

NORTH CAROLINA

WAKE COUNTY

**OFFER TO PURCHASE AND CONTRACT**

This Offer to Purchase and Contract ("Contract") is made as of the Effective Date (defined herein) by and between The Wake County Board of Education, a North Carolina corporate body ("Buyer") and Research Triangle Foundation of North Carolina, a North Carolina non-profit corporation ("Seller").

**WITNESSETH:**

WHEREAS, Buyer hereby agrees to purchase and Seller hereby agrees to convey that tract of land containing approximately 32 acres as more particularly described on **Exhibit A** attached hereto ("Land") together with all right, title and interest which Seller may have in all creeks, streams, rights-of-way, roads, streets and ways bounding said property (collectively, the "Property").

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein contained and the earnest money deposit set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged and confessed, the parties hereto agree to the following terms and conditions:

1. **PURCHASE PRICE:** The purchase price for the property shall be One Hundred Twenty Seven Thousand and No/100 Dollars (\$127,000.00) per useable acre based upon the survey referred to in Paragraph 3, and , shall be paid by Buyer to Seller as follows:

A. Twenty Five Thousand and No/100 Dollars (\$25,000.00) in earnest money shall be paid by check to Boxley, Bolton, Garber & Haywood, L.L.P., Attorneys at Law ("Escrow Agent"), with the delivery of this Contract, to be held in trust until the sale is closed, at which time it will be credited to Buyer, applied to payment of the purchase price and disbursed to Seller at closing, or until this Contract is otherwise terminated and it is disbursed in accordance with the terms of this Contract.

B. Buyer and Seller acknowledge that the Land includes thirty two (32) acres of land more or less. The exact acreage shall be determined by a formal boundary survey to be provided Seller as described in Section 3. Buyer and Seller agree to adjust the Purchase Price by an amount equal to One Hundred Twenty Seven Thousand and No/100 Dollars (\$127,000.00) per acre times the amount of usable acreage shown on the survey.

C. For purposes hereof the term "usable acre" and "usable acreage" shall mean the gross acreage of the Land, less any land lying within an existing right-of-way for public roads or streets on or abutting said Land as of the time of Contract.

D. The balance of the partial payment shall be paid by wire transfer at closing.

2. BUYER'S CONDITIONS: The obligation of Buyer to purchase the Property is subject to the satisfaction at or prior to closing of the following conditions:

A. The Buyer must approve all terms and conditions of this contract.

B. The Wake County Board of Commissioners must, prior to closing:

(1) approve Buyer's purchase of the Property under N.C.G.S. Section 115C-426; and

(2) disburse to Buyer sufficient funds to pay the full balance of the purchase price for the Property.

C. Buyer must be able to obtain a zoning designation to its satisfaction to construct and operate educational and related facilities.

D. Buyer must be able to obtain approval from Seller, the Town of Morrisville, Wake County and/or the North Carolina Department of Transportation to construct a suitable means of ingress and egress from the Land to Little Drive and Parkside Valley Drive.

E. Buyer must be able to confirm reasonable availability of municipal water and sewer services to the Land, or acquire approval from the applicable municipal body, Wake County and/or the North Carolina Department of Environment and Natural Resources or such other governmental agencies as are necessary to connect to a suitable sewer system and connect to a suitable water supply system to support a potential elementary school upon the Land.

F. Within one hundred twenty (120) days from the date the Buyer signs this contract, Buyer must be able to obtain, at its expense, the following:

(1) A survey of the Land acceptable to Buyer prepared by a registered land surveyor and a legal description that conforms to the survey. The survey shall be prepared pursuant to Section 3 herein.

(2) A determination that there will be no adverse effect to the intended use of the Property due to the existence of rock or other unsuitable soil conditions;

(3) An environmental assessment of the Property to determine the existence of conditions that may be governed by Federal, State, or Local Environmental Laws. Buyer shall promptly deliver to Seller a copy of such environmental assessment when the same becomes available, at no expense to

Seller. The results of the Buyer's tests and investigations shall not be made available or disclosed to any third party until a copy has been provided to Seller.

(4) An appraisal by a MAI appraiser, acceptable to Buyer, that reflects the value of the Land as equal to or exceeding the purchase price. If the appraised value of the Land does not equal or exceed the purchase price but sufficiently supports the price so as to be acceptable to the Buyer and The Wake County Board of Commissioners for approval of the Contract and funding, this condition will be deemed satisfied.

G. There shall be no restrictions, easements or governmental regulations, other than zoning regulations that would prevent the reasonable use of the Land for public school and administrative purposes.

H. As of the date of Closing, there shall be no Deeds of Trust, liens, leases or other monetary charges against the Land other than liens or charges resulting from the action of Buyer or its agents, contractors, employees or representatives.

I. Title must be delivered at closing by Special Warranty Deed and must be fee simple marketable title, free of all encumbrances and assessments except *ad valorem* taxes for the current year (prorated as described in Paragraph 6-A), utility easements and unviolated restrictive covenants, neither of which materially affect the value of the Property and such other encumbrances as may be assumed or specifically approved by Buyer. The Property must have legal access to a public right-of-way.

J. Seller shall have obtained from the Research Triangle Park Owners and Tenants Association approval of the school site on the land.

3. PLAT: Seller shall be obligated to provide, at Seller's expense, a boundary survey of the Land and a recordable plat, approved by the applicable governmental authorities for the purpose of establishing the Land as a subdivided tract. Seller agrees that Buyer may, at its election, utilize the surveyor who is preparing Seller's survey to prepare, at Buyer's expense, any additional survey work, including topographical work or to ALTA specifications. The cost of recording of the plat shall be the responsibility of Seller.

4. FAILURE OF BUYER'S CONDITIONS PRECEDENT: If any of the conditions contained in Section 2 are not met within one hundred eighty (180) days after the Effective Date, Buyer has the option to waive the satisfaction of any unsatisfied conditions and proceed to closing or to terminate this Agreement by delivery of written notice to Seller on or before one hundred ninety-five (195) days after the Effective Date, in which event the earnest money shall be returned to Buyer and the parties shall have no further rights or obligations herein except the Buyer's obligations pursuant to Section 15. In the event Buyer has not delivered written notice of its election to terminate by 3/14/2016, Buyer shall be deemed to have elected to waive the satisfaction or any unsatisfied conditions.

5. SELLER REPRESENTATIONS AND WARRANTIES: Seller makes the following representations and warranties to and for the benefit of Buyer which are true as of the date of this Contract and will continue to be true unless written notice of a change is delivered to Buyer prior to Closing. The disclosure of a change in a representation or warranty contained in this section is not a breach of this Contract if the disclosed information regarding the change was not known to Seller at the Effective Date and provided Seller was not a cause in making the representation or warranty untrue or inaccurate. Should Buyer receive notice of a material change in the following representations and warranties it may terminate this Contract by delivery of written notice to Seller, in which event the earnest money shall be returned to Buyer and the parties shall have no further rights or obligations except as expressly set forth in this Contract as intended to survive termination. In the event Seller caused the representation or warranty to become untrue or inaccurate, such action may be an event of default by Seller and Buyer shall have the same remedies as if a default occurred under the terms of this Contract pursuant to Section 13.

A. Seller has received no notice that there are any encumbrances or special assessments, either pending or confirmed, for sidewalk, paving, sewer, water, or other improvements on or adjoining the Land. Any encumbrances and assessments resulting from the actions of Buyer or Buyer's agents, employees or other representatives are the responsibility of Buyer and are excluded herefrom.

B. Seller has not entered into any leases or rental agreements with reference to the Land. To the best of Seller's knowledge, neither Seller nor the Property are the subject of any claim, demand, suit, unfiled lien, proceeding or litigation of any kind, pending or outstanding, or to the knowledge of Seller threatened or likely to be made or instituted which would be binding upon the Land or affect or limit Buyer's full use and enjoyment of the Land or which would limit or restrict in any way Seller's right or ability to enter into this Contract and consummate the sale and purchase contemplated herein.

C. To the best of Seller's knowledge Seller has complied with any applicable laws, ordinances, regulations, statutes, rules and regulations affecting the Property and to the best of Seller's knowledge no portion of the Land has been used for the production, storage or disposal of toxic or Hazardous Materials (as defined herein).

D. Seller is not a "foreign persons" as defined in the Foreign Investor Reporting and Property Tax Act and shall provide an affidavit at least ten (10) days prior to closing in a form satisfactory to Buyer to such effect.

E. To the best of Seller's knowledge the Land is not the subject of any active or pending action by the North Carolina Department of Environment, Health and Natural Resources (DEHNR) or its successor agencies, or any federal, state or local agencies under any federal, state or local environment laws or regulations;

F. To the best of Seller's knowledge, but without investigation, there is no Hazardous Material on the Land, whether such Hazardous Material was placed by spill, release, discharge, disposal or storage. Hazardous Material as used in this Contract

means any hazardous or toxic substance, material, waste or similar term which is regulated by local authorities, the State of North Carolina and/or the Federal Government including, but not limited to, any material substance, waste or similar term which is:

(1) defined as Hazardous Material under the laws of the State of North Carolina, as amended from time to time;

(2) defined as a hazardous substance under Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), as amended from time to time;

(3) defined as a hazardous waste under Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901, *et seq.*), as amended from time to time;

(4) defined as a hazardous waste substance under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, *et seq.*), as amended from time to time;

(5) defined as hazardous waste or toxic substance, waste, material or similar term in any rules and regulations, as amended from time to time, which are adopted by any administrative agency including, but not limited to, the Environmental Protection Agency, the Occupational Safety and Health Administration, and any such similar State or Local agency having jurisdiction over the Property whether or not such rules and regulations have the force of law; or

(6) defined as hazardous or toxic waste, substance, material or similar term in any statute, regulation, rule or law enacted or adopted at any time after the date of this Agreement by local authorities, the State of North Carolina, and/or the Federal Government.

G. To the best of Seller's knowledge the Land complies with any environmental laws or ordinances or rules and regulations of any authorities having jurisdiction over the Property relative to any hazardous material.

6. PRORATIONS AND ADJUSTMENTS: Unless otherwise provided, the following items shall be prorated and adjusted between the parties or paid at closing:

A. At closing, *ad valorem* taxes on the Land shall be pro-rated between Buyer and Seller to the date of closing for the year in which closing occurs. All "roll back" taxes, if any, shall be the responsibility of Seller. All *ad valorem* and "roll back" taxes (if any), shall be calculated and paid at closing from the proceeds due at closing. Buyer and Seller understand that the prorated amounts may be based upon tax rates that may change after closing but before the end of the year in which closing occurs. Should the actual tax bill be different than the amount estimated at closing, Buyer and Seller will promptly adjust and pay to the other party as appropriate any additional taxes prorated against the actual tax bill. As part of the consideration of this sale, this term and condition shall survive closing and shall not merge upon delivery of the deed.

B. All late listing penalties, if any, shall be paid by Seller.

C. Seller shall be responsible for a brokerage commission payable to Lee Clyburn of CBRE ("Broker") in an amount of 1.6% of the purchase price pursuant to a separate Agreement between Seller and Broker. Buyer represents that it has not been represented by any other broker in connection with this transaction. Buyer agrees to indemnify and hold Seller harmless against any real estate commission claimed by any other parties allegedly representing Buyer in this transaction.

7. LABOR AND MATERIAL: Seller shall furnish at closing an affidavit and indemnification agreement in a form satisfactory to Buyer at least ten (10) days prior to closing showing that all charges for labor or materials, if any, furnished to the Property by Seller or on behalf of Seller within one hundred twenty (120) days before the date of closing have been paid and agreeing to indemnify Buyer against all loss from any claim arising therefrom. Seller shall not be responsible for any labor or materials furnished to the Land on behalf of Buyer.

8. CLOSING EXPENSES: Seller shall pay for the preparation of a deed which shall be prepared by Seller's attorney and for the revenue stamps required by law. Buyer shall pay for recording the deed and all other closing costs. Buyer and Seller shall each pay their respective attorneys fees.

9. EVIDENCE OF TITLE: Seller shall deliver to Buyer within thirty (30) days after the Effective Date copies that are reasonably available without cost of all title information available to Seller, including, but not limited to, title insurance policies, attorneys' opinions on title, surveys, and covenants, relating to the Property.

10. ASSIGNMENT: This Contract may not be assigned by Buyer without the written consent of Seller, which consent may be withheld by Seller in its sole discretion. Notwithstanding the foregoing, Buyer shall have the right to assign this Contract to Wake County without the written consent of Seller.

11. BINDING EFFECT: This Contract shall be binding and shall inure to the benefit of the parties and their heirs, successors and assigns.

12. SURVIVAL: Any provision of this agreement which by its nature and effect is required to be observed, kept or performed after the closing shall survive the closing and remain binding upon and for the benefit of the parties until fully observed, kept or performed. The representations and warranties of Seller contained in Section 5 shall survive closing for a period of one (1) year.

13. DEFAULT; REMEDIES: In the event of a breach by Seller of this Contract and if such breach is not cured within ten (10) days after receipt of notice thereof by Buyer, Buyer shall have as its sole and exclusive remedies the right to either: (1) terminate this Contract and receive a refund of the earnest money together with any out-of-pocket expenses incurred by Buyer in its due diligence investigation and preparation for closing, provided that the amount to

be recovered shall not exceed Seventy Five Thousand and No/100 Dollars (\$75,000.00), or (2) seek specific performance against Seller, provided that any action for specific performance must be commenced within ninety (90) days after the date of breach by Seller. Notwithstanding anything stated to the contrary, Buyer's right to use its power of eminent domain is not limited by any remedy for a default stated herein.

In the event of a breach of this Contract by Buyer, and if such breach is not cured within ten (10) days after written notice from Seller of such breach, Seller shall have as its sole and exclusive remedy the right to receive the earnest money and Escrow Agent shall immediately pay such earnest money to Seller.

In the event of a breach by either party subsequent to closing, and if such breach is not cured within ten (10) days after receipt of notice of breach, or in the event such breach cannot be cured within ten (10) days, within such reasonable time thereafter, provided that the defaulting party has commenced a cure within ten (10) days, then the non-defaulting party shall have as its sole and exclusive remedy the right to recover from the defaulting party any actual damages incurred by the non-defaulting party, but in no event shall such damages include any special punitive or consequential damages.

14. SELLER'S AUTHORITY: Seller warrants and represents that it has full and complete power and authority to enter into this Contract in accordance with all the provisions contained herein and that there is no person or entity that has any interest in the Land other than the parties to this Contract.

15. RIGHTS OF BUYER PRIOR TO CLOSING: Buyer, its agents, employees or other representatives shall have the right during the term of this Contract to go upon the Land for the purpose of making such surveys, engineering, topographical, geological and other tests and measurements including, but not limited to, soil tests, percolation tests and subsoil tests as Buyer deems necessary or advisable. Buyer agrees to return the Land to as near its original condition as is possible after completion of tests the Buyer or its agents conduct on the Land. Buyer indemnifies and holds Seller harmless from loss, cost, damage or expense resulting from Buyer's entry or activities on site or caused by Buyer's agents, employees or representatives. The obligations of Buyer contained in this Section 15 shall survive any termination of this Contract.

16. ADDITIONAL COVENANTS: These covenants shall survive closing:

A. At such time as the future elementary school is named in accordance with Buyer's Board Policies, Buyer agrees to include in its consideration of naming options "Research Triangle Park (RTP) Elementary School."

B. Buyer will explore opportunities to develop an academic theme, focus or concentration for the future elementary school that is compatible with the research, technical and engineering focus of the Research Triangle Park, so as to best position the school and constituent businesses within RTP for collaboration and contribution of resources and talent in support of the success of the school, its administration, teachers, and students.

C. Seller agrees to remove on or before closing all deeds of trust, liens, leases and other monetary charges against the Land which can be satisfied by the payment of money, provided that any liens or charges resulting from the actions of Buyer or Buyer's agents, employees, contractors, or representatives shall be the responsibility of Buyer.

D. Seller shall provide to Buyer copies of any studies and/or reports in their entirety which Seller may have received and or commissioned, regarding the property within ten (10) days of the Effective Date. The studies and/or reports shall include, but are not limited to, streams and wetlands delineations, geotechnical reports, surveys (including but not limited to boundary and topographic surveys), transportation studies, Phase 1 Environmental Site Assessment, and other environmental reports. Seller shall execute such appropriate releases as Buyer may request to authorize and direct the appropriate consultant to release and transfer consultants' work product to the Buyer for its use and benefit.

E. Seller shall disclose to Buyer within thirty (30) days after full execution of this Contract, any information regarding the use of the Land, or any portion thereof, in a manner that is regulated by Federal, State, or Local Environmental Laws to the degree Seller has knowledge.

F. Seller agrees to cooperate with Buyer in Buyer's testing and investigation of the Property for an environmental assessment. Upon request from Buyer, Seller shall deliver to Buyer any information in its possession related to the environmental assessment.

17. RISK OF LOSS: The risk of loss prior to closing, which shall include personal property, shall be upon the Seller.

18. POSSESSION: Exclusive possession of the Land 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 Buyer at closing on the conditions required in this Contract.

19. CLOSING: The parties agree to execute any and all documents and papers necessary in connection with the closing and transfer of title within thirty (30) days after all conditions have been met or waived, but not later than seven months from the Effective Date, at a time, date and place designated by Buyer. The deed is to be made to Wake County Board of Education, Facilities Building, 1551 Rock Quarry Road, Raleigh, North Carolina 27610, Attention: Betty L. Parker, Real Estate Services Director.

20. TIME IS OF THE ESSENCE: Time is of the essence with regard to the terms and conditions contained in this Contract.

21. EXTENSION: Buyer shall have the right to extend the closing date by up to sixty (60) days by the provision of written notice to Seller prior to the date of closing set forth in Section 19 to Seller of its desire to extend if such additional time is necessary for the completion



of due diligence studies, to obtain approvals from the Board of Education, Board of Commissioners, or such other agencies necessary to satisfaction of the conditions hereinabove described.

22. COUNTERPARTS: This offer shall become a binding contract when signed by both Buyer and Seller in two (2) counterparts with an executed counterpart being retained by each party.

23. MEMORANDUM OF CONTRACT: Each party agrees that a Memorandum of Contract or Contract Documents shall not be recorded in this transaction.

24. NOTICES: All notices, requests and other communications hereunder shall be deemed to have been fully given, by either Party to the other, when made in writing and either a) deposited in the United States mail (sent certified, return receipt requested); b) personally delivered; c) transmitted by overnight courier for next Business Day delivery, d) by facsimile or e) by electronic mail but, in the case of electronic mail, only if followed by transmittal by overnight courier or hand for delivery on the next Business Day, to the addresses of Buyer and Seller set forth below or to such other addresses as the Parties may, from time to time, designate by written notice.

To Seller:                    Research Triangle Foundation of North Carolina  
                                  Attn: Liz Rooks, Executive Vice-President  
                                  12 Davis Drive  
                                  Research Triangle Park, NC 27709  
                                  Fax No.:        919-549-8246  
                                  E-mail:         [rooks@rtp.org](mailto:rooks@rtp.org)

w/copy to:                Michael G. Winters, Esquire  
                                  Ellis & Winters LLP  
                                  4131 Parklake Avenue, Suite 400  
                                  Raleigh, NC 27519  
                                  Fax No.:        919-865-7008  
                                  E-mail:         [mike.winters@elliswinters.com](mailto:mike.winters@elliswinters.com)

To Buyer:                    Wake County Board of Education  
                                  Attn: Superintendent  
                                  5625 Dillard Drive  
                                  Cary, NC 27518  
                                  Fax No.:        919-431-7563\_\_\_\_\_

w/copy to:                Wake County Public School System  
                                  Real Estate Services Director  
                                  1429 Rock Quarry Road, Suite 116  
                                  Raleigh, NC 27610  
                                  Fax No.:        919-856-8288  
                                  Email:          bparker@wcpss.net

w/copy to: Kenneth C. Haywood, Esq.  
Boxley, Bolton, Garber & Haywood  
227 W. Martin Street  
Raleigh, NC 27601  
Fax No.: 919-832-3918  
Email: [khaywood@bbghlaw.com](mailto:khaywood@bbghlaw.com)

25. SELLER'S KNOWLEDGE: The term "Seller's knowledge" or "Seller's actual knowledge" as used in this Contract means the actual knowledge (as opposed to imputed or constructive knowledge) of Elizabeth H. Rooks, Seller's Executive Vice President and of Mason Ailstock, Seller's Vice President.

26. ENTIRE UNDERSTANDING: This contract constitutes the entire understanding between the parties. It may not be modified orally or in any manner except by agreement in writing by the parties hereto.

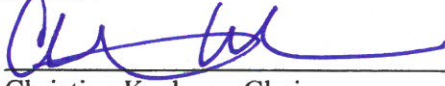
27. EFFECTIVE DATE: The Effective Date of this Contract shall be the date of last execution by Buyer and Seller.

*[Signatures appear on the subsequent page].*

IN WITNESS THEREOF, the parties have hereunto set their hands and seal the day and year indicated below.


**BUYER:**

**THE WAKE COUNTY BOARD OF  
EDUCATION**

By:   
Christine Kushner, Chair

Date of Execution: 9/1/15

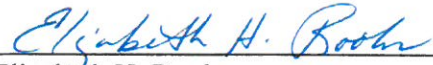
[Corporate Seal]

Attest:   
**JAMES G. MERRILL**  
Secretary/Superintendent

Date of Execution: 9/2/15

**SELLER:**

**RESEARCH TRIANGLE FOUNDATION OF  
NORTH CAROLINA**

By:   
Elizabeth H. Rooks  
Executive Vice President

Date of Execution: 8/26/15

**Exhibit A**

**Legal Description**

The Land is located on the southern side of Little Drive, west of its intersection with Davis Drive, Wake County, North Carolina, and consists of 32.0 acres more or less, plus land for the adjacent right-of-way, which is all or a portion of the parcel having Wake County PIN #0736850004, and is more particularly described as follows:

BEING that tract of land as roughly shown on **Exhibit B** attached hereto and identified on that Preliminary Concept Plan shown on **Exhibit C** attached hereto.

The exact dimensions and description of the Land will be determined in accordance with the survey and plat reference in this Contract, but Seller and Buyer agree that the description of the Property set forth above shall be deemed sufficient to describe the Property to be conveyed, and Seller and Buyer each hereby waives any defense to enforcement of this Contract based on vagueness of the description of the Property. The legal description of the Property to be conveyed by deed to Buyer shall be drawn from the survey and plat.

**Exhibit B**

**Wake County GIS Aerial Photo of Subject Property Parcel**

**PIN #0736-85-0004**

Subject Property portion of parcel contains 32.0 acres more or less, subject to survey

