

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

MEETING DATE: AUGUST 12, 2013

AGENDA ITEM NUMBER: 8

**SUBJECT: RESOLUTION APPROVING THE AMOUNT TO BE SPENT FOR REAL PROPERTY FOR FUTURE IMPROVEMENT OF THE SOUTHWEST ELEMENTARY SCHOOL SITE (A PORTION OF TAX BLOCK 4404, LOT 026H, PIN 5894-05-5443.00) (1690 SOUTHWEST SCHOOL DRIVE, CLEMMONS, N.C.)**

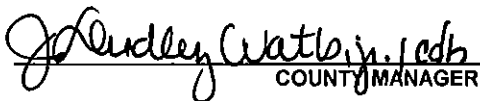
**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:** Recommend Approval

### SUMMARY OF INFORMATION:

See attached

ATTACHMENTS:  YES  NO

SIGNATURE: \_\_\_\_\_

  
COUNTY MANAGER

DATE: August 8, 2013

**RESOLUTION APPROVING THE AMOUNT TO BE SPENT FOR  
REAL PROPERTY FOR FUTURE IMPROVEMENT OF  
THE SOUTHWEST ELEMENTARY SCHOOL SITE  
(A PORTION OF TAX BLOCK 4404, LOT 026H, PIN 5894-05-5443.00)  
(1690 SOUTHWEST SCHOOL DRIVE, CLEMMONS, N.C.)**

**WHEREAS**, the provisions of N.C.G.S. 115C-426(f) require the approval of the Board of County Commissioners as to the amount to be spent for school sites prior to the execution of a contract by the Board of Education for the purchase of a site or the expenditure of funds therefor; and

**WHEREAS**, on June 18, 2013, the Winston-Salem/Forsyth County Board of Education adopted a Resolution to exercise an Option to Purchase Real Estate consisting of approximately two (2) acres owned by William E. Clayton and wife, Leslie P. Clayton, which is located at 1690 Southwest School Drive, Clemmons, N.C., to facilitate the future improvement of Southwest Elementary School, which property is further identified as a portion of Tax Block 4404, Lot 026H, PIN 5894-05-5443.00, on the Forsyth County Registry, subject to approval of such purchase amount by the Forsyth County Board of Commissioners as required by law; and

**WHEREAS**, the Winston-Salem/Forsyth County Board of Education requests that the Forsyth County Board of Commissioners approve One Hundred Thirty-Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00) as the amount to be spent for the real property for future improvement of the Southwest Elementary School site.

**NOW, THEREFORE, BE IT RESOLVED** that the Forsyth County Board of Commissioners hereby approves the amount of One Hundred Thirty-Seven Thousand Five Hundred and 00/100 Dollars (\$137,500.00) for the purchase of approximately two (2) acres owned by William E. Clayton and wife, Leslie P. Clayton, located at 1690 Southwest School Drive, Clemmons, N.C. and is further identified as a portion of Tax Block 4404, Lot 026H, PIN 5894-05-5443.00 for future improvement of the Southwest Elementary School site.

Adopted this 12<sup>th</sup> day of August 2013.



Winston-Salem/Forsyth County Schools  
 P.O. Box 2513  
 Winston-Salem, NC 27102-2513  
 (336) 727-2816 Fax (336) 727-2008  
 website: wsfcs.k12.nc.us

June 26, 2013

RECEIVED

JUN 28 2013

COUNTY MANAGER'S/  
 COMMISSIONERS' OFFICE

Mr. Dudley Watts  
 Forsyth County Manager  
 Forsyth County Government Center  
 201 North Chestnut Street  
 Winston Salem, North Carolina 27101

Re: **Acquisition of Property-Southwest Elementary School  
 Winston-Salem/Forsyth County Board of Education**

Dear Mr. Watts:

At its meeting on June 18, 2013, the Winston-Salem/Forsyth County Board of Education approved, subject to approval of the purchase price by the Forsyth County Board of Commissioners pursuant to N.C.G.S. § 115C-426, the purchase of real property owned by William E. and Leslie P. Clayton, such property known as a portion of Lot 026H, Tax Block 4404 (PIN 5894-05-5443.00), Forsyth County Registry, for a purchase price of \$137,500.00;

The Board of Education requires such property for future improvement of the Southwest Elementary School site;

Pursuant to N.C.G.S. § 115C-426, the Winston-Salem/Forsyth County Board of Education respectfully requests the approval by the Forsyth County Board of County Commissioners of the purchase price of this property. A copy of the Winston-Salem/Forsyth County Board of Education Resolution authorizing purchase of this property subject to approval by the Board of County Commissioners is enclosed herewith.

Should you have any questions or wish to discuss this matter, please do not hesitate to contact me.

Sincerely yours,  
 Winston-Salem/Forsyth County Board of Education

Allison C. Tomberlin  
 General Counsel

Enclosure

cc: Donald L. Martin, Jr., Superintendent  
 Darrell Walker, Assistant Superintendent Operations  
 William Bucher, Financial Services Director

P:\Law3\Real Estate\Southwest ES\Watts.Dudley 06-26-13 (Clayton).doc

**Board of Education**

- A. L. (Buddy) Collins
- John Davenport, Jr.
- Jane D. Goins (Chair)
- Victor Johnson, Jr.
- Irene May
- Jeannie A. Metcalf
- Elisabeth Motsinger
- Marilyn A. Parker
- Jill A. Tackabery

Donald L. Martin, Jr.  
 Superintendent

An Equal Opportunity/Affirmative Action Employer

**RESOLUTION OF THE  
WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION  
EXERCISING OPTION TO PURCHASE REAL ESTATE  
OWNED BY WILLIAM E. AND LESLIE P. CLAYTON**

WHEREAS, on or about June 7, 2013, the Winston-Salem/Forsyth County Board of Education executed an Option to Purchase Real Estate owned by William E. and Leslie P. Clayton, such property known as a portion of Lot 026H, Tax Block 4404 (PIN 5894-05-5443.00) Forsyth County Registry;

WHEREAS, the Board of Education believes the tract or parcel of land owned by William E. and Leslie P. Clayton is proper, necessary and suitable for future improvements at the Southwest Elementary School site;

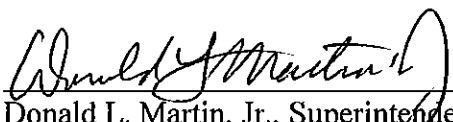
WHEREAS, the purchase price for the real property described hereinabove is One Hundred Thirty-Seven Thousand Five Hundred and No/100 Dollars (\$137,500.00);

WHEREAS, pursuant to Paragraph 4 of the Option to Purchase Real Estate, the WS/FCS hereby exercises the option to purchase real estate as described in such Option, subject to approval by the Board of County Commissioners of Forsyth County pursuant to N.C.G.S. § 115C-426.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Winston-Salem/Forsyth County Board of Education that it hereby exercises the Option to Purchase Real Estate for real property owned by William E. and Leslie P. Clayton, such property known as a portion of Lot 026H, Tax Block 4404 (PIN 5894-05-5443.00), Forsyth County Registry, subject to approval of such purchase by the Board of County Commissioners of Forsyth County pursuant to N.C.G.S. § 115C-426.

ADOPTED by the Winston-Salem/Forsyth County Board of Education, this, the 18th day of June, 2013.

  
\_\_\_\_\_  
Jane D. Goins, Chairman

  
\_\_\_\_\_  
Donald L. Martin, Jr., Superintendent

STATE OF NORTH CAROLINA

**OPTION TO PURCHASE REAL ESTATE**

COUNTY OF FORSYTH

THIS OPTION TO PURCHASE REAL ESTATE is made and entered into this 11<sup>th</sup> day of June, 2013 by and between William E. and Leslie P. Clayton, husband and wife, (hereinafter referred to as "Seller"), and the WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION (hereinafter referred to as "Purchaser").

**STATEMENT OF PURPOSE**

The Seller desires to grant to the Purchaser or its assignee an option to purchase land hereinafter described and the purpose of this Agreement is to state the terms and conditions of such option.

NOW, THEREFORE, for and in consideration of the sum of Two Thousand Five Hundred Dollars and No/100 dollars (\$2,500.00) paid to Seller, the receipt of which is hereby acknowledged, Seller hereby gives, grants and continues unto the Purchaser, its successors and assigns, the exclusive right and option to purchase from Seller upon the terms and conditions hereinafter set forth, all or a portion of Lot 026H, Tax Block 4404, Office of the Tax Supervisor of Forsyth County, and/or as more particularly described on the attached Forsyth County, NC GIS printout, Exhibit A, and all right, title and interest which the Seller may have in all creeks, streams, lakes, rights-of-way, roads, streets and ways bounding said property. The tracts of land herein optioned are hereinafter referred to as "the Property."

The terms and conditions of this Option to Purchase Real Estate (referred to herein as "this Agreement") are as follows:

1. **CONSIDERATION.** The consideration of Two Thousand Five Hundred Dollars and No/100 dollars (\$2,500.00) paid Seller for this Agreement is to be part of the purchase price and is to be credited toward the down payment of the Property, if the Purchaser or its assignee should elect to exercise the right to purchase as set forth in this Agreement. However, should the Purchaser fail to exercise the option to purchase granted hereunder, then the consideration mentioned above shall become the property of Seller and this Agreement shall become null and void and of no further legal effect, except under those circumstances where failure to exercise the option is due to noncompliance by the Seller with one or more of the conditions set forth in Paragraph 14 hereof.
2. **DURATION.** The option herein shall exist and continue to and including the 60th calendar day from the date hereof.
3. **SURVEY.** The parties recognize that the property description in the "Statement of Purpose" was derived from the Forsyth County tax records and not from a survey. Prior to closing, Purchaser, its successor or assigns may cause any existing survey to be updated and recertified, or if there is no existing survey, the Purchaser may cause the Property to be surveyed by a registered land surveyor or a registered land engineer. Such survey shall locate the boundaries of the Property, identify all corners and shall certify to the nearest

one/hundredth of an acre the number of acres included in the Property. The expense of such survey work shall be borne by the Purchaser, and said survey shall be used to draft the description required for the documents called for in Paragraph 15 hereof.

4. **EXERCISE OF OPTION TO PURCHASE.** Purchaser may exercise the option granted hereunder by giving Seller written notice of such exercise at any time within the period set out in Paragraph 2 of this Agreement. Said notice of the exercise of the option shall be effective if given by certified mail, return receipt requested, to Seller, William E. Clayton, at 178 Spyglass Drive, Advance, North Carolina, 27006. In addition, upon exercise by the Purchaser or its assignee of the Option, this Agreement shall become a contract to purchase the Property, and the Purchaser or its assignee shall have sixty (60) calendar days from the date of notification of exercise of the Option in which to close the purchase of the Property, the details of said closing being set forth in Paragraph 6 hereof, or, in the event the zoning classification of the subject property must be changed or modified, sixty (60) calendar days from final decision of the appropriate governmental or public entities which may affect or alter the Property's zoning classification, whichever is later.
5. **PURCHASE PRICE.** The purchase price for the said tracts shall be One Hundred Thirty-Seven Thousand Five Hundred Dollars and No/100 Dollars (\$137,500.00), payable at closing.
6. **CLOSING.** Closing shall be held within sixty (60) calendar days after the exercise of the option granted hereunder or, in the event the zoning classification of the subject property must be changed or modified, sixty (60) calendar days from final decision of the appropriate governmental or public entities which may affect or alter the Property's zoning classification, whichever is later. Closing shall be held on a date selected by Purchaser or its assignee at a mutually agreed upon location. **Extension of time to close: should property fail to close for any reason within sixty (60) days after Buyer's exercise of the Option, Seller agrees to extend the closing period an additional, consecutive (30) days upon payment from Seller of \$2,500, which payment shall be applied to the total purchase price of the property. Seller may purchase up to three (3), consecutive, thirty-day extension periods, at a cost of \$2,500 per extension period.** At closing, Seller shall deliver to Purchaser or its assignee a deed, prepared at Seller's expense, with full warranties subject only to permitted exceptions referred to below and with documentary stamps affixed at Seller's expense, conveying to Purchaser or its assignee an indefeasible fee simple title, marketable and insurable at regular rates, without exception. The Property shall be conveyed to Purchaser or its assignee free and clear of all liens and encumbrances, claims, easements, leases, restrictions or restrictive covenants, except that the Property may be conveyed subject to:
  - (a) The rights-of-way of streets, roads and access roads;
  - (b) Utility easements in customary forms;
  - (c) Forsyth County ad valorem taxes for the year in which the Purchase is closed; and,
  - (d) Zoning regulations for Forsyth County.

Should Purchaser's or its assignee's attorney not approve the title to the property, Purchaser's or its assignee's attorney shall advise Seller in writing of the objections to said title, and Seller shall have a period of thirty (30) days from the date of notice of said objections within which to remedy such objections to the satisfaction of Purchaser's or its assignee's attorney. In the event said objections are not cured or remedied within thirty (30) days, then this Agreement shall at Purchaser's or assignee's election be null and void and of no further legal effect, except that Seller shall immediately refund to Purchaser or its assignee all monies paid; provided, that Seller shall not have the right terminate under this provision if Purchaser or its assignee will accept the property without said objections being cured.

7. **POSSESSION.** Exclusive possession of the Property free and clear of occupancy by all persons, firms or corporations, whether or not under claim of right or color of title, shall be delivered to Purchaser or its assignee at closing.
8. **TAXES.** It is agreed that all real property taxes levied against the Property shall be prorated to the date of closing on a calendar year basis.
9. **RIGHT OF ENTRY.** Purchaser, its agents, assignee, employees or other representatives, shall have the right during the term of this Agreement and at any time from and after the exercise of the option to go upon the property for the purpose of making such surveys and topographical measurements as Purchaser or its assignee deems necessary or advisable without cost to the Seller. Purchaser or its assignee shall pay for any damages to the Property caused while such surveys or tests are being made, and shall indemnify Seller against any claims or losses occasioned by the exercise of the right of entry granted under the provisions hereof.
10. **CONSTRUCTION OF AGREEMENT.**
  - (a) The parties hereto agree that this Agreement constitutes the entire agreement between the parties; that no representations, stipulations, agreement or understanding verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this Agreement. This agreement may not be added to or modified except by written agreement signed by each of the parties.
  - (b) No waiver of any term or condition of this Agreement shall be deemed a waiver of such term or condition in the future unless such waiver shall be in writing and signed by each of the parties.
  - (c) If the option granted hereunder is exercised so that this Agreement becomes a contract to purchase, as set forth in Paragraph 4 hereof, nevertheless, Purchaser's obligation to purchase is contingent upon compliance by the Seller with the conditions of Paragraph 11 hereof.
  - (d) It is understood and recognized that this Agreement is the joint undertaking of the parties hereto and results from their common negotiations.

11. **ZONING.**

- (a) Seller represents that the Property is now zoned RS9 under the zoning classifications of any applicable governmental entity or entities.
- (b) In the event the above stated zoning classification allows construction of a school building by Purchaser or its designee, this Agreement is expressly contingent upon the same zoning being in existence at the time of closing and there being no restrictions in the chain of title that would prohibit the property from being developed to the maximum degree permissible under the applicable zoning classifications.
- (c) In the event the above stated zoning classification does not allow construction of a school building by Purchaser or its designee, this Agreement is expressly contingent upon the revision or alteration of the such zoning classification by Purchaser or its designee to a classification allowing construction of a school building by Purchaser or its designee by the appropriate governmental or public entities which may affect or alter the Property's zoning classification. Such alteration or revision of the zoning classification must be in existence at the time of closing and no restrictions in the chain of title prohibiting the property from being developed to the maximum degree permissible under such zoning classification may exist. In the event the rezoning of the Property to a classification allowing construction of a school building by Purchaser or its designee is denied by the appropriate governmental or public entities, the parties hereby understand and agree this Option shall be null and void and Seller shall refund to Purchaser any consideration paid to Seller by or on behalf of Purchaser.

12. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller hereby makes the following representations and warranties to Purchaser.

- (a) Seller has good and marketable, fee simple title to the Property, free and clear of any and all liens, security interests, encumbrances or other restrictions, whether existing of record or otherwise, except those permitted under Paragraphs 6 and 11 hereof.
- (b) Seller has the right, power and authority to enter into this contract and to sell and convey the Property in accordance with the terms and conditions herein contained.
- (c) Seller has no knowledge of any condemnation proceedings, or proposed proceedings, against the whole or any part of the Property and no such proceedings or proposed proceedings have commenced.
- (d) The Property is free from any special taxes or assessments, except those generally applicable to other real property in the tax district in which the Property is located.
- (e) No options have been granted to others to purchase or to rent any interest in the Property or any part thereof, and Seller has the exclusive right of possession of the Property.
- (f) There are no restrictions in the chain of title which would prohibit the Property from



being used and developed to the maximum degree possible under the zoning classifications applicable to the Property as set forth in paragraph 11.

- (g) All ad valorem taxes through 2012 have been paid.
- (h) The foregoing representations and warranties are made by the Seller with the knowledge and expectation that Purchaser is placing complete reliance thereon.
- (i) Seller will not cause or permit any action to be taken which will cause any of the foregoing representations or warranties to be untrue on the closing date and all representations and warranties contained in this Agreement shall be true at the closing date as though such representations or warranties were made at such time.

13. **SURVIVAL.** It is understood and agreed that whether or not it is specifically so provided herein, any provision of this Agreement, which by its nature is required to be kept, observed and performed after the exercise of the option granted hereunder or closing of the purchase of the Property, shall survive the exercise and closing of title and the delivery of the deed hereunder, and shall not be merged there, but shall be and remain binding upon and for the benefit of the parties hereto until fully observed, kept and performed.

14. **TERMINATION.** Purchaser or its assignee has the election of declaring this Agreement to be null and void and of no further legal effect (which election may be exercised by Purchaser or its assignee by mailing notice to Seller, by certified mail, return receipt requested) if:

- (a) Seller cannot convey good, indefeasible, fee simple, marketable and insurable title, free and clear of all claims, liens, easements, leases, encumbrances, restrictions or restrictive covenants, except the permitted exceptions referred to in Paragraph 6 above;
- (b) Seller cannot deliver exclusive possession of all the property to the Purchaser at time of closing;
- (c) The provisions of Paragraph 11 herein are not true at closing; or,
- (d) The provisions of Paragraph 12 herein containing representations and warranties of Seller are not true at closing.

15. **DOCUMENTS AT CLOSING.** At closing, the Seller shall:

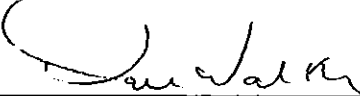
- (a) Execute, acknowledge and deliver to Purchaser or its assignee a deed conveying a good, fee simple and marketable title to the Property with full warranties, free and clear of all liens and encumbrances except as herein provided;
- (b) Deliver to Purchaser all surveys (boundary topographical) in the possession of Seller having to do with the Property; and,
- (c) Execute and deliver any and all documents and papers (including these documents specified above) that may be necessary in connection with the consummation of the

transaction contemplated by this Agreement including the transfer of Seller's interest in the Property, the assignment of various other interests relating to the Property and the improvements thereon, if any, and the certification of compliance with the terms and conditions hereof.

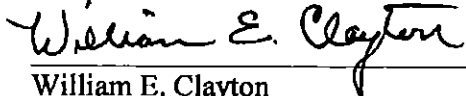
16. **NO WASTE.** During the existence of this Agreement, Seller shall commit no waste upon the Property, including but not limited to, no cutting of trees, and no removal of any improvements without the consent of Purchaser, and Seller shall maintain the Property in as good condition as it is now, usual wear and tear excepted.
17. **LIQUIDATED DAMAGES.** The monies paid to Seller for the option granted hereunder shall be and represent liquidated damages for any default on the part of the Purchaser or its assignee, which liquidated damages shall be the extent of the liability of the Purchaser with respect to any default hereunder, regardless of whether such default shall arise before or after exercise of the option granted hereunder, and Seller shall have no other right, claim or cause of action against Purchaser or its assignee. Should the Seller default under any of the provisions of this Agreement, Purchaser may either demand specific performance of this Agreement, but only to the extent of conveyance of the Property free and clear of all liens and encumbrances except those permitted in Paragraph 6 and 11 above, or Purchaser may consider the Agreement terminated, in which event the extent of the responsibility of the Seller shall be to refund to Purchaser any monies paid to Seller hereunder.
18. **MEMORANDUM OF OPTION.** The parties agree that this instrument shall not be recorded; provided, however, that Seller agrees, at the request of Purchaser to execute a Memorandum of Option in recordable form, stating that the Property is under option to Purchaser and the duration of such option.
19. **BINDING EFFECT.** The provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

WINSTON-SALEM/FORSYTH COUNTY  
BOARD OF EDUCATION

  
\_\_\_\_\_  
Darrell Walker  
Assistant Superintendent for Operations

SELLER:

  
\_\_\_\_\_  
William E. Clayton


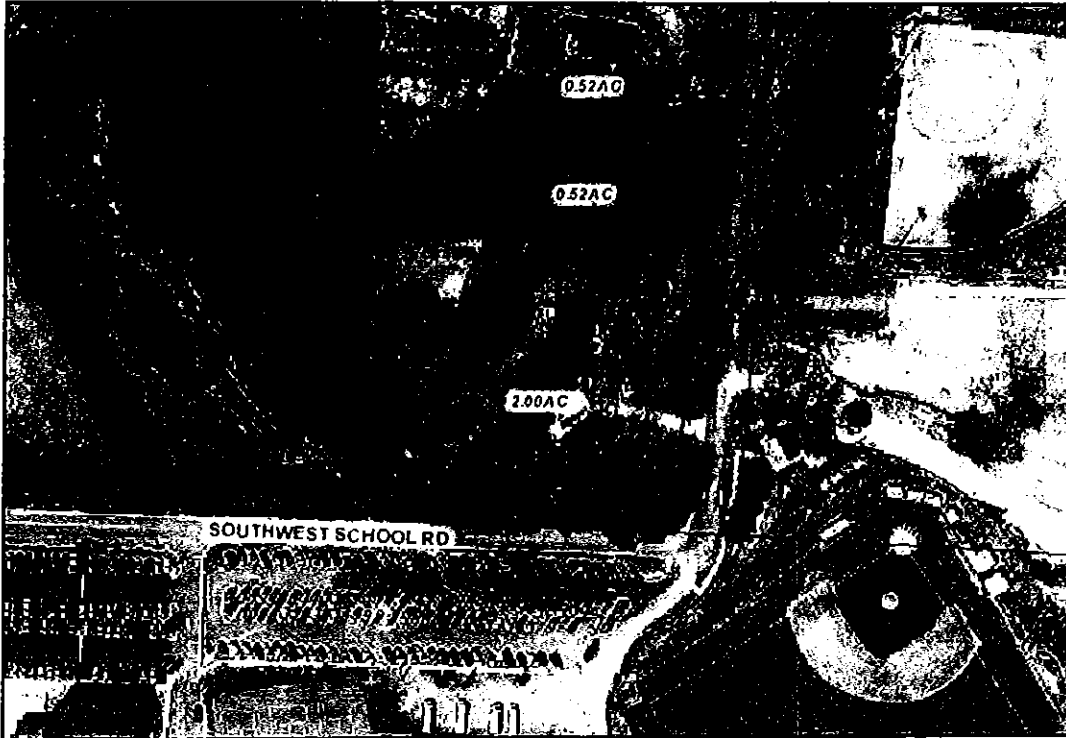
  
\_\_\_\_\_  
Leslie P. Clayton

EXHIBIT A

Forsyth County, NC



<i>PIN</i>	5894-05-5443.00	<i>Current Deed Stamps</i>	\$310
<i>Property Address</i>	1690 Southwest School DR	<i>Map Number</i>	588842
<i>Block Lot</i>	4404 026H	<i>Assessment Method</i>	Cost
<i>Additional Lots</i>		<i>WIP</i>	No
<i>Tax Jurisdiction</i>	Clemmons / Lewisville FD	<i>Land Value</i>	\$49,837
<i>Anx</i>	N	<i>Dwelling Value</i>	\$99,356
<i>Taxable Owner Name1</i>	Barkocy, Susan Reynolds	<i>Commercial Value</i>	
<i>Taxable Owner Name2</i>		<i>Industrial Value</i>	
<i>Taxable Owner Address</i>	6051 Greenhaven DR	<i>Misc Imp Value</i>	
<i>Taxable Owner City St Zip</i>	Winston Salem, NC 27103	<i>Total Value</i>	\$149,200
<i>Taxable Deed Bk-Pg</i>	2722-3407	<i>Acreage</i>	2
<i>Taxable Deed Date</i>	1/10/2007	<i>Sq Ft Living Area (Res)</i>	1950
<i>Taxable Deed Stamps</i>		<i>Gross Sq Ft (Com)</i>	
<i>Current Owner Name1</i>	Us Bank National Association	<i>Year Built (Res)</i>	1969
<i>Current Owner Name2</i>		<i>Year Built (Com)</i>	
<i>Current Owner Address</i>	1661 Worthington RD, Apt/Unit 100	<i>Census Tract</i>	40.06
<i>Current Owner City St Zip</i>	WEST PALM BEACH, FL 33416	<i>Zoning</i>	RS9
<i>Current Deed Bk-Pg</i>	3108-1546	<i>Last Qualified Sale Price</i>	\$90,500
<i>Current Deed Date</i>	2/26/2013		

*Disclaimer:* Forsyth County cannot guarantee the accuracy of this information, and the County hereby disclaims all warranties, including warranties as to the accuracy of this information.

**Map Scale**  
1 inch = 150 feet