

NORTH CAROLINA

WAKE COUNTY

## OFFER TO PURCHASE AND CONTRACT

WHEREAS, The Wake County Board of Education, a body corporate, ("Buyer") hereby agrees to purchase and Crooked Creek Golf Land LLC, a North Carolina Limited Liability Company and CC Partners, Inc., a North Carolina corporation (collectively "Seller") hereby agree to convey a portion of a parcel of land containing a total of 21.0 acres more or less, located on the southern side of Hilltop Needmore Road east of its intersection with Johnson Pond Road, Middle Creek Township, 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 (the "Property"). The Property is further identified by a legal description shown in Exhibit "A", and upon a Map shown on Exhibit "B" and Potential Concept Plan shown on Exhibit "C" for illustration only. Exhibit "A," Exhibit "B" and Exhibit "C" 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 or a portion of the parcel having Wake County PIN **#0678-84-2334** and **#0678-73-8917** and street addresses of 0 Hilltop Needmore Road, Fuquay-Varina, North Carolina and 0 Brushy Meadows Drive, Fuquay-Varina, North Carolina, respectively.

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 the greater of (a) Sixty-five Thousand and no/100 Dollars per acre based upon the survey referred to in Paragraph 2.C.1., or (b) \_\_\_\_\_ (\$\_\_\_\_\_), the fair market value of the property as determined by an appraisal performed by \_\_\_\_\_ (the "Appraiser"), who shall be chosen by Seller and whose name shall be inserted in the preceding blank by Seller upon selection. The Appraisal shall be commissioned by Seller and the cost thereof shall be borne by Seller. The Appraisal shall be completed within 120 days after this Contract is signed by the Wake County Board of Education. The Appraisal shall be performed based on the value of the property, as improved by the sewer, water and access infrastructure contemplated under Section 15. The Purchase Price shall be paid as follows:
  - A. **Partial Payment.** In partial payment of the Purchase Price, Buyer shall pay Seller Sixty-five Thousand and no/100 (\$65,000.00) Dollars per acre based upon the survey referred to in Paragraph 2.C.1., and shall be paid by Buyer to Seller as follows:
    1. \$10,000.00 in earnest money shall be paid by check to Boxley, Bolton, Garber & Haywood, L.L.P., Attorneys at Law, 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 agreement is otherwise terminated and it is disbursed in accordance with the terms of this agreement.
    2. Buyer and Seller acknowledge that the "Property" to be purchased includes 21.0 acres of land more or less. The exact location and acreage shall be determined by a formal boundary survey to be provided by Seller. Should the survey described in 2.F(1) obtained by Buyer determine that the total useable acreage is different than 21.0 acres, Buyer and Seller agree to adjust the purchase price to equal \$65,000.00 per acre times the amount of acreage.

roads, streets and/or utilities on or abutting said Property existing as of the date of this contract,

4. The balance of the purchase price, in cash at closing.
- B. Balance of Purchase Price. The balance of the Purchase Price (being the difference between the Purchase Price determined by the appraisal described above and the Partial Payment paid pursuant to sub-paragraphs 1(A)1-4 shall be credited to Buyer in the form of a charitable contribution from Seller to Buyer. In no event shall cash paid by Buyer exceed the sum of One Million Three Hundred Sixty-Five Thousand and no/100 (\$1,365,000) Dollars, unless as a result of an adjustment made pursuant to Paragraph 1.A.2. hereinabove.
  - C. Minimum Purchase Price. Notwithstanding the foregoing, in no event shall the Purchase Price be less than Sixty-five Thousand and no/100 (\$65,000.00) Dollars per usable acre based upon the survey referred to in Paragraph 2.C.1.
2. 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 Wake County Board of Education must approve all terms and conditions of this contract. Buyer agrees to diligently pursue such approval within the Due Diligence Period and to provide Seller with notice of the status and receipt of the same. This condition will be deemed satisfied or waived unless Buyer terminates this contract prior to the expiration of the Due Diligence Period.
    - 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. Buyer agrees to diligently pursue such funding approval within the Due Diligence Period and to provide Seller with notice of the status and receipt of the same. This condition will be deemed satisfied or waived unless Buyer terminates this contract prior to the expiration of the Due Diligence Period.
    - C. Within one hundred fifty (150) days from the date the Chairman of the Wake County Board of Education signs this contract ("Due Diligence Period"), Buyer must be able to obtain, at its expense unless otherwise provided herein, the following:
      - (1) A survey of the Property provided by Seller as contemplated under Section 1.A.2 hereof, 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 (the "ESA") 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 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.

- (5) 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.
- (6) 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.
- (7) Approval from the Town of Fuquay-Varina, Wake County and/or the North Carolina Department of Transportation to construct a suitable means of ingress and egress from the "Property" to Hilltop Needmore Road.
- (8) Approval from the Town of Fuquay-Varina, Aqua North Carolina, Wake County and/or the North Carolina Department of Environmental and Natural Resources or such other governmental agencies as are necessary to construct a suitable sewer system to support a elementary school upon the subject property.

With respect to each of the conditions enumerated in Section 2(C)(1) through (8), inclusive, above, Buyer agrees to diligently pursue satisfaction of such conditions within the Due Diligence Period and to provide Seller with notice of the status and receipt of the same. Each of the foregoing conditions will be deemed satisfied or waived unless Buyer terminates this contract prior to the expiration of the Due Diligence Period.

- D. At no cost or expense to Seller, Seller agrees that it has an affirmative duty to cooperate with Buyer in Buyer's testing and investigation of the Property for an environmental assessment and shall disclose any and all information about the Property actually known by Seller that may be useful in such an assessment provided however, that the cost of investigation shall be paid by the Buyer. Seller hereby represents and warrants to Buyer:
- (1) Buyer is relieved of any liabilities, claims, penalties, fines, costs, or charges that may occur as a result of any action against the Property under Federal, State, or Local Environmental Laws as a result of any environmental conditions arising from circumstances occurring during the period of Seller's ownership and caused by acts or omissions of Seller, its employees, agents or contractors. The foregoing shall specifically exclude such liabilities, claims, penalties, fines, costs, or charges (i) caused by actions or omissions of Buyer, its employees, agents or contractors, (ii) any conditions or liabilities existing on or with respect to the Property prior to the Seller's acquisition of the same, and (iii) any conditions or liabilities existing with respect to the Property which are identified in the ESA.
  - (2) 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 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;
  - (3) To the best of Seller's knowledge, the Property is not subject to any casualty damage. Any casualty damage to the property arising out of or resulting from the acts of Buyer, its agents, employees or other representatives is excluded;
  - (4) (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 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 Agreement by local authorities, the State of North Carolina, and/or the Federal Government; and
- (5) 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; and
  - (6) To the best of Seller's knowledge, 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.

Buyer's obligation to purchase the subject Property is expressly conditioned upon the foregoing representations of Seller being true and accurate on the date hereof and on the date closing; and these representations and warranties shall be deemed extended through the date of closing unless Seller advises Buyer in writing of any changes prior to closing. These representations and warranties shall survive closing and transfer of possession for a period of six (6) months.

E. [intentionally deleted].

F. 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. If such conditions exist, Buyer shall send notice of the same to Seller, whereupon Seller will exert all commercially reasonable efforts to cure same prior to closing; provided, Seller's failure to effect a cure of the same shall not constitute a default of Seller hereunder. If Seller is unsuccessful in timely curing said conditions, Buyer may cancel this agreement, 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 agreement. Buyer agrees to diligently pursue satisfaction of the foregoing condition within the Due Diligence Period and to provide Seller with notice of the status and receipt of the same. The foregoing condition will be deemed satisfied or waived unless Buyer terminates this contract prior to the expiration of the Due Diligence Period.

- G. There must be no zoning regulations that could prevent the reasonable use of the real property for public school and administrative purposes. If such conditions exist, Buyer shall send notice to Seller, and with Seller's prior written consent, it is the responsibility of the Buyer to file a petition to rezone the Property to such zoning classification, or classifications, as the Buyer may select. 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. Buyer agrees to diligently pursue satisfaction of the foregoing condition within the Due Diligence Period and to provide Seller with notice of the status and receipt of the same. The foregoing condition will be deemed satisfied or waived unless Buyer terminates this contract prior to the expiration of the Due Diligence Period.
- H. All deeds of trust, liens, leases and other monetary charges against the Property which can be satisfied by the payment of money must be paid and canceled by Seller (or the Property released from the liens thereof) 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.
- 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 for the following (collectively "Permitted Exceptions"): (i) ad valorem taxes for the current year (prorated as described in Paragraph 5-A), (ii) rights of others in and to the public rights of way on or abutting the property or natural waters on or abutting the property, (iii) zoning and land use restrictions applicable to the property, including any conditions arising or created in connection with Buyer's proposed use and development of the property, (iv) the subdivision and/or recombination plat referenced below (i.e., the plat itself, but the foregoing shall not be construed as to effect Buyer's implied consent to any easements, rights of way or other adverse matters shown thereon, which, if objectionable, shall be handled through the objection process below) , as well as any other documents or instruments required to effect the same, and (v) all other matters which are of record as of the date of this contract, or which would be shown by a current and accurate survey of the property as of the date of this contract, except for those matters which (a) are objected to in writing by Buyer within the later of one hundred twenty (120) days following the execution of this contract or fifteen days after Seller has provided Buyer with the recombination/subdivision plat, and (b) Seller has agreed in writing to cure (the "Curable Title Matters"). Buyer's failure to object to any matters of title or survey prior to the deadline set forth above shall constitute its deemed waiver and acceptance of such matters. Seller agrees to respond to Buyer's title/survey objections within fifteen (15) days following Seller's receipt of the same. Seller's failure to agree in writing to cure any matters to which Buyer objects shall constitute Seller's election not to cure the same, and Buyer shall be deemed to have waived such objections in such case unless Buyer terminates this contract prior to the expiration of the Due Diligence Period.
- J. At no cost to Seller, Seller shall provide to Buyer copies of any studies and/or reports in their entirety which Buyer may have received and or commissioned in Buyer's possession (or in the possession of Withers & Ravenel, Inc.), regarding the property within 10 days of the execution of this contract by all parties. 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 provided the same can be transferred without cost to Seller. Any such reports or studies shall be deemed delivered to Buyer as an accommodation, without any representation or warranty whatsoever. Buyer is encouraged to obtain and generate its own reports and studies.

- K. Seller shall be responsible for preparation and recordation of such surveys or plats as are necessary to effect recombination and/or subdivision of the subject property from the parent tracts described hereinabove. Buyer shall assist the Seller in the Seller's recombination or subdivision mapping efforts to such extent as the Seller may reasonably request, but the Buyer shall have no duty to incur any expense in such efforts.
  - L. Should Buyer 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 the Purchase Agreement in writing prior to the expiration of the Due Diligence Period. If requested by the Escrow Agent, Seller shall confirm in writing that the Purchase Agreement 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 Agreement. If Buyer fails to deliver written notice of termination prior to the expiration of the Due Diligence Period, the foregoing due diligence conditions shall be deemed satisfied or waived, the earnest money shall become non-refundable except in the event of a material default by Seller, and Buyer shall have no further right to terminate this contract under this Section 2.
3. FAILURE OF CONDITIONS: If any of the conditions in this document are not met, Buyer has the option to waive the satisfaction of any unsatisfied conditions. If Seller breaches the contract in any other way, and such breach is not cured within fifteen (15) days following Seller's receipt of written notice thereof, Buyer shall recover its earnest money deposit without prejudice to any other remedies it may have for the breach. If Buyer breaches the contract, and such breach is not cured within fifteen (15) days following Buyer's receipt of written notice thereof, Seller shall be entitled to the earnest money deposit without prejudice to any of the remedies they may have for the breach.
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 at closing for a period of six (6) months:
- A. ASSESSMENTS: Seller warrants that to the best of Seller's knowledge, there are no special assessments, either pending or confirmed, for sidewalk, paving, sewer, water, or other improvements on or adjoining the Property. 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; and further any encumbrances and assessments arising from the work and infrastructure contemplated under Section 15 of this contract are excluded herefrom.
  - B. CLAIMS AND SUITS: Seller has not entered into any leases or rental agreements with reference to the Property. Except for the pending lawsuit identified on the Disclosure Schedule attached hereto as Schedule 1 (the "**Pending Litigation**"), 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. With respect to the Pending Litigation, it shall be a condition precedent to Buyer's obligation to close hereunder that (a) the Pending Litigation is dismissed

with prejudice, or (b) a final order or judgment is entered in the Pending Litigation or any appeal thereof (with all subsequent rights to appeal waived or expired) which does not materially and adversely affect the Property or Buyer's ability to purchase, use and develop the Property for the intended use (the "**Litigation Resolution Condition**").

- C. COMPLIANCE WITH APPLICABLE LAWS: To the best of Seller's knowledge, Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and regulations affecting the Property and to the best of Seller's knowledge no portion of the Property has been used for the production, storage or disposal of toxic or hazardous waste materials of any kind.
- 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 least ten (10) days prior to closing in a form satisfactory to Buyer to such effect.
- E. ADVERSE SUBSURFACE CONDITIONS: Seller has no actual knowledge of the existence of any subsurface or buried construction material or debris on the Property.

As used throughout this contract, the phrase "knowledge of Seller" and "to the best of Seller's knowledge" or words of similar import, shall mean the actual awareness of Hamilton E. Withers, III, solely in his capacity as Manager and President of the two Seller entities, without investigation or inquiry. Reference to Hamilton E. Withers, III, is for the sole purpose of qualifying the knowledge component of Seller's representations and warranties in this contract and shall not be construed as to impose any personal or individual liability to Hamilton E. Withers, III.

Seller agrees to execute a certificate at closing reaffirming its representations and warranties set forth in this Section 2.D and Section 4 in commercially reasonable form, subject to the expiration of the same as noted herein. Notwithstanding the foregoing, Buyer agrees that any representations or warranties of Seller set forth in this contract may be modified by Seller at closing to the extent that facts and circumstances first arise or are first discovered after the date of this contract, so long as (a) such modifications are not necessitated by Seller's actions in breach of this contract; and (b) such fact or circumstance first arose or was first discovered during the Due Diligence Period (or would have been discovered during the Due Diligence Period by a commercially prudent purchaser of real property performing due diligence on a site).

- 5. 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 real property 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. It shall be Buyer's responsibility to ensure that the property acquired by the Board of Education shall be released by the Property Taxing Authority from further tax liability.
  - 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. All crop allotments, if any, shall be retained by the Sellers.
  - E. 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 Moss Withers of NAI Carolantic Realty, presented the property to Buyer for its consideration in the capacity of Seller's Agent or Sub-Agent, ii) Buyer's dealings with Withers 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, 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 least ten (10) days prior to 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. Buyer and Seller shall each pay their respective attorney's fees.
8. **EVIDENCE OF TITLE:** Seller shall deliver to Buyer within 30 days after the acceptance of this offer copies that are reasonably available without cost of all title and due diligence information available to Seller which is not recorded with the Wake County Register of Deeds, including but not limited to any existing title insurance policies, attorneys' opinions on title, surveys (boundary, topographic, streams & wetlands delineation), Phase 1 ESA, geotechnical subsurface explorations relating to the Property. Seller shall also provide copies of such development plan information that is available to Seller without cost including subdivision plans, anticipated plan approval timeline, infrastructure plans and information regarding roads, water and sewer that is anticipated to serve the Subject Property, and the construction timelines for Seller's installation of such infrastructure.
9. **ASSIGNMENT:** This contract may not be assigned without the written agreement of all parties, but if the same is assigned by agreement, then the same shall be binding on the assignee and his heirs. Notwithstanding the foregoing, Buyer shall have the right to assign this Offer to Purchase and Contract to Wake County, or take title to the Property at closing in an entity affiliated with Buyer without necessity of written agreement by Seller. Further, if necessary or convenient with respect to the subdivision or recombination of the subject property from the parent tract, one or both of the Seller entities shall have the right to transfer the portion of the subject property owned by it to the other, on the condition that the Seller entities named herein shall remain liable and such transfer shall be made expressly subject to this contract and the transferee shall assume all obligations hereunder.
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 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, subject to any applicable expiration set forth herein.
12. **SELLER'S AUTHORITY:** Sellers warrant and represents that they have 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 agreement. Should Sellers fail to convey title to Buyer under the terms and conditions of this contract, Sellers shall be immediately liable and shall immediately reimburse the Wake County Board of Education for all expenses incurred in its attempt to acquire approximately 21.0 acres. Reimbursement of expenses shall not relieve Sellers of their responsibility to convey approximately



21.0 acres and Buyer does not waive any additional remedies it may have as to performance by Sellers.

14. **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 Property 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 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. Buyer shall obtain, and shall ensure that its contractors obtain, commercial general liability insurance insuring its due diligence activities and naming Seller additional insured.
15. **POST CLOSING COVENANTS:** These covenants shall survive closing:
  - A. **WATER AND SEWER INFRASTRUCTURE:** Buyer and Seller shall share the cost (50% by Seller and 50% by Buyer) of extending a 12" water line from the intersection of Hilltop Needmore Road and Lake Wheeler Road westward along Hilltop Needmore Road to the eastern boundary of the subject property. Buyer and Seller shall also share the cost (50% by Seller and 50% by Buyer) of extending a sewer line from the current terminus of the sewer line leading to the Aqua pump station southward to the southern side of Hilltop Needmore Road to the northern boundary of the subject property. Seller shall be solely responsible for the work required for the installation of the foregoing-described adequately-sized water and sewer line extensions to the proposed school site at least eighteen (18) months prior to projected school occupancy date, subject to the cost sharing provisions required herein. Buyer shall provide Seller with adequate notice in writing of the proposed school occupancy date. If Buyer provides Seller with notice of the proposed opening date less than twenty-four (24) months in advance or said opening date, Seller's provision and installation of adequately-sized water and sewer line extensions to the proposed school site within twelve (12) months following Seller's receipt of notice of such occupancy date shall be deemed acceptable to Buyer. The Buyer is responsible for making its own connection to said water and sewer lines. Buyer shall also be responsible for such development requirements, approvals and fees as are customarily charged in the process of the development of land and construction thereon of a public school. Seller shall provide a performance bond or Letter of Credit issued by a financial institution to Buyer at closing in an amount of \$335,995.50 (which amount is 115% of the estimated costs – See **Exhibit D**) to secure its timely installation of the utilities as described herein, the costs of which such bond/letter of credit are to be included in the project costs being split by the parties. Once the utilities are installed and Seller has paid third party contractor all amounts due including retainage, then Buyer shall reimburse Seller for its one half-share of the costs of installation and foregoing-described work from its E-44 elementary school construction budget once approved, established, and allocated for the project, but in any event not later than thirty days following Buyer's commencement of clearing and grading of the site.
  - B. **SUBDIVISION ROAD INFRASTRUCTURE:** Seller's subdivision plans as submitted to the Town of Fuquay and illustrated on Exhibit "C" attached depict location of a road along the eastern side of the Subject Property that extends southward from Hilltop Needmore Road at its intersection with Shady Greens Drive to Brushy Meadows Drive. Buyer and Seller shall share the cost (50% by Seller and 50% by Buyer) of installing a portion of the foregoing road extension, said portion constituting the road section from the intersection of Hilltop Needmore Road and Shady Greens Drive southward along the Shady Greens Drive extension to the southeastern corner of the subject property (the "Shared Road Section"). Seller shall be solely responsible for the work required for the installation of the foregoing-described Shared Road Section to provide access to and along the eastern boundary of the Subject Property (E-44 elementary school) site as road frontage at least eighteen (18) months prior to school occupancy

date, subject to the cost sharing provisions required herein. The road cross-section shall be designed and installed to such standards as NCDOT recommends to adequately support school bus traffic. Buyer shall provide Seller with adequate notice in writing of the proposed school occupancy date. If Buyer provides Seller with notice of the proposed opening date less than twenty-four (24) months in advance of said opening date, Seller's provision and installation of a gravel road access to existing public roads (over the Shared Road Section area) at least twelve (12) months following Seller's receipt of notice of such occupancy date, and thereafter provision and installation of a paved public road access to and along the eastern boundary of the School Site as road frontage (over the Shared Road Section area) at least six (6) months prior to school occupancy date shall be deemed acceptable by Buyer. Until such time as the road access to the site is completed via the Shared Road Section, Seller shall grant Buyer such temporary easements for ingress and egress from an existing public road to the site to accommodate such vehicular traffic as is necessary to provide reasonable access to the site for development of the school site. Seller shall provide a performance bond or Letter of Credit issued by a North Carolina financial institution to Buyer at closing in an amount of \$541,075 (which amount is 115% of the estimated costs – See **Exhibit D**) to secure its timely installation of the Shared Road Section as described herein, the costs of which such bond/letter of credit are to be included in the project costs being split by the parties. Once the Shared Road Section improvements are installed and Seller has paid third party contractor all amounts due including retainage, then Buyer shall reimburse Seller for its one-half share of the costs of installation of and foregoing-described work in connection with the Shared Road Section from its E-44 elementary school construction budget once approved, established, and allocated, but in any event not later than thirty days following Buyer's commencement of clearing and grading of the site.

- C. **HILLTOP NEEDMORE ROAD INFRASTRUCTURE:** Seller shall have no expense for such public road improvements to Hilltop Needmore Road as are required by NCDOT or Town of Fuquay-Varina along the northern boundary of the Subject Property (E-44 elementary school) site as road frontage.
- D. **EASEMENTS AND RIGHTS OF WAY:** In the event that Buyer is required by the Town of Fuquay-Varina, Wake County or NCDOT to make other road or utility improvements to support the development of an elementary school on the Subject Property and easements or rights of way are needed upon properties owned by Seller, Seller shall convey and/or dedicate such easements and rights of way to buyer, NC DOT, or the municipality, as appropriate, at no additional costs so long as the remainder of Seller's impacted property is not unreasonably or substantially damaged or adversely affected by said conveyances. The parties shall endeavor to determine whether such off-site easements will become necessary during the Due Diligence Period.
- E. **RECORDABLE INSTRUMENTS.** Seller shall be responsible for preparation of such recordable plats and documents as are necessary for the conveyances described hereinabove.
- F. **REIMBURSEMENTS TO SELLER.** The reimbursement payments for which Buyer is to provide to Seller under subsection A (as to sewer and water infrastructure) and subsection B (as to roadway infrastructure) above (collectively the "Infrastructure Reimbursement Payments") shall, from the date of completion of the work, constitute a lien and charge against the title of the Property for the benefit of Seller, which lien shall run with the title to the Property and be enforceable against each and every owner of the Property. The Infrastructure Reimbursement Payments are due and payable in full as provided in subsections A and B above. If not earlier paid, the sale or other transfer of all or any portion of the Property shall cause the Infrastructure Reimbursement Payments to be immediately due and payable. Buyer agrees to permit Seller to record a notice on the title evidencing such lien at Closing (the "Lien Notice"), and to take such further actions as may be necessary or required to effectuate the intent of this provision. The Lien Notice shall provide that upon payment in full of the Infrastructure

Reimbursement Payments, Seller shall record a cancellation of the Lien Notice, and that if Seller fails to record a cancellation of the Lien Notice within thirty (30) days following its receipt of payment in full, Buyer shall be entitled to record a sworn affidavit which states the Infrastructure Reimbursement Payments have been paid in full, which shall be effective to cancel the Lien Notice on the title to the Property. Additionally, if requested by Buyer at Closing, Seller agrees to execute a cancellation of the Lien Notice at Closing for recordation upon payment in full of the Infrastructure Reimbursement Payments, which cancellation shall be held in escrow under a mutually acceptable escrow agreement executed at Closing. The form of the Lien Notice and escrow agreement shall contain the foregoing provisions and otherwise shall be mutually acceptable to Buyer and Seller and negotiated in good faith between the parties prior to Closing.

16. **RISK OF LOSS:** The risk of loss prior to closing, which shall include personal property, shall be upon the Seller.
17. **POSSESSION:** Exclusive possession of the Property free and clear of occupancy by all persons, firms or corporations, whether or not under claim of right or color of title, shall be delivered to Buyer at closing on the conditions required in this Offer to Purchase and Contract.
18. **CLOSING:** The closing of the transaction shall occur on the date specified by Buyer upon five (5) business days written notice from Buyer to Seller; provided that the closing shall occur within thirty (30) days after all conditions set forth in 2 of this contract have been met or waived. Notwithstanding the foregoing, closing shall occur on or before July 31, 2016 (the "Outside Closing Date"), and in the event that any conditions have not been met or waived (or deemed waived) by Buyer on or prior to the Outside Closing Date, then Buyer shall either waive such conditions and proceed to closing prior to the Outside Closing Date. In the event Buyer has failed to terminate this contract and fails to close on its purchase of the property prior to the Outside Closing Date, Seller may terminate this contract, whereupon the earnest money shall be forfeited to Seller and neither party shall have any further rights or obligations hereunder except for those which survive termination. The parties agree to execute any and all documents and papers necessary in connection with the closing and transfer of title 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 Senior Director. Notwithstanding anything contained herein to the contrary, in the event the Litigation Resolution Condition has not been satisfied or waived by Buyer on or before the Outside Closing Date, either party shall have the right to extend the Outside Closing Date for a period equal to the earlier of (a) ten (10) business days following the satisfaction of the Litigation Resolution Condition, or (b) six (6) months following the original Outside Closing Date set forth herein. In the event that the Litigation Resolution Condition has not been satisfied or waived by Buyer, as may be extended as set forth herein, then at Buyer's election it may either terminate this Contract or extend the Outside Closing Date for a period of time not to exceed an additional eighteen (18) months for the Litigation Resolution Condition to occur. Should the Litigation Resolution Condition not be satisfied after all the extensions of the Outside Closing Date then either party may terminate this Agreement, whereupon the Buyer shall receive a refund of the earnest money, and neither party shall have any further rights or obligations hereunder.
19. **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.
20. **EXTENSION:** Notwithstanding the foregoing, Buyer shall have the one-time right to extend the Outside Closing Date by up to thirty (30) days by the provision of written notice to the Seller prior to July 31, 2016 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. In addition thereto, Buyer shall deposit \$10,000.00 in additional earnest money deposit prior to expiration of

the term that is sought to be extended, which shall be non-refundable and earned by Seller in consideration of the extension, and shall be paid to Seller upon any subsequent termination of this contract, but will be applicable to the purchase price at closing.

21. 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.
22. 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: Hamilton E. Withers, III, Manager  
Crooked Creek Golf Land LLC  
4621 Shady Greens Drive  
Fuquay-Varina, NC 27526  
Email: [twithers@withersravenel.com](mailto:twithers@withersravenel.com)

w/copy to: Manning, Fulton & Skinner, P.A.  
3605 Glenwood Ave., Suite 500  
Raleigh, NC 27612  
Attn.: Douglas J. Short  
Email: [short@manningfulton.com](mailto:short@manningfulton.com)

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

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](mailto:bparker@wcpss.net)

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

22. MEMORANDUM OF CONTRACT: Each party hereto reserves the right to obtain upon request the execution by the parties of a Memorandum of Contract suitable for recordation in the Office of the Register of Deeds of Wake County. The requesting party shall pay all expenses for preparation and recordation of said Memorandum(s). This contract itself may not be recorded without the prior written permission of Buyer and Seller. If Buyer records a memorandum of contract, Buyer shall furnish a notice of termination that Seller can record, which notice shall be in form and substance reasonably satisfactory to Seller.
24. 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.

25. 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 (SEAL)

**THOMAS C. BENTON**  
~~CHRISTINE KUSHNER~~, CHAIR

Attest: James G. Merrill  
JAMES G. MERRILL, Secretary/Superintendent

Date: 2/15/16

**SELLER:**

CROOKED CREEK GOLF LAND LLC  
A North Carolina Limited Liability Company

H.E. Withers, III (SEAL)  
BY: HAMILTON E. WITHERS, III Manager/Member

Date: 2/1/14

CC PARTNERS, INC.,  
A North Carolina corporation

By: Hamilton E. Withers, III (SEAL)  
Hamilton E. Withers, III, President

SCHEDULE 1  
DISCLOSURE SCHEDULE

The Sellers are subject to a lawsuit in Wake County Superior Court styled *Friends of Crooked Creek, LLC et al. v. C.C. Partners, Inc. et al.*, 15 CVS 7979, whereby neighbors to the Property sought to enjoin the closing of a golf course located on a portion of the Property. The injunction was denied in July, 2015 because the court found that the plaintiffs were unlikely to be successful on its merits. A Declaratory Judgment action remains pending and should be resolved in Spring 2016.

**Exhibit "A":**  
Legal Description:

The subject Property is located on the southern side of Hilltop Needmore Road east of its intersection with Johnson Pond Road, Middle Creek Township, Wake County, North Carolina, and consists of a  $\pm 21.0$  acre assemblage of all or a portion of those certain parcels having Wake County PIN #0678-84-2334 and PIN #0678-73-8917, and more particularly described as follows:

Tract 1: BEING a portion of the property of Crooked Creek Golf Land LLC, having Wake County PIN #0678-84-2334 and REID #0302159, and a portion of that property as described in that general warranty deed recorded in Deed Book 9827, Page 2248, Wake County Registry.

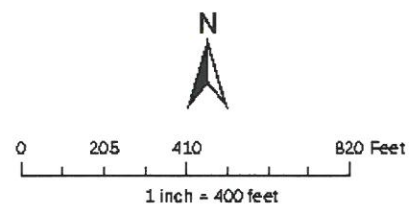
Tract 2: BEING all of the property of CC Partners, Inc., having Wake County PIN #0678-73-8917 and REID #0301216, and a portion of that property described in that general warranty deed recorded in Deed Book 8932, Page 966, Wake County Registry.

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/Subdivision/Recombination Plat.

Exhibit "B"  
Wake County GIS Aerial Photo of Seller's Parcel Outlined in Red:  
(Subject Property approximately depicted with yellow outline. See also Exhibit "C")  
PIN #0678-84-2334 & 0678-73-8917



Crooked Creek Aerial









## EXHIBIT D

## Estimates

**Estimated Costs of Water and Sewer Infrastructure**

Water line extension. Lake Wheeler to site

Tie to existing wl. Lump sum.	\$1,000
1500 lf 12" pvc wl @ \$32/lf.	46,500
70 lf 12" dip wl @ \$41/lf.	2,870
B & J 12" dip wl \$70 lf @ \$250 lf	17,500
Driveway repair. 2 @ \$ 1500 ra.	3,000
12x8 tee. 2 @ \$700 ra.	1,400
12" gv. 2 @ \$1,200 ea.	2,400
8" gv. 2 @ \$1,000 ea.	2,000
FH assemblies. 4 @ \$3,500ea.	14,000
2" BO. 1 @ \$1,800.	1,800
EC. Lump sum.	5,000
Sub. Total.	\$ 97,470
Cont 10%.	9,700
Total.	\$107,170

Sewer line

FM Tie to plant. Lump sum.	3,000
4" pvc force main. 5000lf @ 16/lf.*	80,000
60 gpm PS to Aqua specs. LS.	80,000
EC. LS.	5,000
Sub total.	168,000
Cont @10%.	17,000
Total.	\$ 185,000

\*good chance 2000 lf of existing line in ground may be able to be utilized as FM. This will be determined in an upcoming meeting with Aqua and could save \$32,000 in potential cost.

**Estimated Costs of Road Infrastructure**

Road construction on site adjacent to site

1000 lf 29' bb to Town FV specs	
@ \$400 lf.	\$ 400,000
1000 lf. 8" wl at \$32/lf.	32,000
Sub total.	432,000
Cont @ 10%.	43,000
Total	\$ 470,500