

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 **Gerald W. Mann, Successor Trustee of the Inez Haley Mann Revocable Trust under that certain trust agreement dated January 23, 2004**, as recorded in Book 16101, Page 147, Wake County Registry ("Seller") hereby agrees to convey a parcel of land containing a total of  $\pm 3.99$  acres, located on the southern side of Tryon Road, east of its intersection with Campbell Road, Swift 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". 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 or a portion of the parcel having Wake County PIN #0772-86-6148 and street address of 5701 Tryon Road, Raleigh, North Carolina 27606.

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 One Million One Hundred Thousand and no/100 (\$1,100,000) Dollars (which amounts to \$275,000 per acre) and shall be paid by Buyer to Seller as follows:
  - A. \$10,000.00 in earnest money shall be paid by check to Boxley, Bolton, Garber & Haywood, L.L.P., Attorneys at Law, within fifteen (15) business days of the full execution of this Offer to Purchase and 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  $\pm 3.99$  acres of land more or less, together with a  $\pm 1,472$  sq. ft. house and affiliated outbuildings located thereon as shown on Exhibit B. 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 acreage is different than 3.99 acres, Buyer and Seller agree to adjust the purchase price by an amount equal to \$275,000 per acre times the amount of acreage variance.
  - C. 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.
  - 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 Cary, Wake County and/or the North Carolina Department of Transportation to construct a suitable means of ingress and egress from the "Property" to Tryon Road.
  - (8) Approval from the Town of Cary, City of Raleigh, 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 an 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 actual 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 actual 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) To the best of Seller's actual knowledge, (a) 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 actual 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.

For purposes of the foregoing representations of Seller in this Paragraph 2.D and other terms and conditions of this Agreement, the phrase "to Seller's actual knowledge", "to the best of Seller's knowledge," or words of similar import shall mean the actual knowledge of Gerald W. Mann, Successor Trustee of the Inez Haley Mann Revocable Trust under that certain trust agreement dated January 23, 2004, without requirement or research or investigate. 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 for one year thereafter.

- 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 and insurable 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. Notwithstanding anything to the contrary herein, if any legal description as set forth in the approved Survey includes real property that is not within the bounds of the property description(s) contained in the deed(s) by which Seller obtained title to the Property, Seller shall be entitled to limit its deed warranties to the areas described and contained in the deed(s) by which Seller obtained title to the Property; provided however, upon Buyer's request, Seller also shall provide a quitclaim deed to Buyer at closing containing the legal description from the approved Survey. For purposes of this Paragraph 2.I., Seller shall be considered to have obtained title to the Property by general warranty deed to Grantees William S. Mann and wife, Mary H.

Mann (also known as Mary Inez Haley Mann, and being the same person as the Seller's Trustor) as recorded in Book 1312, Page 0466, Wake County Registry.

- J. Seller shall provide to Buyer copies of any studies and/or reports in their entirety which Buyer 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 for a period of one year:
- 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. Except the letter described in Paragraph 24 hereinbelow, Seller has not and will not sign any letters or enter into any easements or agreements with third parties with respect to the Property including any that would be binding upon Buyer other than those already of record at the time of the execution of this agreement.
  - 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 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 it has been represented by real estate broker Tommy Drake of Drake Commercial Properties in this transaction, that 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 five (5) 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 reasonable expenses incurred by Buyer from the date of this agreement in Buyer's attempt to acquire  $\pm 3.99$  acres. Reimbursement of such reasonable expenses shall not relieve Seller of its responsibility to convey  $\pm 3.99$  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, asbestos and lead based paint assessments, 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 sixty (60) days following the expiration of due diligence.. The deed is to be made to Wake County Board of Education, Facilities Building, 1429 Rock Quarry Road, Suite 116, Raleigh, North Carolina, 27610, Attention: 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: Mr. Gerald W. Mann  
4014 Robert Ruark Drive  
Southport, NC 28461-2648  
Email. [dmann4@ec.rr.com](mailto:dmann4@ec.rr.com)

w/copy to: Mr. Zeke Creech, Esq.  
Zeke Creech Law  
3130 Fairhill Drive, #108  
Raleigh, NC 27612  
Email. [zeke@zekecreechlaw.com](mailto:zeke@zekecreechlaw.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)

21. 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.
22. 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.



23. **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.
24. **CONSERVATION EASEMENT SOUGHT FOR BENEFIT OF THIRD PARTY DEVELOPER:** Notwithstanding anything in this contract to the contrary, including, without limitation, any representations and warranties of Seller (which are hereby made subject to the following), Seller and Buyer acknowledge the following letter, and acknowledge and agree that the purchase price under this contract shall not be lowered by any terms or representations made within that certain letter from Carrol Capital Investments, LLC to the Inez Haley Mann Irrevocable Trust, dated August 7, 2017, with subject line "Re: Agreement related to Conservation Easement," signed by Brian Wise and Gerald W. Mann," a copy of which together with an illustrative drawing is attached hereto as Exhibit "C" and is incorporated herein by reference.

A. Buyer agrees to employ reasonable good faith efforts to honor Seller's commitment described in the letter in support of the adjacent landowner by:

- i. During the due diligence period, investigating the extent to which the proposed easement may adversely impact Buyer's intended development of the Property; and
- ii. Review and approval the proposed terms and conditions of the final Town-approved form for the conveyancing instrument for the easement referenced in the letter;
- iii. Review and approval of a sealed survey exhibit provided by the developer depicting the easement area sought to be conveyed
- iv. Negotiating in good faith, review and approval of a development agreement ("Development Agreement") acceptable to Buyer with the third party developer substantially upon the terms of the letter referenced hereinabove to facilitate conveyance of the easement sought and receipt of compensation therefor by Buyer after Buyer completes its closing of the Property from Seller and title passes to Buyer; and
- v. Negotiating in good faith to include a term within the Development Agreement with the developer that the Seller shall be fully released and discharged from all obligations under the letter upon passage of title to Buyer.

B. In the event the developer requires fulfillment of the Seller's obligations under the letter agreement prior to completion of the Development Agreement described hereinabove and prior to closing, Buyer shall cooperate in good faith with Seller to reach mutually agreeable terms and conditions to facilitate the transfer. If the transfer occurs prior to closing, the compensation received therefor shall be delivered to and held in trust by Boxley, Bolton, Garber & Haywood, L.L.P., Attorneys at Law, for the benefit of Buyer to be released at closing. If the Agreement is terminated for any reason and closing does not occur, the funds shall be disbursed to Seller.

C. In the event terms and conditions of the Development Agreement have not been reached by Buyer and Developer prior to closing, and Buyer is prepared to proceed to closing, at the time of closing Seller shall assign to Buyer and Buyer shall accept assignment and assume all rights and responsibilities of Seller pursuant to the letter agreement referenced hereinabove.


When the terms "review and approval" are used in the foregoing Paragraph 24, approval shall be within Buyer's reasonable discretion, and will not be unreasonably withheld, conditioned or delayed.

*\*\*\* 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

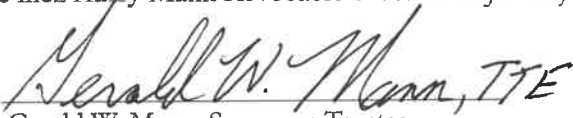
By:   
Monika Johnson-Hostler, Board Chair

Attest:   
Cathy Q. Moore, Secretary/Superintendent

Date: 8/13/18

**SELLER:**

The Inez Haley Mann Revocable Trust dated January 23, 2004

By:   
Gerald W. Mann, Successor Trustee

Date: August 2 2018

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

The subject Property is located on the southern side of Tryon Road, east of its intersection with Campbell Road, Swift Creek Township, Wake County, North Carolina, and contains a total of  $\pm 3.99$  acres having Wake County PIN #0772-86-6148, and street address of 5701 Tryon Road, Raleigh, North Carolina 27606, and more particularly described as follows:

BEING all or a portion of the property of Gerald W. Mann, Successor Trustee of the Inez Haley Mann Revocable Trust under that certain trust agreement dated January 23, 2004, and recorded in Book 16101, Page 146, Wake County Registry, and as described in that general warranty deed recorded in Deed Book 1312, Page 466, Wake County Registry. See also the Certification of Trust recorded in Book 16639, Page 62, Wake County Registry. See also the Estate of Mary Inez Haley Mann, late of Wake County, whose passing occurred on September 8, 2015.

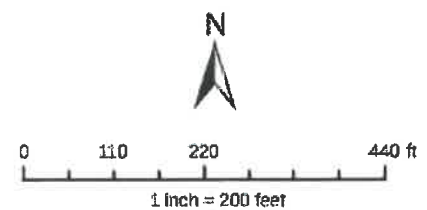
The exact dimensions and description of the Property will be determined in accordance with the Survey/Subdivision/Recombination Plat, but Seller and Buyer agree that the description of the Property set forth above shall be deemed sufficient to describe the Property to be conveyed, and Seller and Buyer 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 Plat.

Exhibit "B"

Subject Property:  
5701 Tryon Road, Raleigh, NC 27606;  
Wake County PIN #0772-86-6148  
Deed Book 1312, Page 466, Wake County Registry  
±1,472 sq. ft. house with affiliated outbuildings  
±3.99 acres lot size



**Mann Family Property: PIN 0772-86-6148**



**Exhibit "C":**

Letter from Carroll Capital Investments, LLC to the Inez Haley Mann Irrevocable Trust  
With Attachments (as referenced in Paragraph 26)

**CARROLL CAPITAL INVESTMENTS, LLC**

August 7, 2017

Inez Haley Mann Irrevocable Trust  
Attn: Gerald W. Mann, Trustee  
4014 Robert Ruark Dr SE  
Southport, NC 28461-2648

Re: Agreement related to Conservation Easement

Dear Mr. Mann:


As you know, Carroll Capital Investments, LLC ("us" or "we"), is under contract to purchase certain real property located at 2500 Campbell Road, Raleigh, North Carolina (the "Property"). In order to develop the Property for our intended use we would benefit from the dedication of a conservation easement on a portion of your property located at 5701 Tryon Rd, Cary, NC and as shown on the attached map (the "Conservation Easement"). The Conservation Easement would be pursuant to a form mutually agreeable to you, us and the Town of Cary, a draft of which is included with this letter.

In consideration for the Conservation Easement, we would agree to pay you \$101,000 (One Hundred One Thousand Dollars) (the "Payment"). Such Payment is conditioned and contingent upon: a) our acquisition of the Property; b) the Town of Cary approving the Conservation Easement; and c) our election to use the Conservation Easement for the purpose of reducing buffers as contemplated by Section 7.22(k) of the Town of Cary Land Development Ordinance.

Upon finalizing the terms of the Conservation Easement and obtaining the Town of Cary's preliminary approval, the parties would sign the Conservation Easement and such document would be held Morehead Title Company pending closing of the acquisition of the Property. At the closing of the Property, the Payment would be released by Morehead Title to you prior to recording of the Conservation Easement with the Wake County Register of Deeds. Notwithstanding anything herein to the contrary, in the event that we do not acquire the Property or the Conservation Easement is not recorded with the Wake County Registry (because we elect to satisfy the Town of Cary's buffer requirements in a different manner or for any other reason), we shall deliver written notice to you and Morehead Title, and Morehead Title shall immediately return your original signature page to the Conservation Easement and this agreement shall be deemed terminated.

If you are in agreement with the foregoing, please countersign this letter in the space provided below.

Sincerely yours,

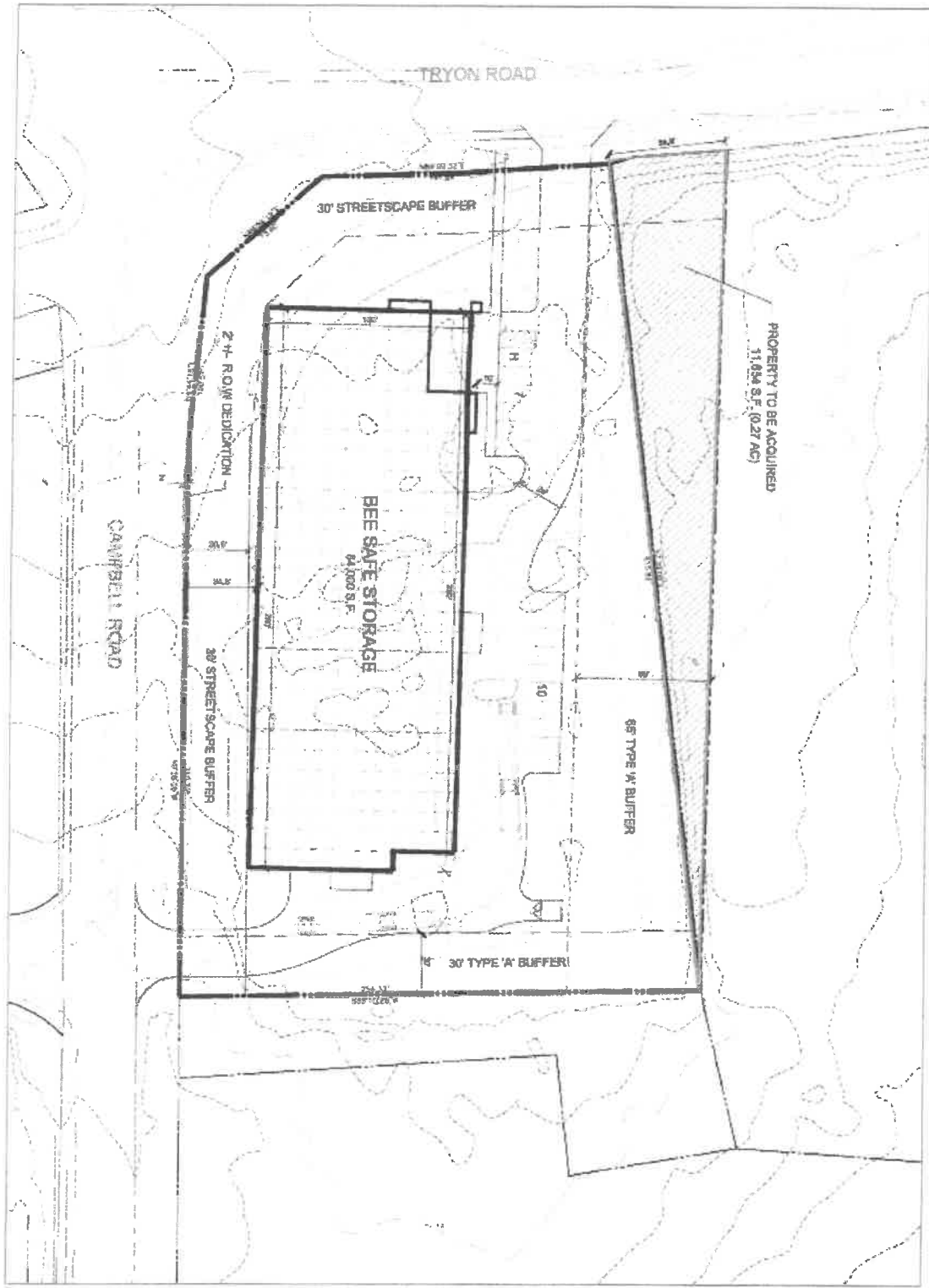
  
Brian Wise  
Vice President

ACKNOWLEDGED AND AGREED:

Inez Haley Mann Irrevocable Trust

  
Gerald W. Mann, Trustee

Date: 08-18-2017



**[WORKING DRAFT – NOT APPROVED BY ANY PARTY.]**

**[Easement subject to approval of the Town of Cary.]**

Prepared by and return to:  
Bee Safe Campbell Road, LLC  
Post Office Box 9846  
Greensboro, NC 27429

*[PREPARED WITHOUT THE BENEFIT OF A TITLE EXAMINATION;  
NO OPINION ON TITLE IS MADE OR PROFFERED BY  
THE PREPARATION OF THIS DOCUMENT]*

STATE OF NORTH CAROLINA     )

**DEED OF  
AND  
LANDSCAPE EASEMENT**

COUNTY OF WAKE                     )

**THIS DEED OF LANDSCAPE EASEMENT** (this "Easement Agreement") is entered into and to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between \_\_\_\_\_, a citizen and resident of the State of North Carolina \_\_\_\_\_, (hereinafter "Grantor" or "Owner"), Bee Safe Campbell Road, LLC, a North Carolina limited liability company ("Bee Safe" or "Grantee") and the Town of Cary (hereinafter "Town").

WHEREAS, Grantor is the holder of the fee simple interest in certain real property located at \_\_\_\_\_, NC (PIN \_\_\_\_\_) and as more particularly described on Exhibit A attached hereto and incorporated herein by reference ("Grantor Parcel" or the "Property"); and

WHEREAS, Bee Safe is under contract to purchase that certain property located at \_\_\_\_\_, North Carolina (PIN \_\_\_\_\_) currently owned by \_\_\_\_\_, and as more particularly described on Exhibit B attached hereto and

incorporated herein by reference ("Bee Safe Parcel"); and

WHEREAS, future development of the Bee Safe Parcel necessitates certain buffers between the Bee Safe Parcel and neighboring properties; and

WHEREAS, Section 7.22(k) of the Town of Cary Land Development Ordinance permits the use of certain off-site permanent landscape easements may be used to satisfy such development buffers; and

WHEREAS, Grantor has agreed to set aside \_\_\_\_\_ acres more or less of the Property (as described herein below and hereinafter referred to as the "Easement Area"), as more particularly described on Exhibit C attached hereto and incorporated herein by reference, for the purpose of establishing a permanent landscape easement on the Property.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, this Conservation Easement in the Easement Area, which is more particularly described on the attached "Exhibit C" incorporated, as follows:

1. **Recitals.** The recitals hereinabove set forth are hereby incorporated into and made a part of this Easement Agreement.

2. **Permanent Landscaping Easement.** Grantor hereby grants and conveys to the Town, and its successors and assigns, a non-exclusive, appurtenant, perpetual permanent landscaping easement, subject to the terms and conditions herein set forth herein (the "Conservation Easement"). The Parties hereby agree that said Conservation Easement is a non-exclusive easement intended for the use and benefit of the Bee Safe Parcel and shall run with title to the Bee Safe Parcel.

3. **Duration of Easement.** This Conservation Easement shall remain in effect in perpetuity from the effective date. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, its personal representatives, heirs, successors, assigns, lessees, agents, and licensees.

4. **Prohibited and Restricted Uses and Activities.** [Prohibited uses are subject to approval by Town of Cary.]

a. Any activity on, or use of, the Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. The Easement Area shall be maintained in its natural and open condition and restricted from any development.

b. In addition to the foregoing, the following specific activities are prohibited, restricted, or reserved, as the case may be, within the Easement Area:



- i. All industrial uses are prohibited.
- ii. All residential uses are prohibited.
- iii. All commercial uses are prohibited.
- iv. Agricultural uses are prohibited.
- v. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material on the easement area is prohibited.
- vi. There shall be no livestock grazing within the Easement Area, nor shall be allowed therein any confined animal facilities.

c. There shall be no building, facility, mobile home, or other structure constructed on or placed within the Easement Area.

d. No signs shall be permitted within the Easement Area except interpretative signs identifying the area as a Conservation Easement, including signs giving directions or prescribing rules and regulations for the use of the Easement Area and the Property.

e. There shall be no grading, filling, excavating, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials; and no change in the topography of the land in any manner except as reasonably necessary for the purpose of alleviating erosion, dispersing sheet flow maintain water quality and wetland values.

f. [Burning, Cutting, Removal, Grazing or Destruction of Vegetation. There shall be no burning, cutting, removal, grazing or destruction of trees, shrubs, grasses or other vegetation (collectively, "Vegetation") within the Easement Area except for: (1) practice establishment; (2) non-native, invasive or noxious Vegetation; (3) dead, insect-infested or diseased Vegetation; (4) trees impeding the flow of the Water Body; (5) removal necessary to protect rare and endangered species; (6) Vegetation for one crossing for vehicular access to the remainder of the Property; (7) burning in accordance with a conservation plan approved by the Town.]

5. **Warranty as to Environmental Conditions.** The Grantor warrants that it has no actual knowledge of the existence of any hazardous substances or wastes or the release or threatened release of any hazardous substances or wastes on the Easement Area, and that no notice of a violation of any state, federal or local environmental law, ordinance, statute, treaty, decree, rule or regulation has been issued or is pending with respect to the Easement Area.

6. **Right of Entry.** The Town or its designated representatives shall have the right of ingress, egress and regress to and across the Property and Easement Area, including but not limited to the lands, paths and farm roads of other property owners, required to gain access from a public road at all reasonable times for the purpose of inspecting said Easement Area to

determine if Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement.

7. **Enforcing Authority.** Town or its agents, representatives or designees, shall have the right to enforce all of the terms of this Easement. In addition, this Easement may only be amended by a written document that is executed by the Town, the Grantor and the Grantee and recorded among the land records of the appropriate jurisdiction.

8. **Methods of Enforcement.** In the event a violation of these terms, conditions, or restrictions is found to exist, the Grantee and/or the Town may institute a suit to enjoin by ex parte temporary or permanent injunction such violation and to require the restoration of the Easement Area to its prior condition.

9. **Failure to Enforce.** No failure on the part of the Town to enforce any covenant provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of the Town or the Grantee to enforce the same in the event of a subsequent breach or default.

10. **Miscellaneous Provisions.**

a. **Entire Agreement.** This instrument sets forth the entire agreement between the parties with respect to the Conservation Easement. All prior discussions, negotiations, understandings or agreements relating to the Conservation Easement are hereby merged into this Easement.

b. **Severability.** If any provision of this Easement is found to be invalid, the remainder of the provisions of the Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

c. **Gender.** The designations Grantor, Grantee, Owner and Town as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter gender as required by context.

d. **Headings.** The headings of the various sections of this Conservation Easement have been inserted for convenience only and shall in no way modify, define, limit or expand the express provisions of this Conservation Easement.

e. **Transfer of the Property.** Grantor shall notify Grantee and Town in writing of the name and street address of any party to whom the Easement Area or any part of the Property is to be transferred at or prior to the time said transfer is made.

f. **Quiet Enjoyment.** Grantor reserves all rights accruing from ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not expressly prohibited or restricted herein and are not inconsistent with the purposes of the Conservation Easement.

g. Waste; Impairment of Title; Payment of Taxes and Other Charges. Grantor shall not destroy, damage or impair the Easement Area, allow it to deteriorate, commit waste on the Easement Area or otherwise take any action on the Property or in the Easement Area in conflict with the terms of this Conservation Easement. Grantor shall take no action that can impair his title to the Property unless otherwise allowed by the terms of this Conservation Easement. Grantor shall promptly and regularly pay all taxes, assessments, charges, fines, and impositions attributable to the Property that can attain priority over this Conservation Easement.

h. Binding Effect. This Easement shall run with the land and be binding on the Grantor hereof, his heirs, administrators, successors and assigns.

i. Release on Conveyance. In the event of any conveyance or divestiture of title to either the Bee Safe Parcel or the Grantor Parcel the grantor, assignor or the person or persons who are divested of title shall be entirely freed and relieved of all covenants and obligations thereafter accruing hereunder, and the grantee, assignee or the person or persons who otherwise succeed to title shall be deemed to have assumed all of the covenants and obligations thereafter accruing hereunder until such grantee, assignee or successor is freed and relieved therefrom pursuant to this subsection.

j. Recording. This Agreement may be recorded by any party with the Wake County Register of Deeds.

k. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

l. Notice. Any notice provided hereunder to any party hereto shall be in writing and shall be transmitted via certified United States Mail, return receipt request, postage prepaid to the mailing address for such party as set forth in the Wake County Real Estate records, which may be changed by written notice in accordance herewith. For notices to the Town of Cary, the parties shall use the following address \_\_\_\_\_.

m. Attorney's Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

n. No Public Use. This Agreement is not, and shall not be construed, interpreted or enforced as, a dedication of all or any portion of the Property and/or Easement Area to public use or to the private use of any party other than Grantor, Grantee and/or the Town.

**[SIGNATURE PAGE(S) ATTACHED]**

IN WITNESS WHEREOF, the undersigned has executed this Easement Agreement as of the day and year set forth above.

**GRANTOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
 Print: \_\_\_\_\_  
 Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, acting with due authority given by \_\_\_\_\_, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
 Notary Public

\_\_\_\_\_  
 Notary Printed Name

(Official Seal)

My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year set forth above.

**BEE SAFE:**

**Bee Safe Campbell Road, LLC**, a North Carolina limited liability company

By: \_\_\_\_\_  
 Print: \_\_\_\_\_  
 Its: \_\_\_\_\_

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, acting with due authority given by Bee Safe Campbell Road, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
 Notary Public

\_\_\_\_\_  
 Notary Printed Name

(Official Seal)

My commission expires: \_\_\_\_\_