

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 The Adcock Trust Agreement dated 08/11/1998 ("Seller"), by David W. Ball, as Trustee for Seller, hereby agrees to convey a parcel of land, totaling 62.41 acres more or less, located on the eastern side of Main Street, north of its intersection with Bowling Road, Middle Creek Township, Fuquay-Varina, 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". Exhibit "A" and "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 or a portion of the parcel having Wake County PIN 0666-11-2040 and street address of 1201 Bowling Road, Fuquay-Varina, North Carolina 27526.

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 Forty Seven Thousand 7and no/100 (\$47,000.00) Dollars per useable acre based upon the survey referred to in Paragraph 2.C.1., and shall be paid by Buyer to Seller as follows:
  - A. \$25,000.00 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.
  - B. Buyer and Seller acknowledge that the "Property" to be purchased includes 62.41 acres of land more or less. The exact location and acreage shall be determined by a formal boundary survey to be provided by Buyer. Should the survey described in 2.C(1) obtained by Buyer determine that the total useable acreage is different than 62.41 acres, Buyer and Seller agree to adjust the purchase price by an amount equal to \$47,000.00 per acre times the amount of acreage.
  - C. For purposes hereof the term "usable acre" and "usable acreage" shall mean the gross acreage of the Property, less any land lying within an existing right-of-way or easement for roads on or abutting said Property, streets or utilities, and less any land lying within such streams, ponds and wetlands as are identified in the due diligence process and confirmed by appropriate governmental agencies. Usable acreage shall specifically include such required site development buffers, streetscapes, or open space dedication areas as may be required with development, unless excluded by the preceding definition.
  - D. The balance of the purchase price, in cash at closing.
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.

- A. 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 eighty days from the date upon which the Wake County Board of Education approved this Offer to Purchase and Contract, ("Due Diligence Period"), 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. Failure to determine such conditions by this inspection shall not relieve Seller of its obligation to indemnify Buyer from any claims under Federal, State, or Local Environmental Laws as required by other sections of this Offer to Purchase and Contract. 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 Wagstaff Road.
  - (8) Approval from the Town of Fuquay-Varina, , Wake County and/or the North Carolina Department of Environmental Quality or such other governmental agencies as are necessary to construct a suitable sewer system to support a, elementary school upon the subject property, or connect to public sewer service that is otherwise available with sufficient capacity for Buyer's purposes.
- D. 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 that may be useful in such an assessment provided however, that the cost of investigation shall be paid by the Buyer. Seller shall furnish at least ten (10) days prior to closing an affidavit and indemnification agreement in a form suitable to Buyer stating that:

- (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 agents or assigns (for these purposes, "Seller's agents or assigns" excludes Buyer, its agents, employees or other representatives);
- (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) 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 possession of the Property is transferred by Seller to Buyer; and these representations and warranties shall be deemed extended through the date possession is transferred unless Seller advises Buyer in writing of any changes prior to transfer of possession. These representations and warranties shall survive closing and transfer of possession.

- E. Seller shall disclose to Buyer within 30 days of the execution of this contract, any information regarding the use of the Property, or any portion thereof, in a manner that is regulated by Federal, State, or Local Environmental Laws to the degree Seller has knowledge.
- 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, it is the responsibility of the Seller to inform the Buyer of any such conditions and Seller will exert all commercially reasonable efforts to cure same prior to closing. 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.
- 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, 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.
- 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 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 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. The Property must have legal access to a public right-of-way.
- J. Seller shall provide to Buyer copies of any studies and/or reports in their entirety which Seller may have received and or commissioned regarding the property within 10 days of the execution of this contract by all parties. 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.

- K. 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. 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. Within five days of the notification of Seller of Buyer's election to terminate, Buyer will provide to Seller copies of all due diligence studies procured in the Buyer's investigation of the subject property and will advise its consultants that they are released to discuss their findings with Seller.
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, Buyer shall recover its earnest money deposit without prejudice to any other remedies it may have for the breach. If Buyer breaches the contract, 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:
- A. ASSESSMENTS: Seller warrants that there are no encumbrances or 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.
  - B. CLAIMS AND SUITS: Seller has not entered into any agreement including leases or rental agreements with reference to 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 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.
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. 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. All crop allotments, if any, shall be retained by the Seller.
  - 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 Clyde Douglass presented the property to Buyer for its consideration in the capacity of Seller's Agent or Sub-Agent, ii) Buyer's dealings with Douglass 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 execution of this offer by all parties copies that are reasonably available without cost of all title information available to Seller, including but not limited to title insurance policies, attorneys' opinions on title, surveys, covenants, deeds, notes and deeds of trust and easements relating to the Property.
  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.
  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.
  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 agreement. Should Seller fail to convey title to Buyer under the terms and conditions of this contract, Seller shall be immediately liable and shall immediately reimburse the Wake County Board of Education for all expenses incurred in its attempt to acquire approximately 62.41 acres. Reimbursement of expenses shall not relieve Seller of its responsibility to convey approximately 62.41 acres and Buyer does not waive any additional remedies it may have as to performance by Seller.

13. **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.
14. **RISK OF LOSS:** The risk of loss prior to closing, which shall include personal property, shall be upon the Seller.
15. **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.
16. **CLOSING:** The parties agree to execute any and all documents and papers necessary in connection with the closing and transfer of title within thirty (30) days after all conditions have been met or waived. The deed is to be made to The Wake County Board of Education, Facilities Building, 1551 Rock Quarry Road, Raleigh, North Carolina, 27610, Attention: Betty L. Parker, Real Estate Services Senior Director.
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 the right to extend the terms of this Contract by up to thirty (30) days by the provision of written notice prior to expiration of the term to the Seller of its desire to extend if such additional time is necessary for the completion of due diligence studies, to obtain approvals from the Board of Education, Board of Commissioners, or such other agencies necessary to satisfaction of the conditions hereinabove described.
19. **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.
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, 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: David W. Minor, Ball & Minor CPA PA, as Trustee for  
The Adcock Trust Agreement  
Attn: David W. Ball  
1001 Procure Street, Suite 101  
Fuquay-Varina, NC 27526-2697

w/copy to: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Email: \_\_\_\_\_

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

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

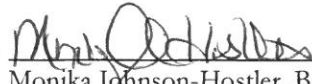
22. MEMORANDUM OF CONTRACT: Each party hereto reserves the right to obtain upon request the execution by the parties of a Memorandum of Contract suitable for recordation in the Office of the Register of Deeds of Wake County. The requesting party shall pay all expenses for preparation and recordation 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

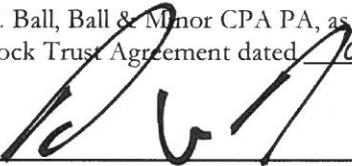
By:   
Monika Johnson-Hostler, Board Chair

Attest:   
James G. Merrill, Secretary/Superintendent

Date: 9/14/17

**SELLER:**

David W. Ball, Ball & Minor CPA PA, as Trustee for  
The Adcock Trust Agreement dated 08/11/1998

By: 

Name: David W. Ball

Title: Trustee

Date: 08/15/17

**Exhibit "A"**  
Legal Description:

The subject Property is located on the eastern side of Main Street, north of its intersection with Bowling Road, Middle Creek Township, Fuquay-Varina, Wake County, Middle Creek Township, Wake County, North Carolina, and contains a total of  $\pm 64.21$  acres having Wake County PIN 0666-11-2040, REID #0000619 and street address of 1201 Bowling Road, Fuquay-Varina, North Carolina, and being the same property acquired by Grantor through the Estate of Louise S. Adcock, Deceased, Wake County Clerk of Superior Court Estates Division File 12-E-3383, and being the same property described in Deed Book 1536, Page 700, Wake County Registry, and depicted as Lot 2 on a plat entitled "J.L. Adcock Estate, Ballentine Place, Fuquay Springs, NC" dated January 11, 1963 and recorded in Book of Maps 1962, Page 225, 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.

