

PPP AGREEMENT FOR W.G. PEARSON CENTER RENOVATION

This PUBLIC PRIVATE PARTNERSHIP AGREEMENT FOR W.G. PEARSON CENTER RENOVATION ("Agreement") is entered into this 29 day of January, 2018 (the "Effective Date"), by and among DURHAM COUNTY, NORTH CAROLINA, a political subdivision of the State of North Carolina (the "County"), SELF-HELP VENTURES FUND, a North Carolina nonprofit corporation ("Self-Help"), and STUDENT U, a North Carolina nonprofit corporation ("Student U").

WITNESSETH:

WHEREAS, Student U is a Durham-based not-for-profit with a mission of empowering students in the Durham Public Schools to own their education by developing the academic skills and personal well-being necessary to succeed in college and beyond;

WHEREAS, Student U currently operates year-round comprehensive programming for over four hundred Durham students and their families, and intends to expand this programming to serve hundreds more in the years ahead;

WHEREAS, Student U partners with the Durham Public Schools, the County, and other community entities to work towards fulfilling a vision of a Durham where all students succeed;

WHEREAS, Student U intends to make the W.G. Pearson Center its long-term home, honoring the building's historic and cultural importance in the community, in order to grow its program and fulfill its mission, as described in the memorandum attached hereto as Exhibit A;

WHEREAS, the Student U desires to redevelop the historic W.G. Pearson Center building and site, located at 600 East Umstead Street, Durham, North Carolina, and two adjacent vacant lots, as office and student programming space for Student U (the "Project");

WHEREAS, the Project includes the renovation of the historic W.G. Pearson Center building and related site improvements;

WHEREAS, Self-Help is a not-for-profit operating to support its parent organization's mission of creating and protecting ownership and economic opportunity for all by providing responsible financial services, lending to small businesses and nonprofits, developing real estate and promoting fair financial practices;

WHEREAS, Self-Help was founded in Durham, remains headquartered here, and seeks to support community development in partnership with the public, non-profit, and private sectors;

WHEREAS, Self-Help seeks to support the work of Durham Public Schools, Durham County, and Student U by providing real estate development services;

WHEREAS, Self-Help has an organization-wide interest in supporting public education and fostering community revitalization, and has determined that the Project will further both objectives;

WHEREAS, the County is authorized to enter into this Public-Private Project Agreement pursuant to North Carolina Session Law 2005-172, Senate Bill 435;

WHEREAS, the Board of Commissioners of Durham County has determined that the County will significantly benefit from the County's participation in the development of the Project; and such significant benefits include, but are not limited to public educational opportunities and support described above;

WHEREAS, the County is agreeable to sharing in the costs in support of the Project in consideration of Self-Help and Student U's commitments contained in this Agreement;

WHEREAS, it is anticipated that financing for the Project will be provided through a combination of sources, including without limitation funds derived from tax credit equity investors, Self-Help equity and/or loans, Student U equity and/or loans, and funds provided by the County pursuant to this Agreement;

WHEREAS, the County is partnering with Self-Help and Student U in this public-private project and is committed to paying a share of the cost of the development of the Project in exchange for Student U's commitment herein to continue providing students in Durham Public Schools with educational programming; and

WHEREAS, the parties to this Agreement believe that every student in Durham has the ability to succeed if given the opportunity and proper support, and that Durham's future depends on helping its children reach their full potential;

WHEREAS, the parties intend for this Agreement to govern their relationship, and to set forth the respective roles and obligations of the parties with respect to the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements stated herein, the parties do agree as follows:

AGREEMENT

1. **Term and Duration.** The duration of this Agreement shall be for twenty (20) years ("Initial Term"); however, the parties are not precluded from entering into subsequent agreements that may extend the original duration period. . In no event will the County's total cost sharing amount increase. County shall not be responsible for any costs overruns and shall not be responsible for additional costs sharing funds to meet any costs overruns.

2. **Development of the Project: Self-Help and Student U's Requirements and Obligations.**

a. **Formation of the Project Owner.** Self-Help is the sole shareholder of Self-Help Historic Properties, Inc. ("SHHP"), a North Carolina corporation formed for the purpose of facilitating tax credit financed historic renovations such as the Project. SHHP will form a single purpose limited liability company (the "Owner") to own, renovate and lease the Project.

b. **Acquisition of Project Site.** On June 23, 2016, Durham Public Schools Board of Education ("DPS") received Student U's bid to purchase the W.G. Pearson Center site for a price of One Million Dollars (\$1,000,000), and the parties anticipate that such bid will be accepted by DPS following the County's election not to exercise its rights to purchase the site, which election occurred on August 22, 2016. Upon agreement on terms and conditions acceptable to DPS, Student U, and Self-Help, Owner or Self-Help will acquire the W.G. Pearson Center site for the purposes of the Project. If Self-Help provides an equity contribution or loan to Owner for the purposes of such site acquisition or any related predevelopment costs, Self-Help shall be reimbursed for all such costs plus interest at Tax Credit Closing (hereinafter defined).

c. Plans and Specifications for the Project. Self-Help or Owner will engage architects, engineers, and other third-party professionals as necessary to prepare plans and specifications necessary for the design, development and construction of the Project (the "Construction Plans"). The Construction Plans and all revisions and modifications thereto shall be certified by design professionals duly registered under the laws of the State of North Carolina. The Construction Plans must comply with all applicable laws and regulations.

d. Construction of Project. Owner will enter into a contract (the "GC Contract") with a general contractor (the "Contractor") for the construction of the Project pursuant to the Construction Plans. Self-Help and the Contractor will use commercially reasonable, best efforts to hire, in connection with the development of the Project, (i) Durham residents and companies located in Durham and (ii) minority- and women-owned businesses, consistent with the County's policies for such hiring then in effect and will establish a system for monitoring and enhancing such local and M/WBE participation and jobs for County residents, including, without limitation, positing local job openings for this Project with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham County Department of Social Services throughout the term of this Agreement; provided that the foregoing requirement does not limit Self-Help and Student U's ability to advertise and/or otherwise post Project job openings with other organizations or media outlets. The County is not responsible for any Project cost overruns unless additional funding is expressly agreed upon.

e. Development Fee. Self-Help will receive from Owner a reasonable and customary developer fee for serving as the developer and performing development services for Owner. The developer fee will be a line item in the Project budget. The parties acknowledge that the timing and amounts of payments of the developer fee will be set forth in the development agreement based upon negotiations with the Tax Credit Investors (hereinafter defined).

f. Reporting. During construction of the Project, Self-Help will deliver to the County quarterly reports detailing the progress of construction.

3. Development of the Project: County's Requirements and Obligations.

a. County Cost Share. The County will pay to Student U, for the redevelopment of the Project, a share of the costs of the Project in an amount not to exceed Four Million and Two-Hundred and Fifty Thousand Dollars (\$4,250,000.00) (the "Cost Share"). The County's Cost Share shall be used to pay for a portion of the hard and soft costs of construction, including but not limited to site work, building shell renovations, windows, systems such as plumbing, mechanical and electrical, painting, building finishes, and lighting ("Construction Costs"), but excluding property acquisition costs. Self-Help shall provide updated projections of Project costs and schedules for Project redevelopment as such are available. The County shall be provided an opportunity to review the cost projections for the purposes of confirming that the Cost Share will be allocated to Construction Costs prior to the issuance of a notice to proceed to the Contractor. The County's payments of its Cost Share will be disbursed to Student U within ninety (90) days of each Payment Milestone described in Exhibit B attached hereto and incorporated herein by reference (each a "Disbursement Date"), in amounts set forth on Exhibit B (each a "Cost Share Payment"); provided, the GC Contract and any additional invoices or other acceptable proof of payments demonstrate that total Construction Costs incurred will exceed the amount of the Cost Share Payment.

b. Cost Certification. Within 120 days of completion of the Project or such longer time as may be required for third party review, Self-Help and Student U shall endeavor to deliver to the County a certification of actual Construction Costs of the Project (the "Cost Certification").

4. **Ownership and Tax Credit Investment Structure for the Project.**

a. **Managers/Managing Members.** The Owner is a North Carolina limited liability company authorized to transact business in the State of North Carolina. The manager of the Owner will be SHHP.

b. **Tax Credit Investors.** The Project investors are anticipated to be one or more state and/or federal Historic Tax Credit investors (collectively, the "HTC Investor") and a New Markets Tax Credit investor (the "NMTC Investor") (with the HTC Investor, collectively, the "Tax Credit Investors"). The NMTC Investor will contribute equity to an investment fund (the "Investment Fund"), which Investment Fund shall make one or more Qualified Equity Investments to one or more Community Development Entities ("CDEs"). Such CDEs shall make one or more Qualified Low Income Community Investment loans to the Owner for the Project. Following the end of the tax credit compliance period for the Project, the NMTC Investor will have the option to either put its membership interest in the CDEs to Self-Help or Student U for a nominal sum, or Self-Help or Student U may call the Tax Credit Investors' interest in the CDEs for the fair market value of such interest if the NMTC Investor does not exercise its put right described above. The HTC Investor may contribute equity to the master tenant of the Owner (the "Master Tenant"), which Master Tenant shall in turn make one or more loans to the Investment Fund. The parties intend for SHHP or its affiliates to have the right to purchase the membership interest of the HTC Investor in the Master Tenant for fair market value following the compliance period.

c. **Tax Credit Closing.** Self-Help, Student U, and the Tax Credit Investors shall endeavor to close tax credit financing for the Project within one (1) year of the Effective Date (the "Tax Credit Closing"), but may continue to pursue such financing for as many as three (3) years from the Effective Date.

d. **Private Sources of Funding.**

(i) Owner anticipates that the NMTC Investor will make an equity contribution to the Project through the Investment Fund.

(ii) Owner anticipates that the HTC Investor will make a capital contribution to the Project through the Master Tenant.

(iii) Self-Help or Student U shall make a loan to the Project through the Investment Fund (the "Leverage Loan").

(iv) Self-Help and/or Student U may contribute additional equity to the Project as necessary.

e. **Public Sources of Funding.** The County will allocate a contribution to Student U for the Project as described in Section 3(a) above, which contribution Student U and Self-Help anticipate using as a source of funds for a loan to the Investment Fund in order to maximize the amount of tax credits available to the Project.

f. **Termination of Tax Credit Financing.** Nothing in this Agreement shall obligate Student U to pursue or obtain tax credit financing. At any time Student U may elect to purchase the W.G. Pearson Center from the Durham Public Schools, Owner or Self-Help and elect to suspend efforts to obtain tax credit financing. From and after the date Student U gives the County notice of its election to suspend efforts to acquire tax credit financing and to acquire title to the W.G. Pearson Center, Self-Help will cease to have any rights or obligations under this Agreement and Student U shall assume the rights and obligations of Self-Help arising under Section 2 of this Agreement.

5. **Default and Remedies.**

a. **Events of Default of Self-Help.** Any of the following shall be a default of Self-Help under this Agreement, if such default is not cured within the time provided in Section 11 (a “Self-Help Default”):

(i) The Cost Certification made by Self-Help is materially false; provided, however, it shall not be an event of default if Self-Help makes any certification under this Agreement based on materially false information it obtains from a third party which Self-Help, acting in good faith, believed to be accurate at the time such certification was made.

b. **Remedies of Self-Help Default.** If such Self-Help Default is not waived by the County and has not been cured by Self-Help within the applicable cure period, then the County shall have the right to require repayment from Self-Help of an amount equal to the amount of the Cost Share actually disbursed, provided, however, such repayment amount shall be reduced by five percent (5%) of the amount of the Cost Share on each yearly anniversary of the first Disbursement Date.

c. **Events of Default of Student U.** Any of the following shall be a default of Student U under this Agreement, if such default is not cured within the time provided in Section 11 (a “Student U Default”):

(i) Student U uses the Project for a purpose that is not in service of a purpose for which the County may levy taxes pursuant to North Carolina General Statutes Chapter 153A or 160A within twenty (20) years of the Effective Date.

(ii) The Cost Certification made by Student U is materially false; provided, however, it shall not be an event of default if Student U make any certification under this Agreement based on materially false information it obtains from a third party which Student U, acting in good faith, believed to be accurate at the time such certification was made.

(iii) Within twenty (20) years of the Effective Date, Student U either (x) conveys the Project to a purchaser who fails to assume the commitment set forth in Section 5(c)(i) above that the Project will be used in service of a purpose for which the County may levy taxes pursuant to North Carolina General Statutes Chapter 153A or 160A for the remainder of the Initial Term; or (y) conveys the Project to the County following the County’s exercise of the right of first refusal described in Section 16 below.

d. **Remedies of Student U Default.** If such Student U Default is not waived by the County and has not been cured by Student U within the applicable cure period, then the County shall have the right to require repayment from Student U of an amount equal to the amount of the Cost Share actually disbursed, provided, however, such repayment amount shall be reduced by five percent (5%) of the amount of the Cost Share on each yearly anniversary of the first Disbursement Date.

e. **Events of Default of the County.** The parties agree that the only obligation of the County under this agreement is to pay to Student U the County’s Cost Share pursuant to the terms of this Agreement. Accordingly, if the County defaults on its obligation to make any County’s Cost Share Payment pursuant to this Agreement, Self-Help and Student U’s sole claim or remedy at law shall be the value of the County’s Cost Share Payment(s) that the County is obligated to pay or termination of this Agreement pursuant to Section 5(f) below.

f. Termination. If Self-Help and Student U fail to fulfill any of their material obligations under the Agreement, then in that event, subject to the notice and cure provisions in this Agreement, the County may, but is not obligated to, terminate this Agreement upon written notice to Self-Help and Student U and make no further reimbursements to Self-Help and Student U. No legal liability on the part of the County for any Cost Share Payment may arise under this Agreement beyond the current fiscal year, until funds for subsequent Cost Share Payments are approved by the County. In the event such subsequent Cost Share Payments are not approved or made when due, beyond any applicable cure period, Self-Help and Student U may terminate this Agreement upon written notice to the County, and no obligations of Self-Help and Student U shall survive.

6. Indemnification. To the maximum extent allowed by law, Self-Help and Student U shall defend, indemnify, and save harmless County from and against all charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of Self-Help and Student U or its contractors, subcontractors, employees, or agents acting on behalf of Self-Help and Student U in the performance of Self-Help and Student U's duties under this Agreement. In the event litigation is instituted against County and such litigation is based on a claim for which Self-Help and Student U would be obligated to indemnify and hold the County harmless pursuant to the above subsection Self-Help and Student U will retain legal counsel reasonably acceptable to County.

a. Definitions. As used in this Section: "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means County and its officers, officials, independent contractors, agents, and employees, excluding Self-Help and Student U.

b. Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the County that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

c. Survival. This section shall remain in force despite termination of this Agreement by the County (whether by expiration of the term or otherwise).

d. Limitations of Self-Help and Student U's Obligation. Self-Help and Student U shall not be required to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

7. Insurance. Self-Help and Student U shall meet the following insurance requirements concerning construction of the Project that is the subject to this Agreement:

a. Condition to Commencement. The work on this Project shall not commence until Self-Help and Student U have verified to the County that all required insurance coverage as described herein has been obtained and verifying certificates of insurance have been approved in writing by the County. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled, reduced in amount or coverage eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the Self-Help and Student U and the County of such alteration or cancellation.

b. Worker's Compensation and Employer's Liability. Self-Help and Student U shall ensure that all contractors and subcontractors with contracts in the amount of at least \$100,000 shall provide and maintain, as applicable during the construction of this Project, worker's compensation insurance, as required by law, as well as employer's liability coverage, with minimum limits of \$2,000,000 or such lower limits as may be agreed to by Self-Help and Student U and the County on a case-by-case basis.

c. Public Liability and Property Damage. Self-Help and Student U shall ensure that all contractors and subcontractors with contracts in the amount of at least \$100,000 shall provide and maintain, as applicable during the construction of this Project, comprehensive general liability insurance, including coverage for premises operations, independent subcontractors, completed operations, products and contractual exposures. Such insurance shall protect Self-Help and Student U's, contractors and subcontractors from claims arising out of any bodily injury, including accidental death, and claims for property damages which may arise from operations under this Agreement. The minimum limits of such insurance shall be \$2,000,000 for each occurrence and \$4,000,000 aggregate, or such lower limits as may be agreed to by Self-Help and Student U and the County on a case-by-case basis.

d. Property Insurance. Self-Help or other owner of the Project shall purchase and maintain property insurance as applicable during the construction of this Project upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of Self-Help and Student U, the County, contractors and subcontractors in the work and shall insure against the perils of fire, vandalism and malicious mischief. If the County is damaged by failure of Self-Help to purchase or maintain such insurance, then Self-Help shall bear all reasonable costs properly attributable thereto.

e. Other Coverage. Self-Help and Student U, their contractors and subcontractors with contracts in the amount of at least \$100,000 shall acquire and maintain such other insurance as may be reasonably required of a prudent developer for similar Projects.

f. Deductible. Any deductible, if applicable to loss covered by insurance provided, is to be borne by Self-Help and Student U or its contractors or subcontractors.

g. Proof of Coverage. Self-Help and Student U shall ensure that it and all contractors and subcontractors with contracts in the amount of at least \$100,000 shall furnish Self-Help and Student U and the County with satisfactory proof of coverage of the insurance required before commencement of work on any part of the Project.

8. Contractors and Lower Tier Subcontractors. Upon written request by the County delivered in accordance with the notice provisions of this Agreement, Self-Help and Student U shall provide to County (i) lien waivers demonstrating that all entities with whom it has contracted to construct all or any proportion of the Project have been paid in full, or (ii) documentation demonstrating that a bona fide dispute over the satisfactory completion of the work to be performed exists and is in the process of being resolved in accordance with applicable law (collectively, the "Required Documentation"). Evidence of bona fide disputes over the satisfactory completion of any work pursuant to any contract or subcontract shall include, but not be limited to, unsatisfied property or payment liens, pending lawsuits or unresolved contract claims made in writing

9. Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act, event, notice, or default after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the county where the Project is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m., Eastern Standard Time.

10. **Force Majeure.** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of the following: labor dispute, including strike and lockout; unavailability of essential materials, riot; epidemic; war, extreme weather events, fire; explosion; accident; delays or default of the other party, then performance of such act shall be excused for the period of the delay, and thereafter the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, a party may take advantage of the preceding sentence only to the extent that the event is not substantially caused by the party to this Agreement who seeks to use said event as an excuse for failure to perform. A party must use its best efforts to perform despite said events and its best efforts to prevent or cure the effects of said event insofar as it prevents performance.

11. **Cure Period.** No default by either party hereto shall result in a termination or limitation of any rights of such party hereunder unless and until the other party shall have notified the defaulting party in writing of said default, and the defaulting party shall have failed to cure said default within thirty (30) days after the receipt of said written notice provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but the defaulting party commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then the other party shall not exercise its remedies or limit the rights of the defaulting party unless such default remains uncured for more than ninety (90) days after the initial delivery of the other party's original default notice.

12. **Compliance with Laws.** In performing their respective obligations under this Agreement, the County, Self-Help and Student U, shall each comply with all federal, state, county and municipal laws, ordinances and regulations.

13. **Reporting.** On each anniversary of the Effective Date Student U shall deliver to the County a report describing Student U's annual growth and performance. Upon approval by the County of the MOU described in Section 14(a) below, Student U's annual reports shall include reporting on the goals described in the MOU.

14. **Community Use.** Upon completion of construction of the Project, Student U and Self-Help intend to fully utilize all available space in the Project for community purposes, including, without limitation, permitting use by Student U, other approved subtenants (as described below in Section 14(a)), and Groups (as defined below and further described in Section 14(b) below). Groups" means non-profit corporations, community associations, local government agencies, and other organizations that (i) conduct activities to benefit residents of the County of Durham; and (ii) plan to carry out activities in the premises that are compatible with ongoing uses of the premises by the Project's owner(s) and tenant(s).

a. Student U shall, within one (1) year of the Effective Date, provide the County with a memorandum of understanding ("MOU") describing (i) potential collaborations for uses of unoccupied portions of the Project by Groups interested in subleasing a portion of the Project at reasonable lease rates, provided, such uses are compatible with ongoing uses of the Premises by Student U; and (ii) short and long-term goals for Student U's increased impact. Upon approval by the County, which approval shall not be unreasonably withheld, the MOU shall be attached hereto as Exhibit C and deemed incorporated herein by reference.

b. Upon completion of the Project, the parties shall permit Groups to make occasional use of certain portions of the Project's premises, subject to the terms and conditions set forth below:

(i) Student U and Self-Help shall make available to Groups portions of Project premises that are reasonably suited for the requested use of Groups, while also considering the reasonable operational needs of ongoing uses of the premises. Factors to consider include, without limitation, whether the use of the premises by Groups would interfere with ongoing programming or activities in the Project, needs to keep some areas of the premises secure, and the wishes of the Groups.

(ii) Student U and Self-Help (or its affiliates) may charge a reasonable fee to Groups for use of any portion of the premises. Such fee shall not exceed the actual costs incurred to allow a Group to use a portion of the premises. Such costs may include but are not limited to, the costs of providing HVAC services, cleaning, hiring a security guard, payment of overtime pay to employees who must be present while a Group uses a portion of the premises, or any other incremental operating expenses incurred as a result of use of the premises by Groups.

(iii) Student U and Self-Help may implement reasonable rules and regulations regarding the use of the Project or its premises by Groups, provided that such rules and regulations are consistent with the requirements of this section and are reasonably designed to maintain the safety and security of Groups, ongoing users of the Project, and the premises.

c. In development of the MOU or other plans for Group access, Student U shall give priority to the My Brother's Keeper initiative administrative space needs, functions and events, as further described in Exhibit A.

15. **EEO Provisions.** During the performance of this Agreement, Self-Help and Student U, agree as follows: Self-Help and Student U shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Self-Help and Student U, shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Self-Help and Student U, shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions;

a. Self-Help and Student U, shall in all solicitations or advertisement for employees placed by or on behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap;

b. Self-Help and Student U, shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding; and

c. In the event of Self-Help and Student U's noncompliance with these EEO provisions, the County may cancel, terminate, or suspend this contract (after complying with the notice and cure provisions of Article III, Section 17), in whole or in part, and the County may declare Self-Help and Student U, ineligible for further County contracts.

16. **Right of First Refusal.** So long as the County is not in default under this Agreement, Student U hereby grants the County a right of first refusal to purchase the Project, for a term commencing on the date Student U actually acquires title to the Project following the seventh anniversary of the Tax Credit Closing, and expiring on the thirtieth (30th) anniversary of the Effective Date ("ROFR Term"). In the event that Student U receives a bona fide offer from a third party to purchase the Project, and Student U intends to pursue such offer, Student U shall notify the County of the terms on which Student U is willing to sell. The County shall have the option for a period of thirty (30) days after receiving written notice to purchase the Project on terms stated in the notice, which shall be substantially similar to the bona fide third party terms. Should the County fail to exercise the option within the option period, Student U shall have the right to sell the Project to the third party on the same terms stated in the notice to the County. Notwithstanding the above, the sale contemplated herein shall be a sale subject to the any master lease of the Project unless the master tenant and its investor members consent to termination of the master lease.

17. **Miscellaneous.**

a. **Notice.** All notices, requests, demands, approvals, or other formal communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given if, and shall not be deemed given unless, dispatched by (1) certified mail, return receipt requested; (2) express delivery service with a delivery receipt; or (3) personal delivery, to the offices of the addressee, at the addresses set forth below.

If to County: Durham County
 200 East Main Street
 2nd Floor, Old Courthouse
 Durham, NC 27701
 Attention: Deputy County Manager

With a copy to:
Durham County Attorney
200 East Main Street
2nd Floor, Old Courthouse
Durham, NC 27701

If to Self-Help: Self-Help Ventures Fund
 301 W. Main Street
 Durham, NC 27701
 Attention: Commercial Real Estate/WG Pearson

With a copy to:
Self-Help Ventures Fund
301 W. Main Street
Durham, NC 27701
Attention: General Counsel

If to Student U: Student U.
 600 East Umstead Street
 Durham, NC 27701
 Attention: Executive Director

With a copy to:
Keith D. Burns, Esq.
Nexen Pruet, PLLC

4141 Parklake Avenue, Suite 200
Raleigh, NC 27612

b. Cooperation and Compliance. The parties hereto agree to cooperate with each other and provide all necessary documentation, certificates and consents and to take all necessary action in order to satisfy the terms and conditions hereof and the applicable laws, regulations and agreements relating thereto.

c. Severability of Provisions. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

d. Resolution of Problems. The County, Student U, and Self-Help will mutually agree upon a method for resolving problems related to financing, approvals, events, processes and deadlines associated with the redevelopment of the Project. The County Manager shall have the authority to address and resolve such issues on behalf of the County.

e. County Manager's Authority. Where this Agreement requires the written approval of the County, the County Manager is authorized to provide that approval, and reference to "County Manager" or "the County" shall include the County Manager or the County Manager's designee. To the extent, if any, the County has the power to suspend or terminate this Agreement or Self-Help and Student U's rights or performance under this Agreement, or make minor modifications to this Agreement in response to Tax Credit Investor requests, that power may be exercised by the County Manager or a Deputy County Manager without action by the Board of County Commissioners.

f. County's Rights; Performance of Government Function. Nothing contained in this Agreement shall be deemed or construed to in any way estop, limit, or impair the County from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions. The rights and obligations of the County hereunder are in addition to, and shall not in any way inhibit or constrict, the County's governmental functions, including but not limited to its regulatory procedures under applicable Planning and Development ordinances. Where the County's or the County Manager's written permission or approval is required by the terms of this Agreement, such permission and approval is separate and apart from any regulatory functions of the County.

g. Modifications. No oral modifications or amendments to this Agreement shall be effective, but this Agreement may be modified or amended by written agreement. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the County unless it is signed by the County Manager or the County Manager's designee.

h. Governing Law. This Agreement and its terms and conditions shall be governed by the laws of the State of North Carolina, without reference to its choice of law or conflict of law principles.

i. Entire Agreement; Counterparts. This Agreement (which shall include the exhibits attached hereto and made a part hereof) constitutes the entire Agreement of Self-Help and Student U and the County and there are no representations, inducements, or other provisions other than those expressed herein. All changes, additions, or deletions of this Agreement must be in writing and signed by both Self-Help and Student U and the County. This Agreement may be executed in counterparts, which, when taken together, shall constitute one and the same Agreement.

j. No Joint Venture Partners. Neither this Agreement nor any agreements, instruments, documents or transactions contemplated hereby, including without limitation, any loan documents, shall in any respect be interpreted, deemed or construed as making the County or an affiliate thereof a partner or joint venturer with Student U, Self-Help, Owner or their affiliates, or as creating a similar relationship or entity.

k. No Consequential Damages. Neither Party shall be responsible for lost profits or other consequential damages that may arise out of a breach of this Agreement.

l. Waiver. A waiver or consent to a breach or default shall not be deemed a waiver or consent to any other breach or default. Failure of either party to complain of any act or to declare the other in default, irrespective of how long since failure to continue, shall not constitute a waiver by such party of its rights.

m. Assignment. Without the County's written consent, which shall not be unreasonably withheld, Self-Help and Student U shall not assign (which includes to delegate) any of its rights or duties that arise out of this Agreement. The County Manager may consent to an assignment without action by the Board of County Commissioners. Unless the County otherwise agrees in writing, Self-Help and Student U and all assignees shall be subject to all of the County's defenses and shall be liable for all of Self-Help and Student U's duties that arise out of this Agreement and all of the County's claims that arise out of this Agreement. It is agreed that the duties of Self-Help and Student U that arise out of this Agreement shall be binding upon its successors and assigns.

n. No Third Party Rights. This Agreement is intended for the benefit of the County and Self-Help and Student U and not for any other person.

o. Authority. Self-Help, Student U and the County each represent to the other that they have the authority to enter into this Agreement, and that entry into this Agreement will not violate any other agreement to which it is a party.

p. Iran Divestment Act Certification. By signing/executing this Agreement the parties certify that as of the date of this Agreement they are not on the Final Divestment List as created by the State Treasurer pursuant to North Carolina General Statute 147-86.58 and they are in compliance with the requirements of the Iran Divestment Act and North Carolina General Statute 147-86.59. None of the parties will utilize, in the performance of this Agreement any contractor or subcontractor that is identified on the Final Divestment List.

q. Audit Rights. County shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to its cost sharing contributions required under this Agreement. Audits shall take place at times and locations mutually agreed upon by the parties. Notwithstanding the foregoing, the parties must make the materials to be audited available within one (1) week of the request for them.

r. Dispute Resolution Procedure. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the parties arising from this Agreement shall be sent to the Durham County Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the County Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or his designee, shall notify the Mediator who will conduct a mediation and notify the parties in writing of the decision within forty five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing services and/or materials. The costs of mediation shall be divided equally between the parties to the dispute.

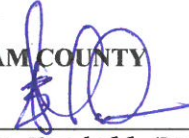
The mediation session shall be private and shall be held in Durham County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

[signatures are on following page]

IN WITNESS WHEREOF, the parties, by their duly authorized signatories, hereby enter into this Agreement effective as of the date first set forth above.

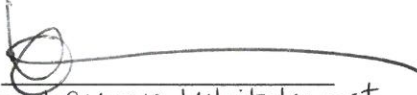
DURHAM COUNTY

By: 
Name: Wendell Davis
Title: County Manager

**SELF-HELP VENTURES
FUND**

By: 
Name: Tucker B. Burt
Title: VP

STUDENT U

By: 
Name: Lauren Whitehurst
Title: Board Chair

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Budget Control Act.

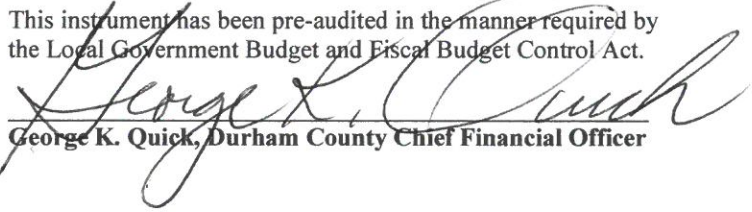

George K. Quick, Durham County Chief Financial Officer

Exhibit A

Memorandum



MEMORANDUM

Date: November 21st, 2016
To: County Manager Davis, Chief of Staff Cummings, and County Commissioners
From: Alexandra Zagbayou, Executive Director of Student U
Dan Levine, Director of Project Management of Self-Help
Subject: Student U's Future at the W.G. Pearson Center

In 2007, not far from where William Gaston Pearson established his legacy, a group of fourteen Durham community members gathered to imagine a new way to empower Durham students, and Student U was created. Ten years later, 100% of Student U students graduate from high school on time. 93% of Student U students enroll in college and 91% persist through college. Each year, Student U students outperform their peers on all standardized tests. Student U students are beating the statistics, overcoming obstacles to achieve greatness. (Please find the latest evaluation data on the last page of this memo.)

Student U is poised to leverage the brilliance of our students and the power of our programming to expand our impact in Durham. By purchasing and thoroughly renovating the W.G. Pearson Center (WGPC), the building that has housed our programming and staff for three years, Student U will enhance and expand current programming and improve educational outcomes for Durham students. Student U will honor William Gaston Pearson, the building's namesake, and preserve this historic building, while creating a better future for our community's children.

Below please find answers to the questions asked to date regarding the renovation, financing, and potential impact of Student U at the WGPC:

Why is the WGPC the best option for Student U?

After almost a year of research, Student U has determined that the WGPC is the ideal location to become Student U's permanent home. Once renovated, WGPC will be configured in a manner that allows for both the effective implementation of current programming and the ability to expand programming in the future. In addition, one critical reason Student U has pursued the WGPC as its permanent home is the building's location within the historic Hayti community. Over the past year, Student U's Executive Director, Alexandra Zagbayou, has met with Durham City, County, and community leaders to discuss the potential future of the Fayetteville Corridor and Student U's potential role in that future. This historic school building, a central landmark on the Fayetteville Corridor, is adjacent to the former Fayette Place apartments and the future stop for the potential Durham-Orange Light Rail. With North Carolina Central University, the Lincoln Community Health Center, the Stanford L. Warren public library, the Whitted School, and the Hayti Heritage Center within blocks, Student U at the WGPC hopes to become a critical, permanent part of the Hayti community.

How will Student U change its operations as a result of this purchase?

Student U is committed to utilizing the WGPC in a manner that both honors its history in the Hayti community and best serves Durham. At the WGPC, Student U will continue to provide its holistic after-school programming, also known as second shift programming, which has led to significant academic gains for 450 Durham students. As a result of the additional space, Student U will be able



to collaborate with the Durham community to expand the reach of its best practices to better serve the citizens of Durham County. Expanded impact is expected to include:

- Directly serving at least 33% more students in the next three years;
- Enhancing leadership development opportunities for students and parents;
- Creating an innovation hub to integrate best practices in to the school system;
- Creating collective impact partnerships with other community non-profits, such as My Brother's Keeper.

Student U is committed to ensuring full and effective utilization of the 52,500 square feet of the WGPC. In the approximately 18 months between the time of the County's investment and construction completion, Student U will further engage directly with members of the historic Hayti community and the larger Durham community to determine the ideal strategy for best utilizing the space. Student U has already begun these conversations with the school district, representatives from Durham County, and community leaders to discuss the long-term vision for the building. Student U continues to welcome the input of the County Commissioners given their understanding of the Durham landscape and their investment in the program. In addition, Student U has had preliminary discussions with community partners such as the YMCA of the Triangle, Habitat for Humanity of Durham, NCCU's School of Education, Duke University's Program in Education, and Book Harvest about the potential of locating staff and programming at the WGPC. Student U remains committed to making the WGPC an affordable space for collective impact, and will therefore invest significantly into this project and the ongoing operating expenses of the building.

Of particular interest are continuing conversations with County staff about the development of the My Brother's Keeper initiative and its potential relationship with Student U and the WGPC. Given the similarities in goals and target population, collaboration between My Brother's Keeper and Student U can be beneficial to both. We expect to work closely with the County and My Brother's Keeper staff to determine how best to utilize WGPC to support this collaboration.

How will Student U measure the impact of its work at the WGPC?

Student U's overall vision is to one day be a part of a Durham community where all students can succeed. Student U measures its impact primarily based on the number of students directly served, high school graduation rates, college enrollment rates, and college graduation rates. In addition, Student U receives quarterly report cards and attendance records for all students and annually, Student U receives students' End of Grade test scores. All data is disaggregated based on race, free or reduced lunch status, and gender and is analyzed in comparison with students with similar demographics in the Durham Public Schools.

As a result of this investment from Durham County, Student U will increase the number of students served by 33% or more in three years, as stated above. In addition, Student U will maintain a high school graduation rate of at least 90%, a college enrollment rate of at least 85%, and a college persistent rate of at least 80%. Each year, dozens of Student U students will graduate from college and, as stated as a critical long-term goal in our logic model, these students will become traditional and non-traditional leaders in Durham, working alongside elected officials and community leaders to support the improved quality of life for Durham citizens. Student U views the impact of our students as community leaders as the most crucial aspect of reaching our vision of a Durham where all students can succeed.

Student U is committed to providing Durham County with annual data reports, including all indicators listed above. In addition, these annual reports will update Durham County on the use of space by



Student U and any and all other community organizations. As Student U's vision for the WGPC evolves, all additional indicators of success will be communicated to the County. Annually, Student U will invite Durham County staff and County Commissioners to conduct a site visit at the WGPC.

How will Student U honor the history of the WGPC and the building's namesake?

As previously discussed, one major reason Student U is securing the WGPC as its permanent home is because of the history of the building and its strategic alignment with Student U's curriculum. Student U's curriculum is focused on three pillars: literacy, identity development, and social justice. Therefore, Student U plans to incorporate the history of the Hayti community, William Gaston Pearson, and the school building into its middle school curriculum. In fact, one of the first curricular decisions made when pursuing the WGPC, is that students will work together with community leaders to create a museum-style exhibit in the front hallway of the WGPC, open to the public, which outlines this significant history. Student U is also eager to utilize space to host programs and events that further honor the community's history and promote a vision for the community's future.

In what stage of the purchase process is Student U and the Durham Public Schools?

Last month Durham Public Schools accepted Student U's offer of \$1,000,000 to acquire the WGPC, and posted notice of that offer in *The Herald-Sun* on October 27, 2016, beginning a 10-day upset bid period. DPS received no other offers during the upset bid period, which ended on November 7, and has now finalized an acquisition contract with Student U.

What entity is responsible for the ongoing operating costs of WGPC?

Upon acquisition, Student U and Self-Help will be fully responsible for all on-going costs related to the maintenance, operation, and future capital expenses of WGPC. As described in Section 3 of the proposed Public Private Partnership Agreement, the County Cost Share will be used to pay for a portion of the hard and soft costs of development and not for acquisition or operations.

What renovations are planned for WGPC?

Self-Help will renovate the WGPC campus to create a comprehensive educational facility for Student U that modernizes the facility and addresses all code deficiencies, as well as makes significant improvements to improve Student U's ability to deliver high quality services and to partner with other community organizations. The WGPC site currently includes the historic 1928 school building, with minor modern additions, and a historic gymnasium constructed in 1957. These structures, including a cafeteria and library, total approximately 52,500 square feet. While these structures are currently usable, millions of dollars of work is required to address code concerns and bring the facility into the 21st century. Specifically, reviews by Student U, Self-Help construction management staff, and contractors have determined that the facility is structurally sound but in need of significant renovations to most major systems, including but not limited to HVAC, electrical, plumbing, and roofing, as well as updates to meet ADA accessibility standards. The proposed renovation will also allow Student U to expand beyond the portion of WGPC that is currently leased from DPS, serving more students in an upgraded and accessible space suited to specific program needs. In addition to improving the existing instructional spaces, gymnasium, and cafeteria, the renovation will create new spaces for Student U programming including arts and dance rooms; computer and technology labs; a multi-purpose auditorium; and office, training and convening spaces for Student U's staff, Board, Learning Specialist and Social Worker.



What are the sources and uses of funds for this overall project?

Self-Help, with extensive input from Student U on program requirements, has carefully developed a preliminary budget of approximately \$10.7 million for the renovation described above based on complete schematic designs as well as multiple iterations of cost estimating by its general contractor. A summary of estimated sources and uses is shown in the chart below.

Sources of Funds		Uses of Funds	
Student U and Self-Help Funds	\$1,424,769	Building Acquisition and	\$6,977,353
Durham County Cost Share	\$4,250,000	Capitalized Reserves	\$834,908
New Markets Tax Credit Equity	\$3,255,000	FF&E	\$75,000
Federal Historic Tax Credit Equity	\$1,199,305	Architecture and Engineering	\$417,000
State Historic Tax Credit Equity	\$603,309	Other Soft Costs	\$155,485
		Financing and Legal Costs	\$602,446
		Developer Fee	\$720,750
		Contingencies	\$949,442
TOTAL SOURCES	\$10,732,384	TOTAL USES	\$10,732,384

The County Cost Share will cover just under 40% of the estimated total development costs. The remaining costs will be funded by an equity contribution from Student U and/or Self-Help, and just over \$5 million in tax credit equity investments, assuming a \$10.5 million allocation of New Markets Tax Credits and Historic Tax Credit qualified rehabilitation expenditures of approximately \$7.5 million. Given the preliminary phase of predevelopment, these figures may change but regardless of the final figures the County Cost Share *will only be used for eligible development costs* and will be supplemented with other funds so that County dollars help leverage additional investment.

What changes have been made to the Public Private Partnership Agreement since the November 7th work session?

Student U and Self-Help have updated the Public Private Partnership Agreement to better reflect and clarify the value of Durham County's participation in this project, and to emphasize the County's interest in the ongoing use of the WGPC to serve the public interest and support Student U's holistic after-school programming and the significant academic gains achieved by the DPS students served by Student U. Section 5 has been modified to extend the duration of the period during which the County may require repayment/clawback of a portion of the County Cost Share in the event of a Student U or Self-Help default on the Agreement from 10 years to 20 years from the first disbursement of County funds. The portion of the County Cost Share repayable in the event of an uncured default will thus decrease by five percent (5%) of the amount of the Cost Share on each anniversary of the first disbursement of funds through year 20. Section 5(c)(iii) has been added to the Agreement describing two additional events of default that would trigger the repayment/clawback requirement. These are a sale of the property to a purchaser who fails to assume the public purpose commitment in Section 5(c)(i) or a conveyance to the County pursuant to its right of first refusal, described below. Section 16 provides the County a right of first refusal to purchase WGPC in the event that the property is offered for sale within 30 years with a commensurate pro-rated repayment of the County Cost Share if this occurs within 20 years.

A new Section 14 has been added to the agreement incorporating measures to support full and effective utilization of the WGPC by non-profits, community associations, local government agencies, and other organizations that conduct activities compatible with Student U's programming that benefits Durham residents. Within one year, Student U will enter into a



memorandum of understanding with the County describing potential collaborations to sublease unoccupied portions of WGPC to such groups at reasonable lease rates, giving priority to My Brother's Keeper. This section also provides for occasional use of WGPC by community groups at rates covering only the additional operating costs incurred as a result of such occasional use.

Finally, recognizing the County's interest in the academic gains achieved by DPS students served by Student U, the revised Public Private Partnership Agreement also includes a new Section 13, incorporating Student U's annual reporting commitment described in this memo.



Student U Impact **2015-2016**

Student Population:

- We currently serve 450 sixth grade students through sophomores in college
- 39% of our students are Black or African-American
- 43% of our students are Hispanic or are of a Latino background
- 16% of our students are Mixed Race
- 90% of our students qualify for free or reduced-price lunch
- 85% of our students will be the first in their families to attend college

College Readiness and Success:

- 100% of Student U's students graduate from high school on-time
- 93% of Student U's graduating high school seniors enrolled in a post-secondary institution
- 91% of Student U students persist through college

Academic Achievement:

The following chart shows proficiency levels of Student U students compared to DPS students as a whole and DPS students who are considered "economically disadvantaged (ED)" for the 2014-2015 school year:

	Student U	DPS	DPS – ED
<i>Math</i>			
All Math Average	44%	36%	23%
Middle School Math	36%	34%	20%
High School Math	63%	45%	32%
<i>Reading</i>			
All English Average	52%	45%	32%
Middle School English	50%	43%	30%
High School English	57%	52%	37%
<i>Science</i>			
All Science Average	63%	51%	39%
Middle School Science	76%	58%	48%
High School Science	50%	44%	30%

The Student U Experience (as reported on the 2015 School Success Profile survey):

- 93% feel good about themselves and feel positive when they think about the future
- 96% of our students plan to attend college and feel they now know what it takes to be successful
- 95% of our students see a strong connection between success in school and success in life
- 94% of our students say they are prepared to work hard to have a good life

Exhibit B

Cost Share Distribution Schedule

Payment Milestone	Anticipated Disbursement Date	Amount of Cost Share to be Reimbursed
Design Development Deposit	Within 60 days of the Effective Date	\$250,000
Completion of Design Work, Abatement, Demolition	June 2017	\$250,000
50% Completion of Construction	January 2018	\$2,250,000
Substantial Completion	August 2018	\$1,500,000

Exhibit C

MOU