

NORTH CAROLINA

WAKE COUNTY

**OFFER TO PURCHASE AND CONTRACT**  
(this "contract")

WHEREAS, The Wake County Board of Education, a body corporate, ("Buyer") hereby agrees to purchase and Murray Investment Company No. 2 LLC, a North Carolina limited liability company ("Seller") hereby agrees to convey an assemblage including four parcels of land together with all improvements, structures, and fixtures thereon, collectively totaling 12.13 acres more or less, located on the southern side of Capital Boulevard east of its intersection with Fenton Street, Raleigh, Wake County, North Carolina, 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 further identified by Exhibit "A" (the "Property") and upon a Map shown on Exhibit "B". Exhibit "A" and Exhibit "B" are attached hereto and made a part of this Offer to Purchase, with the exact location and acreage of the subject property to be determined by a formal survey to be obtained by Buyer. The Property is more particularly described as all of those parcels described as 1816 Capital Boulevard (Wake County PIN #1714-37-1388), 1818 Capital Boulevard (Wake County PIN #1714-37-2566), 1820 Capital Boulevard (Wake County PIN #1714-37-5678) and 121 Fenton Street (Wake County PIN #1714372161).

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 is Six Million Three Hundred Fifty-One Thousand Six Hundred Ninety-Five and no/100 (\$6,351,695.00) Dollars and shall be paid by Buyer to Seller as follows:
  - A. \$25,000.00 in earnest money (the "Earnest Money") shall be paid by check or wire transfer to Metro Title Insurance Company ("Escrow Agent"), with the execution 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. The Earnest Money shall be non-refundable upon the expiration of the Due Diligence Period, except as otherwise expressly provided in this contract in Sections 2 or 3.
  - B. Buyer shall pay Seller the balance of the purchase price, subject to prorations and the Earnest Money as provided herein, at closing by check or wire transfer of funds to Escrow Agent.
  - C. Buyer and Seller acknowledge that the "Property" to be purchased includes  $\pm 12.139$  acres of land, and commercial buildings containing a total of approximately 72,266 heated square feet. The exact location and acreage shall be determined by a formal survey to be provided by Buyer.
2. CONDITIONS: The obligation of Buyer to purchase the Property is subject to the satisfaction at or prior to time periods specified within this Section 2 of the following conditions:

- A. Within the Due Diligence Period (as defined herein), the Wake County Board of Education must approve all terms and conditions of this contract.
- B. The Wake County Board of Commissioners must, prior to closing disburse to Buyer sufficient funds to pay the full balance of the purchase price for the Property.
- C. Within one hundred thirty-five (135) days from the Effective Date ("Due Diligence Period") (subject to extension pursuant to Section 18 below), Buyer must be able to obtain, at its expense, the following:
  - (1) A survey of the Property, acceptable to Buyer by a registered land surveyor and a legal description that conforms to the survey.
  - (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 not deliver to Seller a copy of such environmental assessment unless Seller specifically requests the same. The results of the Buyer's tests and investigations shall be confidential information subject to disclosure to the public records law in North Carolina and as required for the Buyer to seek any approvals and inspections it needs to receive prior to Closing, including but not limited to those of the County of Wake, the Wake County Board of Commissioners and the Wake County Board of Education. An appraisal by a MAI appraiser, acceptable to Buyer, that reflects the value of the subject property as equal to or exceeding the purchase price. If the subject property does not equal or exceed the purchase price but sufficiently supports the price so as to be acceptable to the Board of Education and the Board of Commissioners for approval of the contract and funding, this condition will be deemed satisfied. If the property does not appraise for at least the specified Purchase Price then Buyer shall notify Seller of such and Seller shall have five (5) business days to notify the Buyer in writing of its election either (i) to reduce the Purchase Price to the appraised price or (ii) elect not to reduce the Purchase Price to the appraised price. If the Seller elects to reduce the Purchase Price to the appraised price, this contract shall be deemed amended accordingly and each party shall remain bound thereunder. If Seller elects to not reduce the Purchase Price to the appraised price, the Buyer shall have the option to either (i) proceed under the this contract or (ii) elect to terminate this contract in which event the Earnest Money shall be returned to the Buyer and neither party shall have any further obligation to the other.
  - (4) Approval of the Wake County Board of Commissioners of funding of Buyer's purchase of the Property under N.C. G.S. Section 115C-426.
  - (5) The Wake County Board of Education must be able to acquire a zoning designation to its satisfaction to construct and operate educational and related facilities.

- (6) Approval from the City of Raleigh, Wake County and/or the North Carolina Department of Transportation to utilize the existing means of ingress and egress from the "Property" to Capital Boulevard and Fenton Street.
- (7) Approval from the, City of Raleigh, Wake County and/or the North Carolina Department of Environmental Quality or such other governmental agencies as are necessary to utilize the existing sewer system to support a public school and administrative use upon the subject property.

D. Intentionally Omitted

- E. At closing, there must be no restrictions, easements, or governmental regulations other than zoning regulations that would prevent the reasonable use of the real property for public school and administrative purposes unless waived by Buyer pursuant to this Section 2E. If such conditions exist, it is the responsibility of Buyer to ascertain any such conditions and Buyer shall notify Seller of all of Buyer's objections, if any, to the Property prior to the expiration of the Due Diligence Period ("Buyer's Notice"). Any conditions existing as of the Due Diligence Period and not timely objected to by Buyer shall be waived by Buyer; provided however, Buyer may reexamine title to the Property up to and including the closing date and give Seller written notice of any additional objections appearing of record subsequent to the Due Diligence Date. Seller shall have no obligation to cure any of Buyer's objections other than Required Cure Items (as defined herein) or objections that render Seller's title less than "good and marketable fee simple title", subject to the Permitted Exceptions. Seller shall have until the closing to satisfy all valid objections other than those waived by Buyer. If Seller is unsuccessful in timely curing said conditions, Buyer may cancel this contract, whereupon all deposit monies shall be returned to Buyer, or, in the alternative, Buyer may waive the objectionable conditions and close pursuant to the terms of this contract.

For the purposes of this contract, "Permitted Exceptions" shall mean (i) any and all easements, covenants, restrictions, reservations, rights of way, the lien for taxes not due and payable on or before the closing date, survey matters and other similar matters not objected to by Buyer by the Due Diligence Period or otherwise waived by Buyer (ii) the rights of parties in possession under the Lease and (iii) zoning ordinances affecting the Property. There must be no zoning regulations that could prevent the reasonable use of the real property for public school and administrative purposes ("Permitted Use") unless waived by Buyer. If such conditions exist, it is the responsibility of the Buyer to file a petition to rezone the Property to such zoning classification, or classifications as shall reasonably allow for the Permitted Use, and Buyer shall submit such petition within the Due Diligence Period and shall use its best efforts to prosecute the rezoning of the Property during the Due Diligence Period. Seller shall assist the Buyer in the Buyer's rezoning effort to whatever extent the Buyer may request, but the Seller shall have no duty to incur any expense in such rezoning effort. Buyer assumes the expense of any rezoning requirements.

- F. All deeds of trust, liens, leases and other monetary charges against the Property which can be satisfied by the payment of money ("Required Cure Items") must be paid and canceled by Seller prior to or at closing. Any liens and charges resulting from the actions of Buyer or Buyer's agents, employees or other representatives are the responsibility of Buyer and are excluded herefrom.

- G. Title must be delivered at closing by Special Warranty Deed which will include a legal description matching the Seller's vesting 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 5-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. At Buyer's option, the survey obtained by Buyer will be utilized as the basis for the preparation of a legal description of the Property to be included in a quitclaim deed to be delivered by Seller to Buyer at Closing in addition to the Special Warranty Deed. The Property must have legal access to a public right-of-way.
- H. Seller shall provide to Buyer copies of any studies and/or reports in their entirety which Seller may have commissioned and to the extent in Seller's possession, regarding the property within 5 business days of the execution of this contract by all parties ("Due Diligence Materials"); it is understood that Seller will not re-deliver the Environmental Reports, survey or the Lease to Buyer. The Due Diligence Materials may 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, other environmental reports, and evaluations of the building structure, building envelope, HVAC and Plumbing/Mechanical/Electrical systems. The Due Diligence Materials will be provided to Buyer without representation or warranty of any kind or nature whatsoever and merely for Buyer's informational purposes. Until closing, Buyer and Buyer's Designees (as defined herein) shall maintain all Due Diligence Materials in conformance with Section 2(C)(3) above. If the purchase and sale of the Property is not consummated in accordance with this contract, regardless of the reason or the party at fault, Buyer shall immediately re-deliver to Seller all copies of the Due Diligence Materials, whether such copies were actually delivered by Seller or are duplicate copies made by Buyer or Buyer's Designees. No termination of this contract by Buyer pursuant to any provision of this contract permitting termination by Buyer shall be deemed effective unless and until Buyer shall have re-delivered to Seller all copies of all Due Diligence Materials, as required by this Section 2(I). 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.
- I. Buyer shall have until the expiration of the Due Diligence Period, to perform such investigations, examinations, tests and inspections as Buyer shall deem necessary or desirable to determine whether the Property is suitable and satisfactory to Buyer. If Buyer shall elect for any reason not to proceed with the acquisition of the Property prior to the expiration of the Due Diligence Period, Buyer shall notify Seller and the Escrow Agent that it has elected to terminate this contract. and (ii) deliver to Seller, on or before Due Diligence Date, the items required by Section 2(K) and Section 2(I) of this contract. If requested by the Escrow Agent, Seller shall confirm in writing that this contract has been terminated, that the Earnest Money shall be returned to Buyer, and that neither Seller nor Buyer has any further rights, duties and obligations one to the other except as specifically provided in this contract. If Buyer does not terminate this contract in accordance with this Section, Buyer shall have no further right to terminate this contract except for failure of a condition precedent in Section 2 or a Seller default.

- J. If the purchase and sale of the Property is not consummated in accordance with this contract, regardless of the reason or the party at fault, Buyer shall immediately deliver to Seller, at Buyer's cost and expense and at no cost or expense to Seller: (i) a list setting forth the names of all persons or entities who conducted investigations, examinations, tests or inspections of or with respect to the Property on behalf of or at the instance of Buyer; (ii) all reports, studies, surveys, site plans and other written or graphic material of any kind or nature whatsoever generated, collected, prepared or compiled in connection with such investigations, examinations, tests or inspections; and (iii) an instrument in form and substance reasonably satisfactory to Seller transferring and assigning to Seller all of Buyer's rights, title and interest in or to the materials described in clause (ii), above.
- 3. **FAILURE OF CONDITIONS; DEFAULTS AND REMEDIES:** If any of the conditions precedent to Buyer's obligations set forth in this document are not satisfied within the time period specified in this contract, Buyer has the option to waive the satisfaction of any unsatisfied conditions. If Seller breaches the contract in any other way, Buyer may as Buyer's sole and exclusive remedies either: (i) terminate this contract and recover its Earnest Money or (ii) if, and only if, Seller's breach is a refusal by Seller to convey the Property to Buyer as required by this contract, then Buyer shall have the right to sue Seller for specific performance of this contract; *provided however*, if Seller refuses to convey the Property to Buyer as required by this contract or conveys the Property to a third party, Buyer, shall have the right to collect actual, verifiable expenses incurred in Buyer's attempt to acquire the Property, up to a maximum of \$100,000. If Buyer breaches the contract, Seller shall be entitled to terminate this contract and retain the earnest money deposit as liquidated damages as Seller's sole remedy.
  - 4. **SELLER REPRESENTATIONS AND WARRANTIES:** Seller makes the following representations and warranties to and for the benefit of Buyer which shall be true on the date of closing as though such representations and warranties were made at such time and shall survive the passing of title for a period of one (1) year:
    - A. **ASSESSMENTS:** Seller warrants that there are no or special assessments, either pending or confirmed, for sidewalk, paving, sewer, water, or other improvements on or adjoining the Property, unless otherwise disclosed to Buyer in writing prior to closing. 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. **CLAIMS AND SUITS:** Except as disclosed in Section 4.[F]. below, Seller has not entered into any agreement including leases or rental agreements for occupancy of the Property and neither Seller nor the Property are subject to 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 in any way be binding upon Buyer or its successors or assigns or affect or limit Buyer's full use and enjoyment of the Property 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 hereby.
    - C. **COMPLIANCE WITH APPLICABLE LAWS:** To the best of Seller's knowledge, Seller has complied in all material respects with all applicable laws, ordinances, regulations, statutes, rules and regulations affecting the Property, except as disclosed in the Environmental Reports. Notwithstanding any provision of this contract to the

contrary, Seller has provided Buyer a copy of those certain due diligence reports and information regarding environmental issues on the site as itemized on Exhibit "C" attached hereto, receipt of which is hereby acknowledged by Buyer ("Environmental Reports").

- D. FOREIGN PERSON: Seller is not a "foreign persons" as defined in the Foreign Investor Reporting and Property Tax Act and shall provide an affidavit at closing in a form satisfactory to Buyer to such effect.
- E. IRAN DIVESTMENT ACT CERTIFICATION REQUIRED BY N.C.G.S. 147-86.59: As of the date listed below, the Seller entity listed herein is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58.
- F. EXISTING LEASE DISCLOSURE: Notwithstanding the foregoing, Seller has disclosed that there is a lease encumbering the property by and among Seller, as landlord, and Capital Chevrolet, Inc., as tenant ("Tenant") (the "Lease") , a copy of which is set forth as Exhibit "D" attached hereto, which shall be binding upon and inure to the benefit of Buyer from and after closing.
- G. ENVIRONMENTAL: To the best of Seller's knowledge, the Property is not the subject of any active or pending action by the North Carolina Department of Environmental Quality or its successor agencies, or any federal, state or local agencies under any federal, state or local environment laws or regulations.
- H. ENVIRONMENTAL: Except as disclosed in the Environmental Reports and except for chemicals, paints and other materials customarily stored and used at the car dealership on the Property, (a) to the best of Seller's knowledge, there is no Hazardous Material (as hereinafter defined) on the Property, whether such Hazardous Material was placed by spill, release, discharge, disposal or storage, (b) nor, to the best of Seller's knowledge, has any Hazardous Material penetrated any waters, including, but not limited to, streams crossing or abutting the Property or the aquifer underlying the Property. Hazardous Material as used in this Offer to Purchase and 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:
  - (a) defined as Hazardous Material under the laws of the State of North Carolina, as amended from time to time;
  - (b) 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;
  - (c) 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;
  - (d) 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;

- (e) 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
  - (f) 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 contract by local authorities, the State of North Carolina, and/or the Federal Government.
- I. ENVIRONMENTAL: Except as disclosed in the Environmental Reports, to the best of Seller's knowledge, Seller has complied and caused the Property to comply with all laws and ordinances, and all rules and regulations of all authorities having jurisdiction over the Seller, the Property, or the use thereof, relative to any Hazardous Material.
  - J. ENVIRONMENTAL: There is no other property presently owned or used by Seller, the existence of such Hazardous Material upon or discharge of such Hazardous Material from, which might cause any charge or lien upon the Property.

EXCEPT AS AFORESAID, WITH RESPECT TO ENVIRONMENTAL MATTERS, SELLER DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED.

- 5. PRORATIONS AND ADJUSTMENTS: Unless otherwise provided, the following items shall be prorated and adjusted between the parties or paid at closing:
  - A. Ad valorem taxes on real property are the obligation of the Tenant under the Lease. To the extent the owner of the Property is liable for any ad valorem taxes, ad valorem taxes 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 and/or valuations 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. Rents, if any, for the Property shall be retained by Seller, calculated to the date of closing.

- D. Seller shall be responsible for any brokerage commissions due as a result of this sale. Buyer by its execution hereof confirms that i) licensed real estate broker C. Neal Coker ("Coker") of Trademark Properties Inc. presented the property to Buyer for its consideration in the capacity of Seller's Agent or Sub-Agent, ii) Buyer's dealings with Coker were as a Seller's Agent or Sub-Agent and not as a Buyer's agent, and iii) Buyer has not been represented by a real estate broker in a Buyer's agent capacity in 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. Seller by its execution hereof states that if it has been represented by a real estate broker in this transaction, the identity of said broker has been disclosed (Neil C. Gustafson, Worthy & Wachtel, Inc.), and that Seller is solely responsible for any brokerage commissions due said broker as a result of this sale.
6. LABOR AND MATERIAL: Seller shall furnish at closing an affidavit and indemnification agreement in a form satisfactory to Buyer at closing showing that all charges for labor or materials, if any, furnished to the Property within 120 days before the date of closing have been paid and agreeing to indemnify Buyer against all loss from any claim arising therefrom.
  7. 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. Seller shall pay for any affidavits required by this contract. Buyer shall pay for recording the deed, its survey, title policy, environmental site assessment and Buyer's other diligence and investigations and reports. Buyer and Seller shall each pay their respective attorney's fees.
  8. EVIDENCE OF TITLE: Seller shall deliver to Buyer within 5 business days after the acceptance of this offer copies that are reasonably available without cost of all title information available to Seller, including but not limited to the most recent title insurance policies and surveys of the Property.
  9. ASSIGNMENT: This contract may be assigned in its entirety, not in part, by Buyer with prior written consent by Seller and any assignment shall be binding on the assignee and its successors and assigns; provided however, an assignment by Buyer to any party under common control with Buyer or to Wake County or any of its agencies shall not require Seller's prior written consent but Buyer shall provide written notice thereof to Seller within ten (10) days of such assignment.
  10. BINDING EFFECT: This contract shall be binding and shall inure to the benefit of the parties and their heirs, successors and assigns.
  11. SURVIVAL: Any provision of this contract 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, or such earlier period as expressly provided herein.
  12. 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 Property other than the parties to this contract, except for Tenant.
  13. RIGHTS OF BUYER PRIOR TO CLOSING:

- A. Buyer, its agents, employees or other representatives (hereinafter collectively called "Buyer's Designees") shall have the right between the Effective Date and the closing, at reasonable times and in any event upon 24 hours' notice to Seller to go upon the Property for the purpose of making such examinations, evaluations, investigations, surveys, engineering, topographical, geological and other tests and measurements as Buyer deems necessary or advisable ("Buyer's Activities"). Buyer agrees to return the Property to as near its original condition as is possible after completion of tests the Buyer or its agents conduct on the Property. Buyer indemnifies and holds Seller harmless from loss, cost, damage or expense resulting from Buyer's activities on site for purposes contained herein. Notwithstanding any provision of this contract to the contrary, Buyer shall not have the right to undertake any environmental studies or testing beyond the scope of a standard "Phase I" environmental site assessment without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed in the event the results of such Phase I assessment reasonably warrant the same. The cost of any of Buyer's investigations shall be paid by the Buyer.
  - B. Prior to any entry by Buyer or any of Buyer's Designees onto the Property, Buyer shall: (i) if Buyer does not then have such a policy in force, procure a policy of commercial general liability insurance, issued by an insurer reasonably satisfactory to Seller, covering all Buyer's Activities, with a single limit of liability (per occurrence and aggregate) of not less than \$1,000,000.00; and (ii) deliver to Seller a Certificate of Insurance, evidencing that such insurance is in force and effect, and evidencing that Seller has been named as an additional insured thereunder with respect to any Buyer's Activities conducted by Buyer (such Certificate of Insurance shall be delivered to Seller, at the address for notices set forth below Seller's execution of this contract). Such insurance shall be written on an "occurrence" basis, and shall be maintained in force until the earlier of (x) the termination of this contract and the conclusion of all Buyer's Activities, or (y) closing. Upon Seller's request, Buyer shall provide to Seller evidence of the following insurance retained by its environmental consultant or contractor and in effect during Buyer's inspections of the Property: general liability, contractor pollution liability, professional liability, and automobile liability.
- 14. RISK OF LOSS: The risk of loss prior to closing, which shall include personal property, shall be upon the Seller.
  - 15. POSSESSION: Other than as described in the Lease, 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 Buyer at closing on the conditions required in this contract.
  - 16. CLOSING: The closing of the transaction shall occur on the date specified by Buyer upon five (5) business days written notice; provided that the closing shall occur no later than thirty (30) days after expiration of the Due Diligence Period. The parties agree to execute any and all documents and papers reasonably necessary in connection with the closing, including the following, in form mutually approved by the parties:
    - A. a Special Warranty Deed, in recordable form, conveying the Property; 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 Senior Director.

- B. a Bill of Sale conveying Seller's interest in the personal property constituting the Property but in no event shall such Bill of Sale include personal property of Tenant;
  - C. an Assignment of Tenant Leases, whereby Seller transfers and assigns to Buyer all of Seller's right, title and interest as "landlord" or "lessor" in, to and under the Lease, and whereby Buyer assumes and agrees to perform the duties and obligations of the "landlord" or "lessor" under the Leases arising from and after the Closing Date (which assignment of tenant leases shall be accepted and executed by Buyer);
  - D. if Seller is not a Foreign Person, a Certificate and Affidavit of Non-Foreign Status;
  - E. a completed 1099-S request for taxpayer identification number and certification, and acknowledgment;
  - F. if requested by Buyer, a quitclaim deed conveying all of Seller's right, title and interest in and to the Property in accordance with the legal description prepared from the survey obtained by Buyer; and
  - G. an affidavit and indemnity agreement in standard form regarding contractor's and materialmen's liens on the Property acceptable to Buyer's title insurer.
17. TIME IS OF THE ESSENCE: Time is of the essence with regard to the terms and conditions contained in this Offer to Purchase and Contract.
18. EXTENSION: Notwithstanding the foregoing, Buyer shall have one (1) option to extend the Due Diligence Period by up to forty-five (45) days 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. The Extension Option may be elected by Buyer by providing written notice to the Seller of its desire to extend ten (10) days prior to the expiration of the current Due Diligence Period and delivering to Escrow Agent simultaneously therewith an additional \$25,000.00 of earnest money ("Additional Deposit"). The Additional Earnest Money shall be considered part of Earnest Money and shall be applied to the purchase price and shall be non-refundable upon expiration of the Due Diligence Period, except in the event of a Seller default or as otherwise expressly provided in Section 2.
19. COUNTERPARTS; EFFECTIVE DATE: 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. The effective date of this contract shall be the date of last execution by the Seller and the Chairman of the Wake County Board of Education for Buyer ("Effective Date").
20. 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, or d) 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: J. Brent King, Manager

Murray Investment Company No. 2 LLC  
 PO Box 40639  
 Raleigh NC 27629-0639  
 Email: bkingbmc@gmail.com

w/copy to: Murray Investment Company No. 2 LLC  
 C/O Branch Banking & Trust Company  
 434 Fayetteville Street, 11<sup>th</sup> Floor  
 Raleigh, NC 27601  
 Attn: Kevin Ward  
 Email: KWard@bbandt.com

w/copy to: Kilpatrick, Townsend & Stockton LLP  
 4208 Six Forks Road, Suite 1400  
 Raleigh, NC 27609  
 Attn: B. Ford Robertson, Esq.  
 Email: frobertson@kilpatricktownsend.com

To Buyer: Wake County Public School System  
 Attn: Superintendent  
 5625 Dillard Drive  
 Cary, North Carolina 27518  
 Email: \_\_\_\_\_

w/copy to: Wake County Public School System  
 Attn: Real Estate Services Senior Director  
 1429 Rock Quarry Road, Suite 116  
 Raleigh, North Carolina 27610  
 Email: bparker@wcpss.net

& w/copy to: Kenneth C. Haywood, Esq.  
 Boxley, Bolton, Garber & Haywood, L.L.P.  
 Post Office Drawer 1429  
 Raleigh, North Carolina 27602  
 Email: khaywood@bbghlaw.com

21. 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.
22. TAX-DEFERRED EXCHANGE: In the event Buyer and Seller wish to effect a tax-deferred exchange or bargain sale transaction in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange, providing, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and providing further that the non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange or bargain sale. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision, including the execution of Form 8283 to be attached to Seller's tax return.

*\*\*\* Balance of page left intentionally blank. Signatures appear on subsequent pages \*\*\**

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:   
THOMAS C. BENTON, CHAIR

Attest:   
JAMES G. MERRILL, Secretary/Superintendent

Date: 11/3/16

[Signature Pages Continue]

**SELLER:**

MURRAY INVESTMENT NO. 2 LLC  
A North Carolina Limited Liability Company

By: J. Brent King  
J. BRENT KING, Manager

Date: \_\_\_\_\_

**Exhibit "A":**

The subject Property is located on the southern side of Capital Boulevard west of its intersection with Fenton Street, Raleigh, Wake County, North Carolina, and consists of an assemblage of four parcels containing a total of ±12.13 acres, and being more particularly described as follows:

| <b>Street Address</b> | <b>Wake County PIN</b> | <b>REID</b> | <b>Acreage (±)</b> | <b>Deed Book/Page</b> |
|-----------------------|------------------------|-------------|--------------------|-----------------------|
| 1816 Capital Blvd     | 1714-37-1388           | 0018437     | 2.5                | 10222/540             |
| 1818 Capital Blvd     | 1714-37-2566           | 0070896     | 0.51               | 10222/531             |
| 1820 Capital Blvd     | 1714-37-5678           | 0049701     | 7.92               | 10222/534             |
| 121 Fenton Street     | 1714-37-2161           | 0049697     | 1.2                | 10222/537             |

The exact dimensions and description of the Property will be determined in accordance with the Survey/Subdivision/Recombination Plat, 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.

**Exhibit "B"**  
**Wake County GIS Aerial Photo of Subject Property Assemblage:**



| Parcel # Above | Street Address    | Wake County PIN | REID    | Acreage (±) | Deed Book/Page |
|----------------|-------------------|-----------------|---------|-------------|----------------|
| 1              | 1816 Capital Blvd | 1714-37-1388    | 0018437 | 2.5         | 10222/540      |
| 2              | 1818 Capital Blvd | 1714-37-2566    | 0070896 | 0.51        | 10222/531      |
| 3              | 1820 Capital Blvd | 1714-37-5678    | 0049701 | 7.92        | 10222/534      |
| 4              | 121 Fenton Street | 1714-37-2161    | 0049697 | 1.2         | 10222/537      |

**Exhibit "C"**

**Information Regarding Site Environmental Matters Provided by Seller to Buyer**  
(Paragraph 4.C. Schedule)

1. Letter from AECOM dated as of November 13, 2009.
2. AECOM Groundwater Monitoring Report dated June, 2009.
3. AECOM Groundwater Monitoring Report dated June, 2010.
4. AECOM Groundwater Monitoring Report dated March, 2011.
5. ENSR letter regarding Hydraulic Lift Removal and Report dated as of January 12, 2007.
6. ENSR letter dated as of November 11, 2005.
7. ENSR Phase 2 Environmental Site Assessment Report dated September, 2004.
8. ENSR Phase I/II Limited Site Assessment Report dated January, 2005.
9. 2007 Groundwater Monitoring Report Bobby Murray Chevrolet.
10. S&ME Phase I Environmental Site Assessment dated as of December 23, 2003.
11. AECOM -BMC UST Closure Report -Final -CD dated January, 2009.
12. Notice of Residual Petroleum recorded in the Wake County Register of Deeds at Book 014404, Page 01954.

**Exhibit "D"**

**Existing Lease:**

Lease of Murray Investment Company No. 2 LLC and Capital Chevrolet Inc. of March 1, 2106

*(Copy of lease appears on subsequent pages)*

## LEASE AGREEMENT

This Lease Agreement (this "Agreement" or this "Lease") is made, entered into and effective as of March 1, 2016 (the "Effective Date"), by and between Murray Investment Company No. 2 LLC ("Landlord") and Capital Chevrolet, Inc. ("Tenant" and with Landlord, collectively, the "Parties" and, individually, each a "Party").

1. **Description of Leased Premises.** Landlord leases to Tenant and Tenant leases from Landlord that certain real property and the buildings situated thereon (the "Building") (including the land surrounding the Building), which buildings bear municipal number 1820 Capital Boulevard, Raleigh, North Carolina 27604, and which property is more particularly described on Exhibit 1 attached hereto (the "Premises").

2. **Condition of the Premises.** By accepting possession of the Premises, Tenant acknowledges that the Premises is suitable for Tenant's use. Except as otherwise set forth in this Agreement, Tenant accepts the Premises in their present "AS IS WHERE IS" condition and acknowledges that no representation as to the condition or repair of the Premises, or as to Landlord's intention with respect to any improvement, alteration, decoration, or repair of the Premises, has been made to Tenant.

3. **Term.** The term of this Lease shall begin on the Effective Date (the "Commencement Date") and shall terminate twenty-four (24) months from the Commencement Date, provided, however, Tenant shall have four (4) additional six (6) month option periods to renew this Lease, each of which Tenant may exercise by giving notice to Landlord of Tenant's desire to exercise such option at least ninety (90) days prior to the expiration of the then existing term (the initial 24-month term and each option, as exercised, collectively, the "Term").

4. **Rent.** For the initial twelve (12) months of the Term, Tenant shall pay to Landlord an aggregate amount of \$550,000, payable to Landlord, on a monthly basis, in the amount of \$45,833.33 (although the 12<sup>th</sup> payment shall be for \$45,833.37). For the next twelve (12) months of the Term (i.e., months 13-24), Tenant shall pay to Landlord an aggregate amount of \$566,500 (i.e., an increase of 3%), payable to Landlord, on a monthly basis, in the amount of \$47,208.33 (although the 12<sup>th</sup> payment shall be for \$47,208.37). Thereafter, for each 6-month option period exercised by Tenant, if and as applicable, the aggregate annualized rent shall be increased by 3% from the prior period, and paid on a monthly basis by Tenant to Landlord for the remainder of the Term, as exercised, specifically, the aggregate amounts for each 6-month period, as exercised, and the corresponding monthly payment amounts are as follows:

| Months | Aggregate Rental Amount | Monthly Payment Amounts                           |
|--------|-------------------------|---------------------------------------------------|
| 25-30  | \$291,747.50            | Months 1-5: \$48,624.60<br>6th month: \$48,624.50 |
| 31-36  | \$300,500.00            | Months 1-5: \$50,083.50<br>6th month: \$50,082.50 |

|       |              |                                                   |
|-------|--------------|---------------------------------------------------|
| 37-42 | \$309,515.00 | Months 1-5: \$51,585.90<br>6th month: \$51,585.50 |
| 43-48 | \$318,800.00 | Months 1-5: \$53,133.50<br>6th month: \$53,132.50 |

Each rental payment shall be due on the first day of each month in advance during the Term of this Lease (and a pro rata amount for the remainder of the month, due on the Effective Date, if the Effective Date is any day other than the 1<sup>st</sup> of the applicable month), payable to Landlord at P.O. Box 40639 Raleigh, NC 27629-0639, or at such other place as Landlord shall designate, in writing to Tenant, at least ten (10) days prior to the next ensuing rental payment date. If Tenant shall fail to pay any monthly installment by the tenth (10<sup>th</sup>) day of the month in which such installment is due, a late charge equal to five percent (5%) of the amount due shall be assessed and made payable by Tenant.

5. **Holding Over.** Upon the expiration of the Term or earlier termination of this Lease as set forth herein, Tenant shall quit and surrender to Landlord the Premises, broom clean and in as good order and condition as the Premises was at the time of Tenant's occupancy, ordinary wear and tear excepted, and Tenant shall remove from the Premises all of Tenant's property pursuant to Section 13 hereof. In the event that Tenant remains in possession of the Premises after termination of this Lease without Landlord's written consent, the continued possession of Tenant shall create a month-to-month tenancy with rent payable at 110% of the amount of rent due for the last month of the Term subject to the same covenants and conditions as provided in this Lease.

6. **Use and Compliance with Laws.** Tenant shall use the Premises solely for an automobile dealership and parts and service operation (including body and paint repair) and for no other purpose unless agreed upon by Landlord and Tenant. After the Commencement Date, at its sole cost and expense, Tenant shall comply, and shall cause the Premises to comply with all federal, state, regional, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances, including, but not limited to, zoning ordinances (the "Laws"), affecting any part of the Premises or the use thereof, regardless of whether any statute, law, rule, order, regulation or ordinance is hereafter enacted and results in a change of policy on the part of the governmental body enacting same and creates an additional compliance requirement. To the best of Landlord's knowledge, the Premises complies in all material respects with all Laws as of the Commencement Date; *provided however*, if this representation is untrue, during the Term Landlord shall cause the Premises to comply with such Laws in effect as of the Commencement Date to the extent such Laws are being enforced against the Premises by any applicable authority.

7. **Alterations and Renovations.** No alterations shall be made to the Premises without the prior written consent of Landlord, which consent shall not be withheld unreasonably, provided, however, upon termination of this Lease, such alterations and renovations shall become the sole property of Landlord.

8. **Triple Net Lease.** This Lease shall be a triple net lease. Consequently, throughout the Term, in addition to the daily upkeep of the Premises incident to Tenant's use,

Tenant, at Tenant's sole cost and expense, shall: (i) maintain insurance for the Premises as set forth herein; (ii) pay, before past due, all real estate and, if applicable (i.e. if Tenant has personal property at the Premises), personal property taxes and special assessments assessed to the Premises (or Tenant's personal property located thereon); and (iii) maintain the Premises, in good condition and repair (at least in the condition that the Premises was delivered to Tenant hereunder), performing all maintenance and repair, and the replacement of all items, provided, however, Tenant's obligations concerning repairs and replacement shall not include (i.e., shall exclude) the replacement of HVAC units/systems and any repair or replacement costing more than \$7,500.00, each of which shall be the responsibility of Landlord in Landlord's sole discretion, at Landlord's sole cost and expense (unless such repair or replacement is caused by Tenant's actions; in which case same shall be Tenant's responsibility, at Tenant's cost and the repair of which shall be paid for by Tenant within ten (10) days of Landlord's written demand). Tenant shall enter into a quarterly preventative maintenance contract for the HVAC unit/systems serving the Premises at Tenant's sole cost and expense. In addition to the above and for purposes of clarification, the following shall also be the responsibility of Landlord, at Landlord's sole cost and expense (unless caused by the actions of Tenant, Tenant's employees, guests, agents, customers, independent contractors or invitees, the repair of which shall be paid for by Tenant within ten (10) days of Landlord's written demand): repairing and/or replacing to the extent commercially reasonable any structural components including foundation and the roof. Landlord shall be under no obligation to inspect the interior of the Building. Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair, and if any such defective condition known to Tenant is not so reported and such failure results in other damage, Tenant shall be responsible to Landlord for any liability incurred by Landlord for damage resulting from the failure to report.

9. **Liens.** If Tenant conducts work at the Premises, including any alterations or renovations as contemplated herein, as applicable, Tenant shall promptly pay all contractors and materialmen incident thereto, so as to minimize the possibility of a lien attaching to the Premises, and if any lien is made or filed concerning such work, Tenant shall bond against or discharge same within ten (10) days after written request by Landlord. Additionally, if Landlord conducts work at the Premises, Landlord shall be obligated to adhere to the same requirements as Tenant as contemplated above in this Section 9.

10. **Assignment and Subletting.** Tenant shall not assign this Lease, pledge, or encumber by mortgage or other instrument, Tenant's interest in this Lease, nor sublease the Premises or any part thereof, without the prior written consent of Landlord, which consent shall not be withheld unreasonably.

11. **Insurance.**

(a) **Property and Casualty.** Throughout the term, Tenant shall maintain fire and extended casualty insurance and such other property insurance on the Premises as Landlord deems necessary and as reasonably requested by Landlord. The Tenant shall also be responsible for the insurance for Tenant's personal property located at the Premises for the full replacement value thereof.

(b) **Liability.** Throughout the term, Tenant shall provide and keep in force, for the protection of Tenant, the general public and Landlord, commercial general

liability insurance for the Premises in the amount of One Million and 00/100 Dollars (\$1,000,000.00) combined single limit (bodily injury and property damage).

(c) **Policy Requirements.** All companies writing any insurance which Tenant is required to carry and maintain or cause to be carried or maintained pursuant to this Lease, as well as the form of such insurance, shall at all times be subject to Landlord's approval, which approval shall not be withheld unreasonably, and any such company shall be licensed and authorized to do business in the State of North Carolina. Each policy required to be maintained by Tenant shall name Landlord as an additional insured with loss payable thereunder in accordance with Landlord's interest. Each such policy shall also contain a valid provision or endorsement that any such policy may not be canceled, terminated, changed, or modified except after thirty (30) days written notice is given to Landlord and an endorsement concerning the waiver of subrogation rights. Tenant shall provide to Landlord a certificate evidencing such insurance prior to the Commencement Date and prior to the commencement of each renewal period contemplated above.

## 12. Indemnity.

(a) **Tenant's Obligations.** To the extent permitted by law, Tenant agrees and shall indemnify and hold harmless Landlord and, at Landlord's option, defend it, from and against any and all claims, actions, damages, liabilities and expenses (including reasonable attorneys' and other professional fees), judgments, settlement payments, and fines paid, incurred or suffered by Landlord in connection with the loss of life, personal injury and/or damage to property suffered by Landlord, its agents, or other third parties, arising from or out of (i) any act or omission of Tenant, its officers, agents, contractors or employees, in connection with Tenant's occupancy or use of the Premises or any part thereof; (ii) Tenant's breach of any of Tenant's obligations, agreements or covenants set forth in this Lease, or (iii) any Release or presence of Hazardous Substances by Tenant, its officers, agents, contractors or employees, in violation of applicable environmental law, rule, or regulation into or over the Premises during the Term.

(b) **Landlord's Obligations.** To the extent permitted by law, Landlord agrees to and shall indemnify and hold harmless Tenant and, at Tenant's option, defend it, from and against any and all claims, actions, damages, liabilities and expenses (including reasonable attorney's fees and other professional fees), judgments, settlement payments, fines paid, incurred or suffered by Tenant in connection with the loss of life, personal injury and/or damage to property suffered by Tenant, its agents, or other third parties, arising from or out of (i) Landlord's breach of any of Landlord's obligations, agreements, representations or covenants set forth in this Lease or (ii) any Release or presence of Hazardous Substances by Landlord in violation of applicable environmental law, rule, or regulation into or over the Premises prior to the Commencement Date, except for those Releases or Hazardous Substances disclosed in Schedule 12(c).

(c) **Environmental Matters.** Except as disclosed in Schedule 12(c), to its knowledge, prior to the Commencement Date Landlord has not released, in violation of any applicable environmental law, rule or regulation, any Hazardous Substance or constituents thereof upon, into or over the Premises; and there have been no criminal

penalties or civil assessments for violations, of or under any applicable environmental law, rule or regulation issued to, assessed or paid by Landlord concerning the Premises; and there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice or demand letter, notice of violation, investigation, or proceeding pending or, to Landlord's knowledge, threatened against Landlord relating in any way to any applicable environmental law, rule or regulation concerning the Premises. For purposes of this Section 12, "Release" shall have the meaning as is ascribed to it in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended ("CERCLA"), and the term "Hazardous Substance" shall mean (i) any substance defined as a "hazardous substance" under CERCLA, (ii) petroleum, petroleum products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas, and (iii) any other substance or material deemed to be hazardous, dangerous, toxic, or a pollutant under any federal, state or local law, code, ordinance or regulation. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically active or other Hazardous Substances, or materials in, on, or under the Premises. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Premises any such materials or substances except to use in the ordinary course of Tenant's business. Tenant covenants and agrees that Tenant and Tenant's officers, agents, contractors or employees shall cause the Premises at all times during Tenant's use or occupancy thereof to be kept or maintained so as to comply with all now existing or hereafter enacted or issued environmental law, rule or regulation.

13. **Property of Tenant.** Tenant shall, at the expiration of the Term or the earlier termination of this Lease, remove all of Tenant's furniture, equipment, and other personal property located at the Premises; however, Tenant shall repair any damage to the Premises caused by such removal. Any such property not removed at the expiration or earlier termination of this Lease shall be deemed abandoned, and Landlord may dispose of same in any manner whatsoever at the sole cost and expense of Tenant, and Tenant shall pay the invoice therefor upon demand by Landlord within thirty (30) days. Notwithstanding the foregoing, Tenant shall not be required to remove the following items of personal property: above-ground lifts, paint booth, mezzanine flooring and metal racks in the Premises.

14. **Tenant's Default.** The occurrence of any one of the following shall constitute a default by Tenant:

(a) **Rent.** Tenant's failure to pay rent when due, following the expiration of five (5) days from Tenant's receipt of written demand for same, if Tenant fails to pay such rent before the expiration of the five (5) days;

(b) **Bankruptcy.** Declaration as bankrupt, or an assignment made voluntarily by Tenant for the benefit of Tenant's creditors or the appointment of a receiver or trustee for Tenant's property; or

(c) **Failure to Perform.** Tenant's failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice thereof has been given to Tenant, provided, however, if such cure cannot be completed

within such thirty (30) days, Tenant shall be given sufficient time to cure same as long as Tenant is actively and reasonably proceeding with same. Such notice shall specify the alleged default and the applicable Lease provision, and shall demand that Tenant perform the provision of the Lease within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the notice.

15. **Landlord's Remedies.** Landlord shall have the following remedies if Tenant commits a default of the terms and conditions of this Lease; these remedies are not exclusive, but instead, they are cumulative and in addition to any remedies now or later allowed by law:

(a) **Continue Possession; Reletting.** Landlord shall have the right to continue this Lease in full force and effect, and the Lease shall continue in effect as long as Landlord does not terminate this Lease, and until such time, Landlord shall have the right to collect rent when due. During any period Tenant shall be in default, Landlord shall have the right to relet the Premises, and in connection with such reletting, to enter the Premises without notice to vacate (any right to which is hereby waived by Tenant), remove the property of Tenant therefrom, such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, and relet the Premises, without prior notice or demand, using such reasonable force as may be necessary, changing any or all locks on the Premises, all without being liable for forcible entry, trespass, or other tort. To the extent that Landlord relets the Premises, the lease term can be for a period shorter or longer than the remaining portion of the Term, and Tenant shall be immediately liable to Landlord for all actual costs Landlord incurs in reletting the Premises or any part thereof, including, without limitation, actual broker's commissions, actual expenses of cleaning and redecorating the Premises required by the reletting and like costs. Landlord's reletting of the Premises shall terminate the Lease; *provided however*, despite such termination, Landlord's remedies under this Lease and at law shall remain in full force and effect and Tenant shall pay to Landlord the rent due under this Lease and other sums owing to Landlord under this Lease on the date that the rent or other sums are due, less the rent Landlord is to receive from any reletting. The Parties further acknowledge and agree that Landlord has an affirmative obligation, and Landlord covenants, to use reasonable efforts to mitigate Landlord's damages upon Tenant's default.

(b) **Terminate the Lease.** Landlord shall have the right to terminate this Lease without notice to vacate (any right to which is hereby waived by Tenant) and to terminate Tenant's rights to possession of the Premises at any time, and, in connection therewith, to re-enter the Premises as described in Subsection (a) above. No act by Landlord other than the giving notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. Upon termination, Landlord shall have the right to eject Tenant and pursue its remedies at law or in equity to recover from Tenant all amounts of rent or other sum then accrued and due at the time of such termination, provided, however, Landlord shall not have the right to recover or receive any amount otherwise owed following the termination of this Lease, including monthly rental amounts for the months following termination.

(c) **Perform Covenants.** If Tenant fails to perform any covenant under this Lease, then, after ten (10) days prior written notice and without waiving or releasing Tenant from the performance of such covenant or obligation, Landlord may, but is not obligated to, perform any such covenant, and in exercising any such right, to pay all necessary and incidental costs and expenses. All sums so paid by Landlord, together with interest at the rate of ten percent (10%) per annum on such amount, shall be deemed additional rent and shall be payable to Landlord on the first day of the next month following the date Landlord pays such sums.

16. **Landlord's Default.** Landlord's failure to perform any provision of this Lease shall constitute a default by Landlord, if the failure to perform is not cured within thirty (30) days after written notice thereof has been given to Landlord, provided, however, if such cure cannot be completed within such thirty (30) days, Landlord shall be given sufficient time to cure same as long as Landlord is actively and reasonably proceeding with same, provided, however, to the extent that Tenant cannot operate its business during such cure period, rent shall be abated, and if Tenant's use is limited during such cure period but usable, rent shall be reduced proportionately during such time; regardless, if, during such cure period, Tenant is unable to operate its business at the Premises for thirty (30) days due to Landlord's default, Tenant shall have the right to, but is not obligated to, perform any such covenant, and in exercising any such right, to pay all necessary and incidental costs and expenses. Landlord shall pay such costs and expenses within thirty (30) days of demand.

17. **Intentionally Deleted.**

18. **Eminent Domain.** In the event that the twenty percent (20%) or more of the Premises or such portion as renders the Premises unsuitable for Tenant's business consistent with Tenant's historical operations shall be taken by any public or quasi-public authority under the power of eminent domain or like power, then, the Term of this Lease shall terminate as of the date possession of the Premises shall be taken pursuant to the applicable laws of North Carolina. Rent shall be computed between Landlord and Tenant and paid through that date. All damages and compensation awarded for the taking of the Premises, shall be payable in the full amount to and the same shall be the property of Landlord, except damages and compensation for the fair market value of the leasehold estate or for Tenant's lost profits.

If less than twenty percent (20%) of the Premises or only part of the Premises not required for Tenant's business consistent with Tenant's historical operations shall be taken under this power of eminent domain, then in such event, this Lease shall continue in full force and effect, except that Tenant's rent shall be reduced proportionately to the amount of floor area lost due to such taking (or, if applicable, also accounting for other parts of the Premises lost, if used in, or in connection with, Tenant's business).

If Landlord, in its sole discretion, elects to restore the portion of the Premises subject to the taking, then Landlord shall notify Tenant within ten (10) days from the date of such taking of Landlord's election to repair or restore such taken area, and this Lease shall continue in full force and effect, except that during the period of rebuilding or restoration, rent shall be abated if Tenant is unable to operate its business consistent with Tenant's historical operations at the Premises during such period, and if Tenant can operate its business consistent with Tenant's

historical operations during such period, Tenant's rent shall be reduced proportionately to the amount of floor area lost due to such taking (or, if applicable, also accounting for other parts of the Premises lost, if used in, or in connection with, Tenant's business). Upon completion of such replacement or restoration, going forward, the full rental, as provided herein, shall be paid to Landlord.

19. **Access to Premises.** Upon reasonable notice (except in the case of emergency in which no notice shall be required) to Tenant and provided that Tenant's business shall not be adversely affected, Landlord and Landlord's authorized representatives shall have the right to enter upon the Premises at all reasonable business hours for the purpose of inspecting the Premises, or for making repairs, additions or alterations.

20. **Damage to or Destruction of the Premises.** In the event that the Building on the Premises, or any substantial part of such Building, shall be destroyed or become untenable by reason of fire or other casualty, not caused by Tenant or any of its employees, contractors or other agents, or its customers, and such damage cannot be repaired by Landlord within sixty (60) days, either Party shall have the option of terminating this Lease, by written notice delivered to the other Party within sixty (60) days of such fire or casualty, with Tenant's obligation to pay rent terminating as of the date of fire and other casualty. If applicable, rent shall be abated during any such repair.

21. **Intentionally Omitted.**

22. **Notices.** All notices to a Party shall be in writing and shall be delivered or sent by hand delivery, recognized overnight courier or registered or certified mail, postage fully prepaid and addressed to the recipient at such address appearing below or to such other address as a Party may by proper notice designate, and shall be deemed given in the case of hand delivery upon delivery to the recipient's address, in the case of overnight courier one (1) day after deposit with such courier and in the case of mailing three (3) days after deposit in the mail:

**Landlord:** Murray Investment Company No. 2 LLC  
C/O Branch Banking and Trust Company  
434 Fayetteville Street, 11th Floor  
Raleigh, NC 27601  
Attention: Kevin Ward

J. Brent King  
Murray Investment Company No. 2 LLC  
5408 Rockholly Court  
Garner, NC 27529

**Tenant:** Capital Chevrolet, Inc.  
4900 Leigh Drive  
Raleigh, NC 27616  
Attention: Timothy W. Michael

23. **Subordination.** At the option of Landlord, this Lease may be subject and subordinated to the lien of existing mortgages and mortgages which may hereafter be made a lien on the Premises. Although an instrument or act on the part of the Tenant may not be necessary to effectuate such subordination, if requested, Tenant will nevertheless execute and deliver such further instruments subordinating this Lease to the lien of any such mortgages as may be desired by the mortgagee. Notwithstanding the foregoing provisions, Tenant shall not be required to subordinate its leasehold interest to the lien of any mortgage, nor shall Landlord permit or otherwise effectuate same, unless the mortgagee in said mortgage executes a nondisturbance agreement recognizing the validity and continuance of this Lease for so long as Tenant is not in default.

24. **Utilities.** Landlord shall not be liable in the event of any interruption in the supply of any utility service to the Premises, including, but not limited to, all sewer, water, gas, electricity, heat, janitorial services, or any other utility or service necessary or convenient for the occupancy of the Premises, unless same is caused by, or the result of, Landlord's action or inaction; regardless, if such interruption continues for thirty (30) days and adversely affects Tenant's business, for whatever reason, Tenant shall have the right to terminate this Lease upon the expiration of the thirty (30) days. Additionally, if as a result of any such interruption, Tenant is unable to operate its business at the Premises, or a portion thereof (and such interruption is not caused by the actions or inaction of Tenant), for more than two (2) continuous days, then, effective the third day, Tenant's rent shall be abated or reduced, as applicable, accordingly, until Tenant's ability to operate its business in its normal course is restored. Tenant shall be responsible for all charges for its use or consumption of heat, sewer, water, gas, electricity or any other utility services.

25. **Signs.** Subject to Landlord's prior consent, which consent shall not be withheld unreasonably, Tenant shall have the right to place and maintain a sign or signs on the Premises on the front of the Building and elsewhere on the Premises, as long as same does not cause or create any condition which shall make or constitute a nuisance or danger to the general public, or violate any Laws or easements burdening the Premises. Tenant shall fully and faithfully comply with all applicable laws, ordinances, regulations and requirements of governmental or other regulatory bodies, commissions or agencies, with respect to the size, shape, color, illumination, placement and contents of said signs.

26. **Covenant of Title and Quiet Enjoyment.** Landlord warrants and covenants with Tenant that Landlord is seized of the Premises in fee simple and has the right and authority to enter into and perform this Lease for the Term; and Landlord covenants and agrees that upon Tenant paying the rent and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed under this Lease, that Tenant may peaceably and quietly have, hold, occupy and enjoy the Premises in accordance with the terms of this Lease without hindrance from Landlord or any persons lawfully claiming through Landlord.

27. **Waivers.** No waiver by either Party of any breach of any one or more of the terms, covenants, conditions and agreements of this Lease shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder, and the failure of a Party to insist upon the strict performance of the terms, conditions, covenants, and agreements herein contained or any of them, shall not constitute or be considered as a waiver or relinquishment of

such Party's rights thereafter to enforce any such default of the terms, conditions, covenants, or agreements and the same shall continue in full force and effect.

28. **Attorneys' Fees.** In the event that it becomes necessary for either Party to retain the services of an attorney to enforce any of the terms of this Lease by any legal means, the prevailing party, in addition to all other rights and remedies under this Lease, or as provided by law or in equity, shall be entitled to reimbursement of its reasonable attorney's fees and costs concerning same by the non-prevailing Party.

29. **Memorandum.** Each Party, at the request of the other, agrees to execute a short form memorandum of this Lease in recordable form.

30. **Governing Law.** The laws of the State of North Carolina shall govern the interpretation of this Lease.

31. **Binding Nature of Lease.** This Lease shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, successors and permitted assigns.

32. **Entire Agreement.** This Lease is the entire agreement between the Parties with respect to the subject matter, and there are no other representations or understanding except those written in this Lease with respect to such subject matter. No changes, alterations, or additions can be made to this Lease except in writing signed by the Parties.

33. **Counterparts.** This Lease may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Lease delivered by facsimile, e-mail (e.g. pdf) or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Lease.

**IN WITNESS WHEREOF,** Landlord and Tenant have duly executed this Lease as of the Effective Date.

[Separate Signature Page Follow]

SEPARATE SIGNATURE PAGE  
TO  
LEASE AGREEMENT

LANDLORD:

Murray Investment Company No. 2 LLC

By: J. Brent King  
Name: J. Brent King  
Title: Manager

TENANT:

Capital Chevrolet, Inc.

By: [Signature]  
Name: Timothy W. Michael  
Title: President

EXHIBIT 1  
DESCRIPTION OF PREMISES

Legal Description

1820 Capital Boulevard

Tract 1

Located in the City of Raleigh, County of Wake, State of North Carolina. BEGINNING at a point in the southeastern right of way of U.S. Highway 1, said point being South 37 degrees 08 minutes West 241.72 feet from a point in Pigeon House Branch as shown on a map to which reference is hereinafter made, said point of beginning being 50 feet from the center line of the northbound lane of U.S. Highway 1; runs thence from said beginning point South 58 degrees 30 minutes East 769.95 feet to a point; runs thence South 37 degrees 30 minutes West 230 feet to an existing iron pipe; runs thence North 69 degrees 44 minutes West 209.91 feet to an existing iron pipe; runs thence South 51 degrees 39 minutes West 479.50 feet to a point; runs thence North 64 degrees 02 minutes West 169.90 feet to a point; runs thence North 37 degrees 46 minutes East 173 feet to a point; runs thence North 26 degrees 28 minutes East 140.83 feet to an existing iron pipe; runs thence North 26 degrees 28 minutes East 37.80 feet to a point; runs thence North 69 degrees 43 minutes West 286.24 feet to an existing iron pipe on the Southeastern right of way of U.S. Highway 1, said point being 55 feet from the center line of said northbound lane; runs thence North 45 degrees 51 minutes East 170 feet with the southeastern right of way line of U.S. Highway 1; runs thence North 40 degrees 01 minutes East 230 feet with the Southeastern right of way line of the highway to the point and place of Beginning; containing 7.92 acres according to a map entitled "Property Survey of Gateway Plaza" made by Boney & Newcomb, Engineers, dated January 7, 1966.

Together with all the right, title and interest of the party of the first part in and to all land lying between the center line of the northbound lane of U.S. Highway No. 1 and the northwestern line of the above described property.

Tract 2:

BEGINNING at a stake in the southeastern right-of-way line of the northbound lane of U.S. Highway #1, said stake being in the original dividing line between Tracts No. 5 and No. 6 of the W. F. Taylor property as shown on a map recorded in Book of Maps 1941, Page 2, Wake County Registry; runs thence South 71 degrees 10 minutes East 286.24 feet to a stake; runs thence South 25 degrees 07 minutes West 87.6 feet to a stake; runs thence North 66 degrees 11 minutes West 315.15 feet to a stake in the southeastern right-of-way line of the northbound lane of U.S. Highway #1; runs thence with the said right-of-way North 46 degrees 16 minutes East 67.10 feet to the point and place of beginning. See Book 1519, Page 571, Wake County Registry.

Together with all right, title and interest of the grantor in and to the property lying between the center line of the right-of-way of said northbound lane of U.S. No. 1 and the front line of the property hereinabove described lying on the southeast side of the said right-of-way.

Tract 3:

BEGINNING at a point in the northern edge of the right of way of Fenton Street, the southeast corner of the property now or formerly owned by Storr Investment Company; thence with the eastern property line of Storr Investment Company North 26 degrees 17 minutes East 159.5 feet to a point in the southern property line of the property now or formerly owned by E.L. Torrance, being the site of the now or formerly Alamo Plaza Motel; thence with the southern property line of said property of E.L. Torrance South 66 degrees 10 minutes East 320.7 feet to a point in the western property line of Section 2 of Woodcrest Subdivision (see map recorded in Book of Maps 1956, Page 17 of the Wake County Registry), thence with said property line of Section 2 of Woodcrest Subdivision South 50 degrees 20 minutes West 266.4 feet to a point in the northern edge of the right of way of Fenton Street; thence with said right of way of Fenton Street, in a northwesterly direction along a curve to the left with a radius of 339.8 feet a distance of 211.2 feet to a point; thence continuing with said right of Fenton Street North 59 degrees 34 minutes West 20.4 feet to the point of Beginning, containing approximately 1.2 acres, and being part of Tract 4 of the William F. Taylor Property shown on a map recorded in Book of Maps 1941, Page 2 of the Wake County Registry. For chain of title see Report of Commissioners recorded in Book 267, Page 420 of the Wake County Registry and the Wills of Hubert S. Gill and Dixie D. Gill recorded in the office of the Clerk of Superior Court of Wake County.

Tract 4:

BEGINNING at a stake on the southeast side of U.S. Highway No. 1 North in the dividing line between Tracts 4 and 5 of the W.F. Taylor property as shown on plat in Book of Maps 1941, Page 2 of the Wake County Registry, runs thence with said dividing line between Tracts 4 and 5 South 65 degrees 30 minutes East 425.10 feet to a stake in the corner of land conveyed to Seby B. Jones by E.L. Torrance and others in September 1962, thence with said Seby B. Jones land North 36 degrees 25 minutes East 173 feet to a stake, runs thence North 25 degrees 07 minutes East 140.83 feet to a stake, said stake being located 1 foot northeast of and perpendicular to the original northeast line of that tract of land conveyed to E.L. Torrance by H.P. Faucette, Commissioner, recorded in Book 1045, Page 538, Wake County Registry; runs thence North 66 degrees 11 minutes West 315.15 feet in a line parallel with and 1 foot northeast of the original line of E.L. Torrance as above described to a stake in the southeast right of way of the northbound lane of U.S. Highway No. 1; thence along the line of the right of way of U.S. Highway No. 1 as it curves 341 feet (the cord being South 50 degrees 30 minutes West 340.8 feet) to the BEGINNING, it being part of the land conveyed by H.P. Faucette, Commissioner, to E.L. Torrance by deed recorded in Book 1045, at page 538, and by deed from E.N. Richards and others to E.L. Torrance and others by deed recorded in Book 1437, at Page 765, in the office of the Register of Deeds of Wake County, North Carolina.

**Schedule 12 (c)**

**Environmental Matters**

1. Letter from AECOM dated as of November 13, 2009.
2. AECOM Groundwater Monitoring Report dated June, 2009.
3. AECOM Groundwater Monitoring Report dated June, 2010.
4. AECOM Groundwater Monitoring Report dated March, 2011.
5. ENSR letter regarding Hydraulic Lift Removal and Report dated as of January 12, 2007.
6. ENSR letter dated as of November 11, 2005.
7. ENSR Phase 2 Environmental Site Assessment Report dated September, 2004.
8. ENSR Phase I/II Limited Site Assessment Report dated January, 2005.
9. 2007 Groundwater Monitoring Report Bobby Murray Chevrolet.
10. S&ME Phase I Environmental Site Assessment dated as of December 23, 2003.
11. AECOM – BMC UST Closure Report – Final – CD dated January, 2009.
12. Notice of Residual Petroleum recorded in the Wake County Register of Deeds at Book 014404, Page 01954.