute an event of default (a "Lease Default") under this Lease Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any Basic Rental Payment when such Basic Rental Payment becomes due and payable; or

(b) default in the payment of any Additional Rental Payment with respect to the Purchase Price of Tendered Warrants when such Additional Rental Payment becomes due and payable; or

(c) default in the performance, or breach, of any covenant or warranty of the Board in this Lease Agreement (other than a covenant or warranty, a default in the performance or breach of which is elsewhere in this Section specifically dealt with), and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Board and the Bank by the County or by the Trustee a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder; or

(d) the occurrence of an event of default, as therein defined, under the Indenture, and the expiration of the applicable grace period, if any, specified therein.

## **SECTION 8.2 Remedies on Default**

If a Lease Default occurs and is continuing, the County may exercise any of the following remedies:

(a) declare all installments of Basic Rental Payments for the remainder of the term of this Lease Agreement to be immediately due and payable in an amount not to exceed the principal amount of all Outstanding Warrants, plus the redemption premium (if any) payable with respect thereto, plus the interest accrued thereon to the date of such declaration;

(b) reenter the Leased Facilities, without terminating this Lease Agreement, and, upon 10 days' prior written notice to the Board, relet the Leased Facilities or any part thereof for the account of the Board, for such term (including a term extending beyond the term of this Lease Agreement) and at such rentals and upon such other terms and conditions, including the right to make alterations to the Leased Facilities or any part thereof, as the County may deem advisable, and such reentry and reletting of the Leased Facilities shall not be construed as an election to terminate this Lease Agreement nor relieve the Board of its obligations to make payments required by this Lease Agreement and to perform and observe any of its other agreements and covenants under this Lease Agreement, all of which shall survive such reentry and reletting, and the Board shall continue to make all payments required by this Lease Agreement until the end of the term of this Lease Agreement, less the net proceeds, if any, of any reletting of the Leased Facilities after deducting all of the County's expenses in connection with such reletting, including, without limitation, all repossession costs, brokers' commissions, attorneys' fees, alteration costs and expenses of preparation for reletting;

(c) terminate this Lease Agreement, exclude the Board from possession of the Leased Facilities and, if the County elects so to do, lease the same for the account of the County, holding the Board liable for all payments due under this Lease Agreement up to the date of such termination; and

(d) take whatever legal proceedings may appear necessary or desirable to collect the payments under this Lease Agreement then due, whether by declaration or otherwise, or to enforce any obligation or covenant or agreement of the Board under this Lease Agreement or by law.

## **SECTION 8.3 No Remedy Exclusive**

No remedy herein conferred upon or reserved to the County, the Bank or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient.

#### **SECTION 8.4 Agreement to Pay Attorneys' Fees and Expenses**

If the Board should default under any of the provisions of this Lease Agreement and the County or the Trustee should employ attorneys or incur other expenses for the collection of payments due under this Lease Agreement or the enforcement of performance or observance of any agreement or covenant on the part of the Board herein contained, the Board will on demand therefor pay to the County or the Trustee (as the case may be) the reasonable fee of such attorneys and such other expenses so incurred.

#### **SECTION 8.5 No Additional Waiver Implied by One Waiver**

In the event any agreement contained in this Lease Agreement 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 8.6 Remedies Subject to Applicable Law**

All rights, remedies and powers provided by this Article may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Lease Agreement invalid or unenforceable.

### **ARTICLE 9**

#### **Options**

##### **SECTION 9.1 Option to Terminate**

If no Lease Default exists, the Board shall have the option to cancel or terminate this Lease Agreement at any time after the Indebtedness has been Fully Paid, by giving the County notice in writing of such termination. Such termination shall become effective 10 days after such notice is given.

##### **SECTION 9.2 Option to Purchase Leased Facilities**

If no Lease Default exists, the Board shall have the option to purchase the Leased Facilities for a Purchase Price of \$1.00 after the Indebtedness has been Fully Paid. Such option may be exercised by the Board prior to the termination of this Lease Agreement upon written notice to the County. Such option shall be deemed automatically exercised on the date of termination of this Lease Agreement unless the Board notifies the County in writing that it does not intend to exercise such option. The closing for such purchase shall take place on (a) a Business Day designated by the Board that is not less than 7 days nor more than 21 days from the date of such notice, or the date of termination of this Lease Agreement, as the case may be, or (b) such other date as shall be mutually acceptable to the County and the Board.

##### **SECTION 9.3 Disposition of Portions of Leased Facilities While Warrants are Outstanding**

(a) If no Lease Default exists, the Board shall have the right, from time to time, in the name and on behalf of the County, without any release from or consent by the County or the Trustee, to sell or otherwise dispose of any portion of the Leased Facilities, whether or not any Warrants are Outstanding.



(b) No disposition effected pursuant to this Section shall result in any reduction or abatement of Basic Rental Payments; provided, however, that if any such disposition will effectively result in the disposition of all remaining portions of the Leased Facilities, then (i) prior to or simultaneously with such disposition provisions must be made for the payment of all Outstanding Warrants in accordance with the terms of Article 14 of the Indenture, and (ii) the Board shall take all action necessary for the termination of this Lease Agreement as of the date of such disposition.

(c) The County will cooperate with the Board in good faith in the exercise of the rights and privileges granted by this Section and shall, from time to time, execute a written instrument to confirm any action taken by the Board under this Section, upon receipt by the County of (i) a certificate or certificates signed by an Authorized Board Representative requesting the same and expressing any required opinions and stating that such action was duly taken in conformity with this Section and (ii) an Opinion of Counsel that such action was duly taken by the Board in conformity with such provisions and that execution of such written instrument is appropriate to confirm such action under this Section.

#### **SECTION 9.4 Conveyance on Exercise of Option to Purchase**

Upon the exercise of any option to purchase granted herein, the County will deliver to the Board documents conveying to the Board the property with respect to which such option was exercised, as such property then exists, subject to the following: (a) all easements or other rights, if any, required to be reserved by the County under the terms and provisions of the option being exercised by the Board; (b) those liens and encumbrances, if any, to which title to said property was subject when conveyed to the County; (c) those liens and encumbrances created by the Board or to the creation or suffering of which the Board consented; and (d) those liens and encumbrances resulting from the failure of the Board to perform or observe any of the agreements or covenants on its part contained in this Lease Agreement.

### **ARTICLE 10**

#### **Miscellaneous**

#### **SECTION 10.1 County's Liabilities Limited**

(a) The covenants and agreements contained in this Lease Agreement and in any contract, purchase order or other agreement entered into pursuant to this Lease Agreement shall never constitute or give rise to a personal or pecuniary liability or charge against the general credit of the County, and in the event of a breach of any such covenant or agreement, no personal or pecuniary liability or charge payable directly or indirectly from the general assets or revenues of the County shall arise therefrom. Nothing contained in this Section, however, shall relieve the County from the observance and performance of the covenants and agreements on its part contained herein.

(b) No recourse under or upon any covenant or agreement of this Lease Agreement or of any contract or other agreement entered into pursuant to this Lease Agreement shall be had against any past, present or future incorporator, officer or member of the governing body of the County, or of any successor, either directly or through the County, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Lease Agreement is solely a corporate obligation, and that no personal liability whatever shall attach to, or is or shall be incurred by, any officer or member of the governing body of the County or any successor, or any of them, under or by reason of the covenants or agreements contained in this Lease Agreement.

## **SECTION 10.2 Notices**

(a) Any request, demand, authorization, direction, notice, consent, or other document provided or permitted by this Lease Agreement to be made upon, given or furnished to, or filed with, the County, the Board, the Trustee or the Bank must (except as otherwise expressly provided in this Lease Agreement) be in writing and be delivered by one of the following methods: (1) by personal delivery at the hand delivery address specified pursuant to Section 16.1 of the Indenture, (2) by first-class, registered or certified mail, postage prepaid, addressed as specified pursuant to Section 16.1 of the Indenture, or (3) if facsimile transmission facilities for such party are identified in Section 16.1 of the Indenture or pursuant to a separate notice from such party, sent by facsimile transmission to the number specified in Section 16.1 of the Indenture or in such notice. Any of such parties may change the address for receiving any such notice or other document by giving notice of the change to the other parties named in this Section.

(b) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, partner or other legal representative of the party) at the address or number specified pursuant to this Section, or, if sent by mail, 3 days after such notice or document is deposited in the United States mail, addressed as provided above.

## **SECTION 10.3 Successors and Assigns**


All covenants and agreements in this Lease Agreement by the County or the Board shall bind their respective successors and assigns, whether so expressed or not.

## **SECTION 10.4 Benefits of Lease Agreement**

Nothing in this Lease Agreement, express or implied, shall give to any person, other than the parties hereto and their successors hereunder, the Trustee, the Holders of the Warrants and the Bank, any benefit or any legal or equitable right, remedy or claim under this Lease Agreement.


IN WITNESS WHEREOF, the County and the Board have caused this instrument to be duly executed and their respective corporate seals to be hereunto affixed and attested.

**SHELBY COUNTY**


By:   
County Commission Chairman

[S E A L]

Attest:

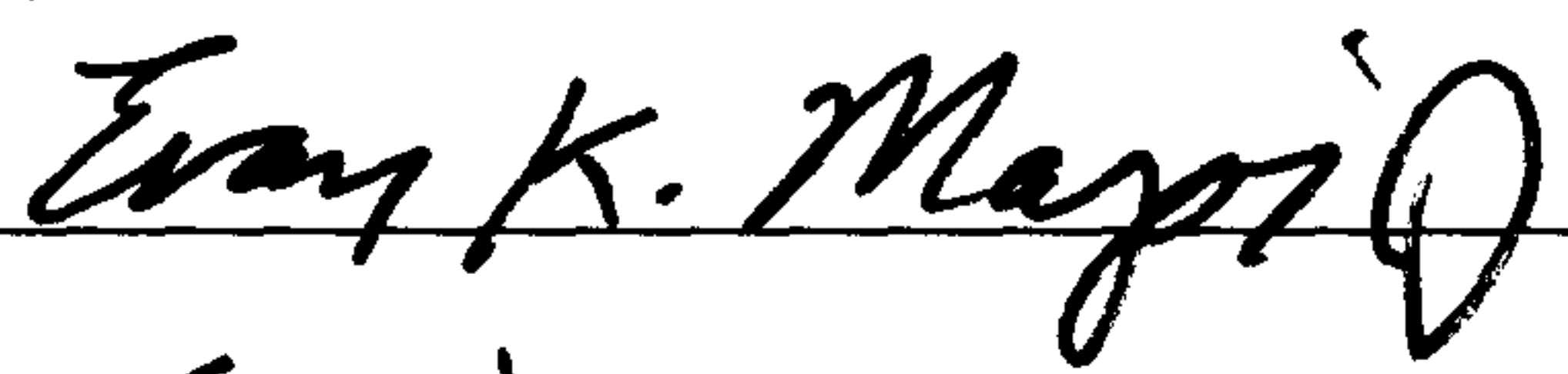
  
Its: Administrative Assistant to  
County Manager

**COUNTY BOARD OF EDUCATION OF SHELBY COUNTY**

By:   
Its: President

[S E A L]

Attest:

  
Its: Secretary

This instrument was prepared by:

Joseph E. Smith  
Maynard, Cooper & Gale, P.C.  
1901 Sixth Avenue North  
Suite 2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2618  
(205) 254-1000



STATE OF ALABAMA

SHELBY COUNTY

I, Joseph E. Smith, a Notary Public in and for said County in said State, hereby certify that Larry Dillard, whose name as Chairman of the County Commission of Shelby County, a political subdivision of the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said political subdivision.

Given under my hand this the 9<sup>th</sup> day of November, 2004.

Joseph E. Smith  
Notary Public

[NOTARIAL SEAL]

My commission expires: 8-22-2007

STATE OF ALABAMA

SHELBY COUNTY

I, Joseph E. Smith, a Notary Public in and for said County in said State, hereby certify that Lee Doebler, whose name as Chairman of the County Board of Education of Shelby County, an agency and instrumentality of the State of Alabama, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said agency and instrumentality.

Given under my hand this the 9<sup>th</sup> day of November, 2004.

Joseph E. Smith  
Notary Public

[NOTARIAL SEAL]

My commission expires: 8-22-2007

## EXHIBIT A

### Description of Leased Facilities

The Leased Facilities subject to this Lease Agreement include the following components:

1. **Real Property.** The following real property located in Shelby County, Alabama:

#### Shelby County High School/Elvin Hill Elementary School

Begin at the northwest corner of the NE ¼ of SE ¼, Section 25, Township 21 South, Range 1 West, thence south 89°03'30" west along the north boundaries of the NW ¼ of SE ¼ and NE ¼ of SW ¼ of the said Section (being the south boundary of the school property), a distance of 2205.43 feet to point on the east boundary of Washington Street; thence turn an angle of 100°18' to the left and go along the said east boundary of Washington Street, a distance of 520.16 feet to a point; thence turn an angle of 79°42' to the left and run north 89°03'30" east parallel to the north boundaries of the NE ¼ of SW ¼ and NW ¼ of SE ¼, Section 25, Township 21 South, Range 1 West, a distance of 2106.10 feet to a point on the east boundary of the JBL, Inc. property; thence turn an angle of 89°17'30" to the left and run north 0°14' west along the said east boundary of the JBL, Inc. property, a distance of 511.82 feet to the point of beginning; Said property is lying in the City of Columbiana, Alabama, and in the NW ¼ of SE ¼ and NE ¼ of SW ¼, Section 25, Township 21 South, Range 1 West.

Note: Shelby County High School and Elvin Hill Elementary School are situated on the same property.

#### Columbiana Middle School

Commence at the NE corner of the SE ¼ of SW ¼ of Section 23, Township 21 South, Range 1 West; thence run South along East line of said Quarter Quarter Section a distance of 489.88 feet; thence turn an angle of 55°35' to the right and run a distance of 242.28 feet; thence turn an angle of 78°00' to the left and run a distance of 160.00 feet to a point on the NW right of way line of the Southern Railroad; thence turn an angle of 78°00' to the right and run along said right of way a distance of 232.96 feet to its intersection with the NE right of way of County Road known as the Joiner Town Road; thence turn an angle of 79°26' to the right and run along said Highway right of way a distance of 417.00 feet; thence turn an angle of 11°48' to the left and run a distance of 240.60 feet; thence turn an angle of 4°32' to the left and run along said right of way a distance of 220.00 feet; thence turn an angle of 79°36' to the right and run a distance of 383.59 feet to an iron pin, being the SW corner of the Lizzie Caddle lot; thence turn an angle of 110°58½' to the right and run a distance of 200.00 feet; thence turn an angle of 90°00' to the left and run a distance of 12.60 feet to the North line of the SE ¼ of the SW ¼; thence turn an angle of 90°00' to the right and run along the North line of said Quarter Quarter Section a distance of 708.82 feet to the point of beginning, situated in the SE ¼ of the SW ¼ of Section 23, Township 21 South, Range 1 West, Shelby County, Alabama.

2. **Buildings and Structures.** All the buildings and structures on the real property described above.

## **EXHIBIT B**

### **Permitted Encumbrances**

#### Shelby County High School/Elvin Hill Elementary School

Easement to City of Columbiana recorded in Deed Volume 263, page 563, in the Probate Office of Shelby County, Alabama.

Note: Shelby County High School and Elvin Hill Elementary School are situated on the same property.

#### Columbiana Middle School

Right of Way granted to Alabama Power Company by instrument recorded in Deed Book 219, page 607 and Instrument 1994/17623, in the Probate Office of Shelby County, Alabama.

LESS AND EXCEPT any part of subject property lying within a railroad right of way.

LESS AND EXCEPT any part of subject property lying within a public road right of way.

Coal, oil, gas and other mineral interests in, to or under the land herein described are not insured.



**EXHIBIT C**

**Requisition**

To: Regions Bank, as trustee under  
the Indenture referred to below

No. \_\_\_\_\_

Re: \$21,295,000 Limited Obligation School Warrants, Series 2004, issued by Shelby County pursuant  
to a Trust Indenture dated November 1, 2004 (the "Indenture")

Capitalized terms not otherwise defined herein shall have the meanings assigned in the Indenture.

**Request for Payment by the Board**

The Board hereby requests payment from the Costs of Issuance Fund of

\$ \_\_\_\_\_

to

Name of payee: \_\_\_\_\_

Address of payee: \_\_\_\_\_

\_\_\_\_\_

The Board hereby certifies that: (a) such payment is for Costs of Issuance within the meaning of the Indenture, (b) no Lease Default exists under the Lease Agreement and no event has occurred and is continuing which, with notice or lapse of time or both, would constitute such a Lease Default, and (c) such payment will not cause or result in the violation of any covenant contained in the Tax Certificate and Agreement.

Dated: \_\_\_\_\_.

**COUNTY BOARD OF EDUCATION OF SHELBY  
COUNTY**

By \_\_\_\_\_

Authorized Board Representative