

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 1071 Classic Road, LLC, a North Carolina limited liability company ("Seller"), hereby agrees to convey a ± 1.0 acre portion, 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 ("Subject Property"), of an ± 11.84 acre tract of land together with all improvements located on the southern side of Humie Olive Road, east of its intersection with Richardson Road, Buckhorn Township, in or near the Town of Apex, Wake County, North Carolina, more particularly described as all of that certain parcel having Wake County PIN 0720-49-6990, Wake County REID 0059857, and street address of 0 Richardson Road, Apex, NC 27502 ("Seller Property"). The Subject Property is that ± 1.00 acre portion of the Seller Property that lies at the eastern end of the tract and is bounded on the west by the approximate centerline of a stream as depicted in Exhibit B attached hereto. The Subject Property is further identified by a legal description shown in Exhibit "A", and upon Map shown on Exhibits "B." Exhibits "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.

WHEREAS, Buyer is a charitable organization as defined in the Internal Revenue Code of 1986, as amended and supplemented, and the applicable regulations promulgated thereunder (the "Code"); and

WHEREAS, Seller intends that the difference between the Purchase Price and the fair market value of the Property shall be a charitable contribution to Buyer.

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 Buyer shall pay to Seller through a Bargain Sale purchase, based on a combination of cash and a charitable contribution. The Purchase Price for the property shall be the fair market value of the Property as determined by an appraisal performed by an Appraiser chosen by Seller. The Appraisal shall be commissioned by Seller and the cost thereof shall be borne by Seller. The Appraisal shall be completed within 60 days after this Contract is signed by the Wake County Board of Education. The Purchase Price shall be paid as follows:

- A. PARTIAL PURCHASE PRICE: In partial payment of the Purchase Price, Buyer shall pay Seller the amount of Ninety Thousand (\$90,000.00) Dollars per usable acre based upon a boundary survey to be obtained by Buyer prior to closing, which shall be paid as follows:
 - (1) \$25,000.00 in earnest money shall be paid by check to Howard, Stallings, From, Atkins, Angell & Davis, P.A, 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 shall pay Seller the balance of the Partial Purchase Price, subject to prorations and the Earnest Money as provided herein, at closing by check or wire transfer of funds to Escrow Agent.
 - (3) Buyer and Seller acknowledge that the Subject Property to be purchased includes ± 1.0 acres of land more or less. The exact location and acreage shall be determined by a formal survey to be provided by Buyer, as described in paragraph 2.L. hereinbelow.

- (4) For purposes hereof the term "usable acre" and "usable acreage" shall mean the gross acreage of the Subject Property, less any land lying within an existing right-of-way or easement for roads on or abutting said Subject Property, streets or utilities upon the Subject Property and depicted on the survey described in Paragraph 1.C hereinabove.
- 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)1-2) shall be credited to Buyer in the form of a charitable contribution from Seller to Buyer. Unless mutually agreed in writing by the parties hereto, cash paid by Buyer shall not exceed the Partial Purchase Prices.
2. CONDITIONS: The obligation of Buyer to purchase the Subject 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 Subject Property.
 - C. Within one hundred fifty (150) 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 Subject 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 Subject Property due to the existence of rock or other unsuitable soil conditions;
 - (3) An environmental assessment of the Subject 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 Subject 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 Apex, Wake County and/or the North Carolina Department of Transportation to construct suitable means of ingress and egress from the Subject Property to S. Salem Street.

- (8) Approval from the Town of Apex, 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 Subject Property for an environmental assessment and shall disclose any and all information about the Subject 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 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 Subject 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 Subject Property is not the subject of any active or pending action by the North Carolina Department of Environmental Quality (DEQ) 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 Subject Property is not subject to any casualty damage. Any casualty damage to the Subject 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 Subject 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 Subject Property or the aquifer underlying the Subject 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 Subject 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 Subject Property to comply with all laws and ordinances, and all rules and regulations of all authorities having jurisdiction over the Seller, the Subject 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 Subject 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 Subject 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 Subject 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. All deeds of trust, liens, leases and other monetary charges against the Subject 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.
- H. 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 Subject Property and such other encumbrances as may be assumed or specifically approved by Buyer. The Subject Property does not have legal access to a public right-of-way.
- I. 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 Subject 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.

- J. Should Buyer elect for any reason not to proceed with the acquisition of the Subject 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.
 - K. The Subject Property alone is insufficient to accommodate the projected site needs for an elementary school. In addition to submitting this Offer to Purchase and Contract to Seller, Buyer is concurrently submitting Offers to Purchase and Contract to the Owners of parcels located adjacent and near to the Subject Property. The assemblage properties are depicted and identified on Exhibit B attached hereto. Buyer must in its sole discretion determine the suitability and sufficiency of acreage of the combination of all the parcels to accommodate the location of an elementary school and related educational uses thereon during the Examination Period, and must be able to acquire all parcels upon acceptable terms with closing occurring on or before the closing date described in Paragraph 16 hereinbelow.
 - L. Buyer shall be responsible for the preparation and recordation of any plat that is necessary to subdivide the Subject Property from the balance of Seller's property, and to recombine it with the adjacent tracts set forth in Section 2.K. and identified on Exhibit B. Buyer shall be responsible for the preparation and submittal of any map that is necessary for completion of a Planned Unit Development Amendment to release the Subject Property from the Friendship Station Planned Unit Development and complete rezoning referenced in Section 2.C(6) hereinabove. To the extent Seller's approval and execution of a plat or map is required for recordation or submittal, Seller will not unreasonably withhold or delay such approval or execution.
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 to the best of Seller's knowledge there are no encumbrances or special assessments, either pending or confirmed, for sidewalk, paving, sewer, water, or other improvements on or adjoining the Subject 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 Subject Property and to the best of Seller's knowledge neither Seller nor the Subject 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 Subject 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 Subject Property and to the best of Seller's knowledge no portion of the Subject 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 Subject 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 it has not been represented by a real estate broker in this transaction. Buyer agrees to indemnify and hold Seller harmless against any real estate commission claimed by any 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 Subject 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 Subject 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 Subject Property at closing in an entity affiliated with Buyer as may be necessary for acquisition to support the intended school use without necessity of written agreement by Seller. Notwithstanding the foregoing, Seller shall have the right to assign this Offer to Purchase and Contract prior to closing without necessity of written agreement of Buyer, to an entity affiliated with Seller (owned by some or all of the constituent members of Seller) as may be necessary or desirable for beneficial tax treatment. If Seller chooses to assign the contract, then the same shall be binding on the assignee, and Seller shall provide immediate written notice to Buyer of the assignment.
10. **BINDING EFFECT:** This contract shall be binding and shall inure to the benefit of the parties and their heirs, successors and assigns.
11. **SURVIVAL:** Any provision of this 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 Subject 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 and assemblage that includes a total of approximately 1.0 acres, provided that the amount to be recovered shall not exceed Twenty Five Thousand and No/100 Dollars (\$25,000.00). Reimbursement of expenses shall not relieve Seller of its responsibility to convey approximately 1.0 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 Subject 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 Subject Property to as near its original condition as is possible after completion of tests the Buyer or its agents conduct on the Subject 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. **ZONING AGENT:** For purposes of Buyers rezoning of the subject property to remove it from the Friendship Station Planned Unit Development and rezone it to the same zoning classification as is assigned the Buyer's adjacent property. Seller will execute such instruments, forms, certifications or applications as may be necessary to appoint Buyer or its designee as agent for Seller for the purposes of execution and processing such Planned Unit Development Amendments, rezoning applications or certifications as may be necessary to accomplish the rezoning condition set forth in Section 2. C. (6) hereinabove. Buyer is responsible for the expenses associated with the Planned Unit Development Amendment and Rezoning processes.

15. **RISK OF LOSS:** The risk of loss prior to closing, which shall include personal property, shall be upon the Seller.
16. **POSSESSION:** Exclusive possession of the Subject 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.
17. **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, , 111 Corning Road, Suite 100, Cary North Carolina, 27518, Attention: Betty L. Parker, Real Estate Services Senior Director.
18. **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.
19. **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.
20. **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.
21. **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: 1071 Classic Road, LLC
P.O. Box 1720
Cary, NC 27512-1720
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
111 Corning Road, Suite 100
Cary, North Carolina 27518
Email: bparker@wcpss.net

& w/copy to: Kenneth C. Haywood, Esq.
Howard, Stallings, From, Atkins, Angell & Davis, P.A.
5410 Trinity Road, Suite 210
Raleigh, NC 27607
Post Office Box 12347
Raleigh, NC 27605
Email: khaywood@hsfh.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.
23. **INVOLUNTARY CONVERSION:** The parties agree the transaction set forth above is an involuntary conversion of Subject Property under Section 1033 of the Internal Revenue Code. In furtherance and support thereof, the Parties acknowledge the following representations:
- A. Buyer is a public agency with the power of eminent domain.
 - B. Buyer believes the Subject Property identified below is particularly well-suited to adaptation for use as a public educational facility.
 - C. Buyer has approached Seller to propose acquisition.
 - D. Seller has identified the Subject Property for dedication as RCA in support of the Friendship Station PUD, which dedication will support greater density of development and enhance the value of the balance of Seller's Property, such that the value of the Subject Property to Seller is greater than Buyer's opinion of what it considers just compensation for the Property.
 - E. While negotiating in good faith with Seller for purchase the Buyer has mentioned (in a professional manner) its power of eminent domain as a means of acquiring the Property in the event negotiations impasse.
 - F. Seller believes the possibility Buyer may opt to invoke its condemnation powers is substantial, real and imminent because of the Buyer's present need for such a property.
 - G. Seller believes it is in Seller's best interest to negotiate the best terms it can in conjunction with what is, in essence, an involuntary sale.
24. **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 Subject 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.
25. **COVID-19 ADDENDUM:** The terms and conditions set forth on Exhibit "C" attached hereto and entitled "COVID-19 Addendum to Offer To Purchase and Contract" are incorporated herein by reference as fully as if set forth herein.
26. **ENTIRE UNDERSTANDING:** This contract constitutes the entire understanding between the parties. It may not be modified orally or in any manner except by agreement in writing by the parties hereto.

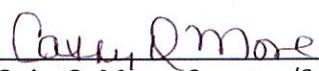
(The balance of this page is left intentionally blank. Signatures appear on subsequent page.)

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

BUYER:

THE WAKE COUNTY BOARD OF EDUCATION

By: 
Keith A. Sutton, Board Chair

Attest: 
Cathy Q. Moore, Secretary/Superintendent

Date: 5-15-20

SELLER:

1071 CLASSIC ROAD, LLC

By: 

Name: F. Jay Haskin

Title: Manager

Date: 4/21/2020

Exhibit "B"

Wake County GIS Aerial Photo of the Subject Property: $\pm 0.1.0$ Acres

Seller Property: Wake County PIN 0720-49-6990, Wake County REID 0059857



Exhibit "C"

COVID-19 ADDENDUM TO OFFER TO PURCHASE AND CONTRACT

THIS ADDENDUM TO OFFER TO PURCHASE AND CONTRACT by and between Varya LLC ("Seller") and The Wake County Board of Education ("Buyer") for the Property is attached to and made a part of the Offer to Purchase and Contract ("Contract").

Buyer and Seller acknowledge and understand that an event related to the world-wide Coronavirus (COVID-19) pandemic may arise or has arisen that could make it unduly burdensome or impossible for Buyer or Seller to exercise their rights and/or perform their obligations under the Contract, including but not limited to, delay by the Wake County Board of Commissioners to approve Buyer's purchase of the Property, and approve funding and disbursement to Buyer of sufficient funds to pay the full balance of the Purchase price all as stated in Section 2. B of the Contract, any of the due diligence requirements set forth in Section 2. C of the Contract, any requirements imposed upon Seller to perform or satisfy, travel restrictions which prevent the attendance of a party or Closing attorney at the place of Settlement on the Closing Date, closures of governmental or private offices and institutions required to close and record real estate transactions in the county where the Property is located, or conditions which would result in a violation of law in the recording of any documents required under the Contract ("COVID-19-Related Restriction"). Buyer and Seller therefore agree to the following:

1. Extension of Deadlines. If, notwithstanding Buyer and/or Seller's good faith efforts, a COVID-19-Related Restriction makes it unduly burdensome or impossible for Buyer or Seller to exercise a right or perform an obligation in accordance with the terms of the Contract, Buyer and Seller agree that the party subject to the COVID-19-Related Restriction shall give as much notice as possible under the circumstances, in writing, to the other party, including a description of the COVID-19-Related Restriction, and that in such event, all deadlines in the Contract that have not expired shall be extended by 30 days. Buyer and Seller agree that this extension of deadlines shall take place one time only, whether extended by Buyer, Seller or both parties, unless Buyer and Seller agree in writing to a further extension or extensions.

2. Completion of transaction. If, following an extension of deadlines in accordance with paragraph 1, any relevant COVID-19-Related Restriction no longer applies, Buyer and Seller will make a good faith effort to complete the transaction contemplated by the Contract as soon as reasonably possible.

3. Inability to complete transaction. If, following the last agreed-upon Closing date, Buyer or Seller are unable to complete the transaction contemplated by the Contract within the number of days specified in paragraph 1 due to a then-existing COVID-19-Related Restriction for which notice was given according to this Addendum, the Contract shall become null and void unless waived or extended by Buyer and Seller as provided above. In the event the Contract becomes null and void hereunder, the Earnest Money Deposit shall be refunded to Buyer.

4. Delay In Closing. Buyer and Seller agree that in the event either party gives notice of a COVID-19-Related Restriction according to this Addendum, any delay in Closing shall be governed by the provisions of this Addendum.

All capitalized terms used herein that are undefined shall have the meaning set forth in the Contract. In the event of a conflict between this addendum and the contract this addendum shall control.

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WAKE COUNTY

OFFER TO PURCHASE AND CONTRACT

WHEREAS, The Wake County Board of Education, a body corporate, ("Buyer") hereby agrees to purchase and the heirs of Maude Harris Stewart and Floya Harris Richardson, including Sherard L. Richardson and spouse, Bernadette Richardson, Bernard D. Richardson and spouse, Lenay Richardson, Carol L. Barbee and spouse, John S. Barbee, Sr., (collectively, "Seller"), hereby agrees to convey a ± 3.0 acre parcel of land, together with all improvements located south of Humie Olive Road, east of its intersection with Richardson Road, Buckhorn Township, in or near the Town of Apex, 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 ("Subject Property"). The Subject Property is further identified by a legal description and survey shown in Exhibit "A", and upon Map shown on Exhibit "B." Exhibits "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 Subject Property is more particularly described as all of that certain parcel having Wake County PIN 0720-59-0123, Wake County REID 0252735, and street address of 0 Humie Olive Road, Apex, NC 27502.

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 Subject Property is One Hundred Twenty-Five Thousand (\$125,000.00) Dollars per usable acre based upon a boundary survey to be obtained by Buyer prior to closing. The purchase price shall be paid by Buyer to Seller as follows:
 - A. \$25,000.00 in earnest money shall be paid by check to Howard, Stallings, From, Atkins, Angell & Davis, P.A, 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 shall pay Seller the balance of the purchase price, subject to prorations and the Earnest Money as provided herein, at closing by check or wire transfer of funds to Escrow Agent.
 - C. Buyer and Seller acknowledge that the Subject Property to be purchased includes a total of ± 3.0 acres. The exact location and acreage shall be determined by a formal survey to be provided by Buyer, as described in paragraph 2.L. hereinbelow.
 - D. For purposes hereof the term "usable acre" and "usable acreage" shall mean the gross acreage of the Subject Property, less any land lying within an existing right-of-way or easement for roads on or abutting said Subject Property, streets or utilities upon the Subject Property and depicted on the survey described in Paragraph 1.C hereinabove.
2. CONDITIONS: The obligation of Buyer to purchase the Subject 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 Subject Property.

- C. Within one hundred fifty (150) 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 Subject 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 Subject Property due to the existence of rock or other unsuitable soil conditions;
 - (3) An environmental assessment of the Subject 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 or State Certified 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 Subject Property under N.C. G.S. Section 115C-426.
 - (6) The Wake County Board of Education must be acquire a zoning designation to its satisfaction to construct and operate educational and related facilities.
 - (7) Approval from the Town of Apex, Wake County and/or the North Carolina Department of Transportation to construct suitable means of ingress and egress from the Subject Property to S. Salem Street.
 - (8) Approval from the Town of Apex, 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 Subject Property for an environmental assessment and shall disclose any and all information about the Subject 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 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 Subject 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 Subject Property is not the subject of any active or pending action by the North Carolina Department of Environmental Quality (DEQ) 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 Subject Property is not subject to any casualty damage. Any casualty damage to the Subject 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 Subject 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 Subject Property or the aquifer underlying the Subject 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 Subject 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 Subject Property to comply with all laws and ordinances, and all rules and regulations of all authorities having jurisdiction over the Seller, the Subject 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 Subject 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 Subject 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.

- F. Seller shall disclose to Buyer within 30 days of the execution of this contract, any information regarding the use of the Subject 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. All deeds of trust, liens, leases and other monetary charges against the Subject 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.
- H. 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 Subject Property and such other encumbrances as may be assumed or specifically approved by Buyer. The Subject Property must have legal access to a public right-of-way.
- I. 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 Subject 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.
- J. Should Buyer elect for any reason not to proceed with the acquisition of the Subject 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.
- K. The Subject Property alone is insufficient to accommodate the projected site needs for an elementary school. In addition to submitting this Offer to Purchase and Contract to Seller, Buyer is concurrently submitting Offers to Purchase and Contract to the Owners of parcels located adjacent and near to the Subject Property. The assemblage properties are depicted and identified on Exhibit B attached hereto. Buyer must in its sole discretion determine the suitability and sufficiency of acreage of the combination of all the parcels to accommodate the location of an elementary school and related educational uses thereon.

during the Examination Period, and must be able to acquire all parcels upon acceptable terms with closing occurring on or before the closing date described in Paragraph 16 hereinbelow.

- L. Buyer shall be responsible for the preparation and recordation of any plat that is necessary to subdivide the Subject Property from the balance of Seller's property, and to recombine it with the adjacent tracts set forth in Section 2.K. and identified on Exhibit B. Buyer shall be responsible for the preparation and submittal of any map that is necessary for completion of a Planned Unit Development Amendment to release the Subject Property from the Friendship Station Planned Unit Development and complete rezoning referenced in Section 2.C(6) hereinabove. To the extent Seller's approval and execution of a plat or map is required for recordation or submittal, Seller will not unreasonably withhold or delay such approval or execution.
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 to the best of Seller's knowledge there are no encumbrances or special assessments, either pending or confirmed, for sidewalk, paving, sewer, water, or other improvements on or adjoining the Subject 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 Subject Property and to the best of Seller's knowledge neither Seller nor the Subject 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 Subject 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 Subject Property and to the best of Seller's knowledge no portion of the Subject 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 Subject 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 it has not been represented by a real estate broker in this transaction. Buyer agrees to indemnify and hold Seller harmless against any real estate commission claimed by any 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 Subject 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 Subject 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 Subject Property at closing in an entity affiliated with Buyer as may be necessary for acquisition to support the intended school use 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 Subject 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 a parcel that includes a total of approximately 3.0 acres, provided that the amount to be recovered shall not exceed Twenty-Five Thousand and No/100 Dollars (\$25,000.00). Reimbursement of expenses shall not relieve Seller of its responsibility to convey approximately 3.0 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 Subject 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 indemnifies and holds Seller harmless from loss, cost, damage or expense resulting from Buyer's activities on site for purposes contained herein.
14. **ZONING AGENT:** For purposes of Buyers rezoning of the subject property to remove it from the Friendship Station Planned Unit Development and rezone it to the same zoning classification as is assigned the Buyer's adjacent property. Seller will execute such instruments, forms, certifications or applications as may be necessary to appoint Buyer or its designee as agent for Seller for the purposes of execution and processing such Planned Unit Development Amendments, rezoning applications or certifications as may be necessary to accomplish the rezoning condition set forth in Section 2. C. (6) hereinabove. Buyer is responsible for the expenses associated with the Planned Unit Development Amendment and Rezoning processes.
15. **RISK OF LOSS:** The risk of loss prior to closing, which shall include personal property, shall be upon the Seller.
16. **POSSESSION:** Exclusive possession of the Subject 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.
17. **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, , 111 Corning Road, Suite 100, Cary North Carolina, 27518, Attention: Betty L. Parker, Real Estate Services Senior Director.
18. **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.
19. **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.
20. **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.
21. **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: Heirs of Maude Harris Stewart and Floya Harris Richardson
c/o Sherard Richardson
8105 Humie Olive Road
Apex, NC 27502-9624
Email: _____

w/copy to: _____, Esq.

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
111 Corning Road, Suite 100
Cary, North Carolina 27518
Email: bparker@wcpss.net

& w/copy to: Kenneth C. Haywood, Esq.
Howard, Stallings, From, Atkins, Angell & Davis, P.A.
5410 Trinity Road, Suite 210
Raleigh, NC 27607
Post Office Box 12347
Raleigh, NC 27605
Email: khaywood@hsfh.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.
23. INVOLUNTARY CONVERSION: The parties agree the transaction set forth above is an involuntary conversion of Subject Property under Section 1033 of the Internal Revenue Code. In furtherance and support thereof, the Parties acknowledge the following representations:
- A. Buyer is a public agency with the power of eminent domain.
 - B. Buyer believes the Subject Property identified below is particularly well-suited to adaptation for use as a public educational facility.
 - C. Buyer has approached Seller to propose acquisition.

- D. Seller has identified the Subject Property for dedication as RCA in support of the Friendship Station PUD, which dedication will support greater density of development and enhance the value of the balance other property owned by Seller within the PUD, such that the value of the Subject Property to Seller is greater than Buyer's opinion of what it considers just compensation for the Property.
 - E. While negotiating in good faith with Seller for purchase the Buyer has mentioned (in a professional manner) its power of eminent domain as a means of acquiring the Property in the event negotiations impasse.
 - F. Seller believes the possibility Buyer may opt to invoke its condemnation powers is substantial, real and imminent because of the Buyer's present need for such a property.
 - G. Seller believes it is in Seller's best interest to negotiate the best terms it can in conjunction with what is, in essence, an involuntary sale.
24. 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 Subject 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.
25. COVID-19 ADDENDUM: The terms and conditions set forth on Exhibit "C" attached hereto and entitled "COVID-19 Addendum to Offer To Purchase and Contract" are incorporated herein by reference as fully as if set forth herein.
26. ENTIRE UNDERSTANDING: This contract constitutes the entire understanding between the parties. It may not be modified orally or in any manner except by agreement in writing by the parties hereto.

**** 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: 

Keith A. Sutton, Board Chair

Attest: 

Cathy Q. Moore, Secretary/Superintendent

Date: 5-15-20

SELLER:

HEIRS OF MAUDE HARRIS STEWART AND FLOYA HARRIS RICHARDSON

By: 

Name: Sherard L. Richardson

By: 

Name: Carol L. Barbee

By: 

Name: Bernadette Richardson

By: 

Name: John S. Barbee, Sr.

Date: 4-20-2020

Date: 4-20-2020

By: 

Name: Bernard D. Richardson

By: 

Name: Lenay Richardson

Date: 4-20-2020

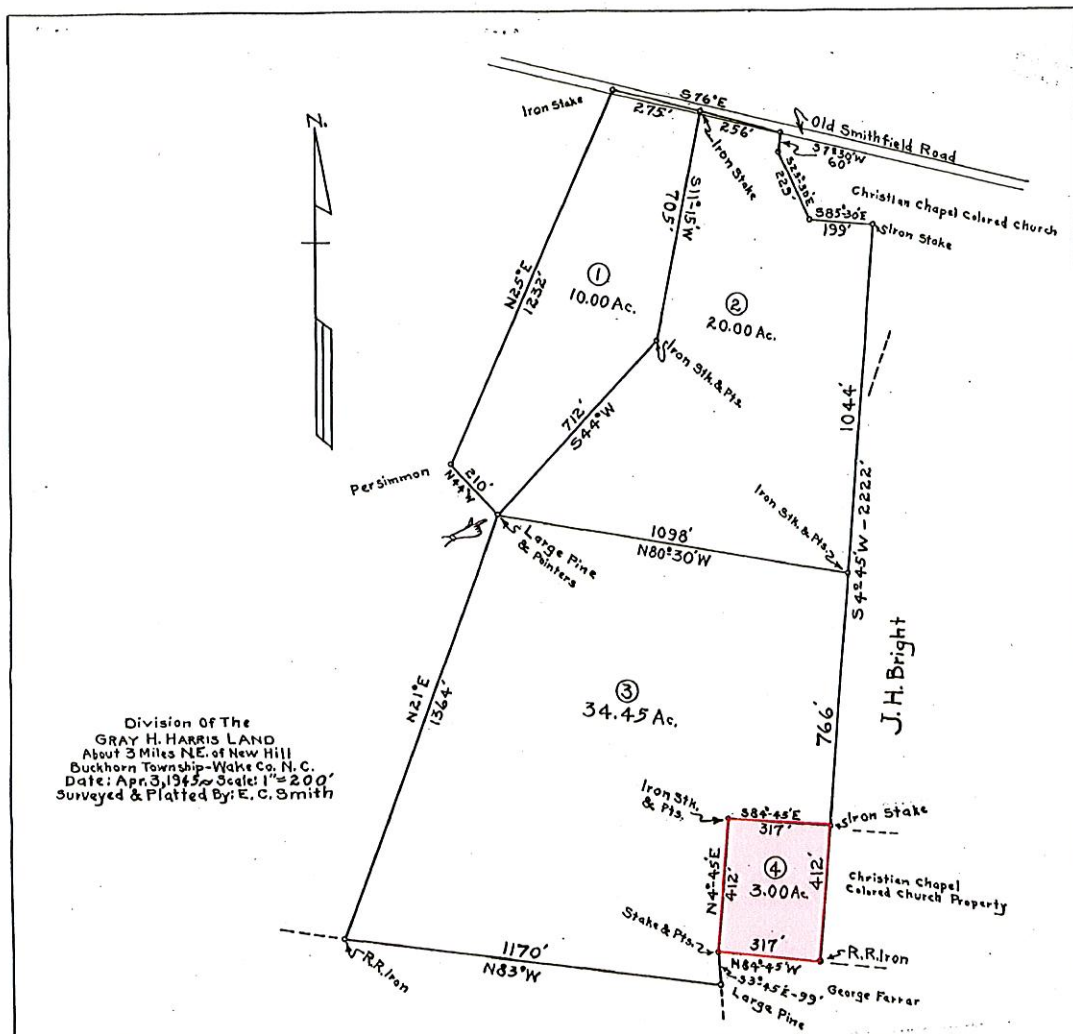
Exhibit "A"

Legal Description:

The Subject Property is located on the southern side of Humie Olive Road, east of its intersection with Richardson Road, Buckhorn Township, in or near the Town of Apex, 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, and is more particularly described as follows:

Being all of that parcel identified as having Wake County PIN 0720-59-0123, Wake County REID 0252735, and street address of 0 Humie Olive Road, Apex, NC 27502, and also described as Tract 4 as shown on Plat entitled "Division of the Gray H. Harris Land - About 3 miles N.E. of New Hill - Buckhorn Township, Wake Co., NC," dated April 3, 1945, surveyed and platted by E. C. Smith, and recorded in Book of Maps 1945 at Page 37, Wake County Registry. The parcel contains a total of ± 3.0 acres. See also Report of Commissioners recorded in Book 925 at Page 165, and Decree Confirming Report of Commissioners recorded in Book 925 at Page 167, Wake County Registry.

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



ACTUAL DATE UNKNOWN

BOOK 1945 Page 37

Exhibit "B"

Wake County GIS Aerial Photo of the Subject Property: ± 3.0 acres
Wake County PIN 0720-59-0123, Wake County REID 0252735

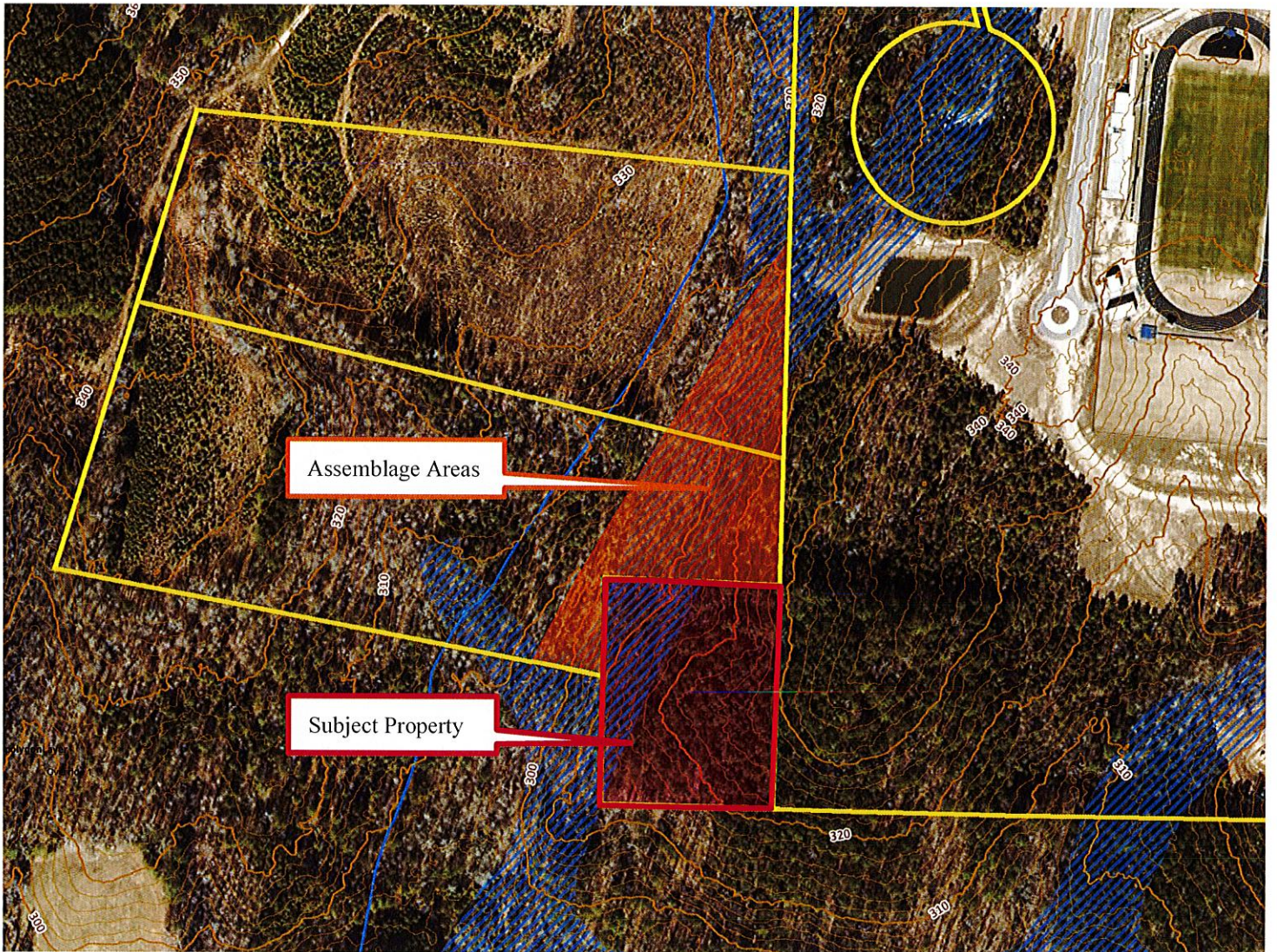


Exhibit "C"

COVID-19 ADDENDUM TO OFFER TO PURCHASE AND CONTRACT

THIS ADDENDUM TO OFFER TO PURCHASE AND CONTRACT by and between the Heirs of Maude Harris Stewart and Floya Harris Richardson, including Sherard L. Richardson and spouse, Bernadette Richardson, Bernard D. Richardson and spouse, Lenay Richardson, Carol L. Barbee and spouse, John S. Barbee, Sr., (collectively, "Seller") and The Wake County Board of Education ("Buyer") for the Property is attached to and made a part of the Offer to Purchase and Contract ("Contract").

Buyer and Seller acknowledge and understand that an event related to the world-wide Coronavirus (COVID-19) pandemic may arise or has arisen that could make it unduly burdensome or impossible for Buyer or Seller to exercise their rights and/or perform their obligations under the Contract, including but not limited to, delay by the Wake County Board of Commissioners to approve Buyer's purchase of the Property, and approve funding and disbursement to Buyer of sufficient funds to pay the full balance of the Purchase price all as stated in Section 2. B of the Contract, any of the due diligence requirements set forth in Section 2. C of the Contract, any requirements imposed upon Seller to perform or satisfy, travel restrictions which prevent the attendance of a party or Closing attorney at the place of Settlement on the Closing Date, closures of governmental or private offices and institutions required to close and record real estate transactions in the county where the Property is located, or conditions which would result in a violation of law in the recording of any documents required under the Contract ("COVID-19-Related Restriction"). Buyer and Seller therefore agree to the following:

1. Extension of Deadlines. If, notwithstanding Buyer and/or Seller's good faith efforts, a COVID-19-Related Restriction makes it unduly burdensome or impossible for Buyer or Seller to exercise a right or perform an obligation in accordance with the terms of the Contract, Buyer and Seller agree that the party subject to the COVID-19-Related Restriction shall give as much notice as possible under the circumstances, in writing, to the other party, including a description of the COVID-19-Related Restriction, and that in such event, all deadlines in the Contract that have not expired shall be extended by 30 days. Buyer and Seller agree that this extension of deadlines shall take place one time only, whether extended by Buyer, Seller or both parties, unless Buyer and Seller agree in writing to a further extension or extensions.

2. Completion of transaction. If, following an extension of deadlines in accordance with paragraph 1, any relevant COVID-19-Related Restriction no longer applies, Buyer and Seller will make a good faith effort to complete the transaction contemplated by the Contract as soon as reasonably possible.

3. Inability to complete transaction. If, following the last agreed-upon Closing date, Buyer or Seller are unable to complete the transaction contemplated by the Contract within the number of days specified in paragraph 1 due to a then-existing COVID-19-Related Restriction for which notice was given according to this Addendum, the Contract shall become null and void unless waived or extended by Buyer and Seller as provided above. In the event the Contract becomes null and void hereunder, the Earnest Money Deposit shall be refunded to Buyer.

4. Delay In Closing. Buyer and Seller agree that in the event either party gives notice of a COVID-19-Related Restriction according to this Addendum, any delay in Closing shall be governed by the provisions of this Addendum.

All capitalized terms used herein that are undefined shall have the meaning set forth in the Contract. In the event of a conflict between this addendum and the contract this addendum shall control.

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 3 Boys Capital, LLC, a North Carolina limited liability company ("Seller"), hereby agrees to convey a ± 2.00 acre portion, 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 ("Subject Property"), of a ± 12.8 acre tract of land together with all improvements located on the southern side of Humie Olive Road, east of its intersection with Richardson Road, Buckhorn Township, in or near the Town of Apex, Wake County, North Carolina, more particularly described as all of that certain parcel having Wake County PIN 0720-49-3535, Wake County REID 0310487, and street address of 0 Richardson Road, Apex, NC 27502 ("Seller Property"). The Subject Property is that ± 2.00 acre portion of the Seller Property that lies at the eastern end of the tract and is bounded on the west by the approximate centerline of a stream as depicted in Exhibit B attached hereto. The Subject Property is further identified by a legal description shown in Exhibit "A", and upon Map shown on Exhibits "B." Exhibits "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.

WHEREAS, Buyer is a charitable organization as defined in the Internal Revenue Code of 1986, as amended and supplemented, and the applicable regulations promulgated thereunder (the "Code"); and

WHEREAS, Seller intends that the difference between the Purchase Price and the fair market value of the Property shall be a charitable contribution to Buyer.

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 Buyer shall pay to Seller through a Bargain Sale purchase, based on a combination of cash and a charitable contribution. The Purchase Price for the property shall be the fair market value of the Property as determined by an appraisal performed by an Appraiser chosen by Seller. The Appraisal shall be commissioned by Seller and the cost thereof shall be borne by Seller. The Appraisal shall be completed within 60 days after this Contract is signed by the Wake County Board of Education. The Purchase Price shall be paid as follows:

- A. PARTIAL PURCHASE PRICE: In partial payment of the Purchase Price, Buyer shall pay Seller the amount of Ninety Thousand (\$90,000.00) Dollars per usable acre based upon a boundary survey to be obtained by Buyer prior to closing, which shall be paid as follows:
 - (1) \$25,000.00 in earnest money shall be paid by check to Howard, Stallings, From, Atkins, Angell & Davis, P.A, 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 shall pay Seller the balance of the Partial Purchase Price, subject to prorations and the Earnest Money as provided herein, at closing by check or wire transfer of funds to Escrow Agent.
 - (3) Buyer and Seller acknowledge that the Subject Property to be purchased includes ± 2.0 acres of land more or less. The exact location and acreage shall be determined by a formal survey to be provided by Buyer, as described in paragraph 2.L. hereinbelow.

- (4) For purposes hereof the term "usable acre" and "usable acreage" shall mean the gross acreage of the Subject Property, less any land lying within an existing right-of-way or easement for roads on or abutting said Subject Property, streets or utilities upon the Subject Property and depicted on the survey described in Paragraph 1.C hereinabove.
- 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)1-2) shall be credited to Buyer in the form of a charitable contribution from Seller to Buyer. Unless mutually agreed in writing by the parties hereto, cash paid by Buyer shall not exceed the Partial Purchase Prices.
2. CONDITIONS: The obligation of Buyer to purchase the Subject 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 Subject Property.
 - C. Within one hundred fifty (150) 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 Subject 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 Subject Property due to the existence of rock or other unsuitable soil conditions;
 - (3) An environmental assessment of the Subject 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 Subject 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 Apex, Wake County and/or the North Carolina Department of Transportation to construct suitable means of ingress and egress from the Subject Property to S. Salem Street.

- (8) Approval from the Town of Apex, 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 Subject Property for an environmental assessment and shall disclose any and all information about the Subject 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 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 Subject 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 Subject Property is not the subject of any active or pending action by the North Carolina Department of Environmental Quality (DEQ) 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 Subject Property is not subject to any casualty damage. Any casualty damage to the Subject 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 Subject 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 Subject Property or the aquifer underlying the Subject 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 Subject 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 Subject Property to comply with all laws and ordinances, and all rules and regulations of all authorities having jurisdiction over the Seller, the Subject 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 Subject 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 Subject 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 Subject 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. All deeds of trust, liens, leases and other monetary charges against the Subject 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.
- H. 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 Subject Property and such other encumbrances as may be assumed or specifically approved by Buyer. The Subject Property does not have legal access to a public right-of-way.
- I. 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 Subject 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.

- J. Should Buyer elect for any reason not to proceed with the acquisition of the Subject 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.
 - K. The Subject Property alone is insufficient to accommodate the projected site needs for an elementary school. In addition to submitting this Offer to Purchase and Contract to Seller, Buyer is concurrently submitting Offers to Purchase and Contract to the Owners of parcels located adjacent and near to the Subject Property. The assemblage properties are depicted and identified on Exhibit B attached hereto. Buyer must in its sole discretion determine the suitability and sufficiency of acreage of the combination of all the parcels to accommodate the location of an elementary school and related educational uses thereon during the Examination Period, and must be able to acquire all parcels upon acceptable terms with closing occurring on or before the closing date described in Paragraph 16 hereinbelow.
 - L. Buyer shall be responsible for the preparation and recordation of any plat that is necessary to subdivide the Subject Property from the balance of Seller's property, and to recombine it with the adjacent tracts set forth in Section 2.K. and identified on Exhibit B. Buyer shall be responsible for the preparation and submittal of any map that is necessary for completion of a Planned Unit Development Amendment to release the Subject Property from the Friendship Station Planned Unit Development and complete rezoning referenced in Section 2.C(6) hereinabove. To the extent Seller's approval and execution of a plat or map is required for recordation or submittal, Seller will not unreasonably withhold or delay such approval or execution.
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 to the best of Seller's knowledge there are no encumbrances or special assessments, either pending or confirmed, for sidewalk, paving, sewer, water, or other improvements on or adjoining the Subject 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 Subject Property and to the best of Seller's knowledge neither Seller nor the Subject 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 Subject

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 Subject Property and to the best of Seller's knowledge no portion of the Subject 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 Subject 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 it has not been represented by a real estate broker in this transaction. Buyer agrees to indemnify and hold Seller harmless against any real estate commission claimed by any 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 Subject 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 Subject 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 Subject Property at closing in an entity affiliated with Buyer as may be necessary for acquisition to support the intended school use without necessity of written agreement by Seller. Notwithstanding the foregoing, Seller shall have the right to assign this Offer to Purchase and Contract prior to closing without necessity of written agreement of Buyer to an entity affiliated with Seller (owned by some or all of the constituent members of Seller) as may be necessary or desirable for beneficial tax treatment. If Seller chooses to assign the contract, then the same shall be binding on the assignee, and Seller shall provide immediate written notice to Buyer of the assignment.
10. **BINDING EFFECT:** This contract shall be binding and shall inure to the benefit of the parties and their heirs, successors and assigns.
11. **SURVIVAL:** Any provision of this 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 Subject 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 and assemblage that includes a total of approximately 2.00 acres, provided that the amount to be recovered shall not exceed Twenty Five Thousand and No/100 Dollars (\$25,000.00). Reimbursement of expenses shall not relieve Seller of its responsibility to convey approximately 2.00 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 Subject 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 Subject Property to as near its original condition as is possible after completion of tests the Buyer or its agents conduct on the Subject 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. **ZONING AGENT:** For purposes of Buyers rezoning of the subject property to remove it from the Friendship Station Planned Unit Development and rezone it to the same zoning classification as is assigned the Buyer's adjacent property. Seller will execute such instruments, forms, certifications or applications as may be necessary to appoint Buyer or its designee as agent for Seller for the purposes of execution and processing such Planned Unit Development Amendments, rezoning applications or certifications as may be necessary to accomplish the rezoning condition set forth in Section 2. C. (6) hereinabove. Buyer is responsible for the expenses associated with the Planned Unit Development Amendment and Rezoning processes.
15. **RISK OF LOSS:** The risk of loss prior to closing, which shall include personal property, shall be upon the Seller.
16. **POSSESSION:** Exclusive possession of the Subject 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.
17. **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, , 111 Corning Road, Suite 100, Cary North Carolina, 27518, Attention: Betty L. Parker, Real Estate Services Senior Director.

18. 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.
19. 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.
20. 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.
21. 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: 3 Boys Capital, LLC
1018 N. Wellonsburg Place
Apex, NC 27502-7127
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
111 Corning Road, Suite 100
Cary, North Carolina 27518
Email: bparker@wcpss.net

& w/copy to: Kenneth C. Haywood, Esq.
Howard, Stallings, From, Atkins, Angell & Davis, P.A.
5410 Trinity Road, Suite 210
Raleigh, NC 27607
Post Office Box 12347
Raleigh, NC 27605
Email: khaywood@hsfh.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.

23. **INVOLUNTARY CONVERSION:** The parties agree the transaction set forth above is an involuntary conversion of Subject Property under Section 1033 of the Internal Revenue Code. In furtherance and support thereof, the Parties acknowledge the following representations:
- A. Buyer is a public agency with the power of eminent domain.
 - B. Buyer believes the Subject Property identified below is particularly well-suited to adaptation for use as a public educational facility.
 - C. Buyer has approached Seller to propose acquisition.
 - D. Seller has identified the Subject Property for dedication as RCA in support of the Friendship Station PUD, which dedication will support greater density of development and enhance the value of the balance of Seller's Property, such that the value of the Subject Property to Seller is greater than Buyer's opinion of what it considers just compensation for the Property.
 - E. While negotiating in good faith with Seller for purchase the Buyer has mentioned (in a professional manner) its power of eminent domain as a means of acquiring the Property in the event negotiations impasse.
 - F. Seller believes the possibility Buyer may opt to invoke its condemnation powers is substantial, real and imminent because of the Buyer's present need for such a property.
 - G. Seller believes it is in Seller's best interest to negotiate the best terms it can in conjunction with what is, in essence, an involuntary sale.
24. **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 Subject 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.
25. **COVID-19 ADDENDUM:** The terms and conditions set forth on Exhibit "C" attached hereto and entitled "COVID-19 Addendum to Offer To Purchase and Contract" are incorporated herein by reference as fully as if set forth herein.
26. **ENTIRE UNDERSTANDING:** This contract constitutes the entire understanding between the parties. It may not be modified orally or in any manner except by agreement in writing by the parties hereto.

(The balance of this page is left intentionally blank. Signatures appear on subsequent page.)

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

BUYER:

THE WAKE COUNTY BOARD OF EDUCATION

By:

Keith A. Sutton, Board Chair

Attest

Cathy Q. Moore
Cathy Q. Moore, Secretary/Superintendent

Date:

5-15-20

SELLER:

3 BOYS CAPITAL, LLC

By:

Kristen Styers

Title: Mgr.

Date:

4/21/20

Exhibit “A”
Legal Description:

The Seller Property is located on the southern side of Humie Olive Road, east of its intersection with Richardson Road, Buckhorn Township, in or near the Town of Apex, Wake County, North Carolina, more particularly described as all of that certain parcel having Wake County PIN 0720-49-3535, Wake County REID 0310487, and street address of 0 Richardson Road, Apex, NC 27502.. See also deed recorded in Book 16998 at Page 80, Wake County Registry, and plat recorded in Book of Maps in Book of Maps 2017 at Page 1583, Wake County Registry. The Subject Property is that ± 2.00 acre portion of the Seller Property that lies at the eastern end of the tract and is bounded on the west by the approximate centerline of a stream as depicted in Exhibit B attached hereto.

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

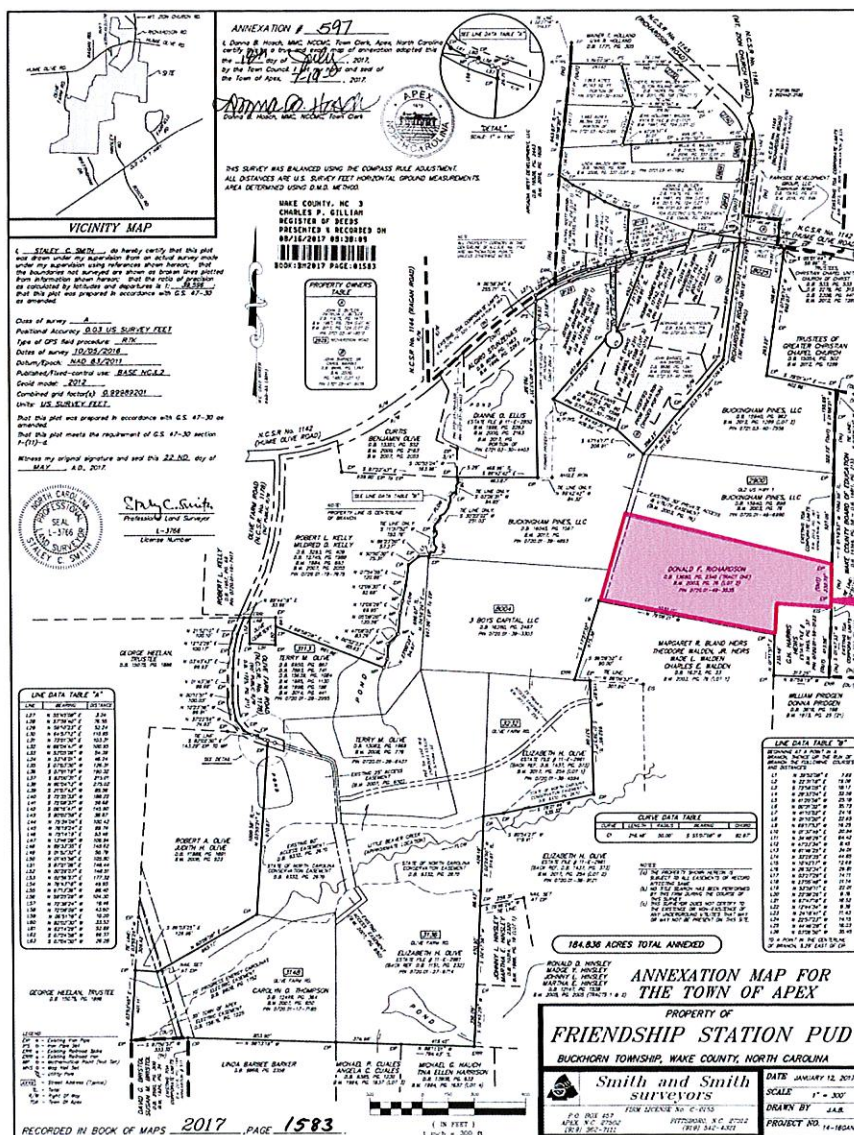


Exhibit "B"

Wake County GIS Aerial Photo of the Subject Property: ± 2.00 Acres

Seller Property: Wake County PIN 0720-49-3535, Wake County REID 0310487

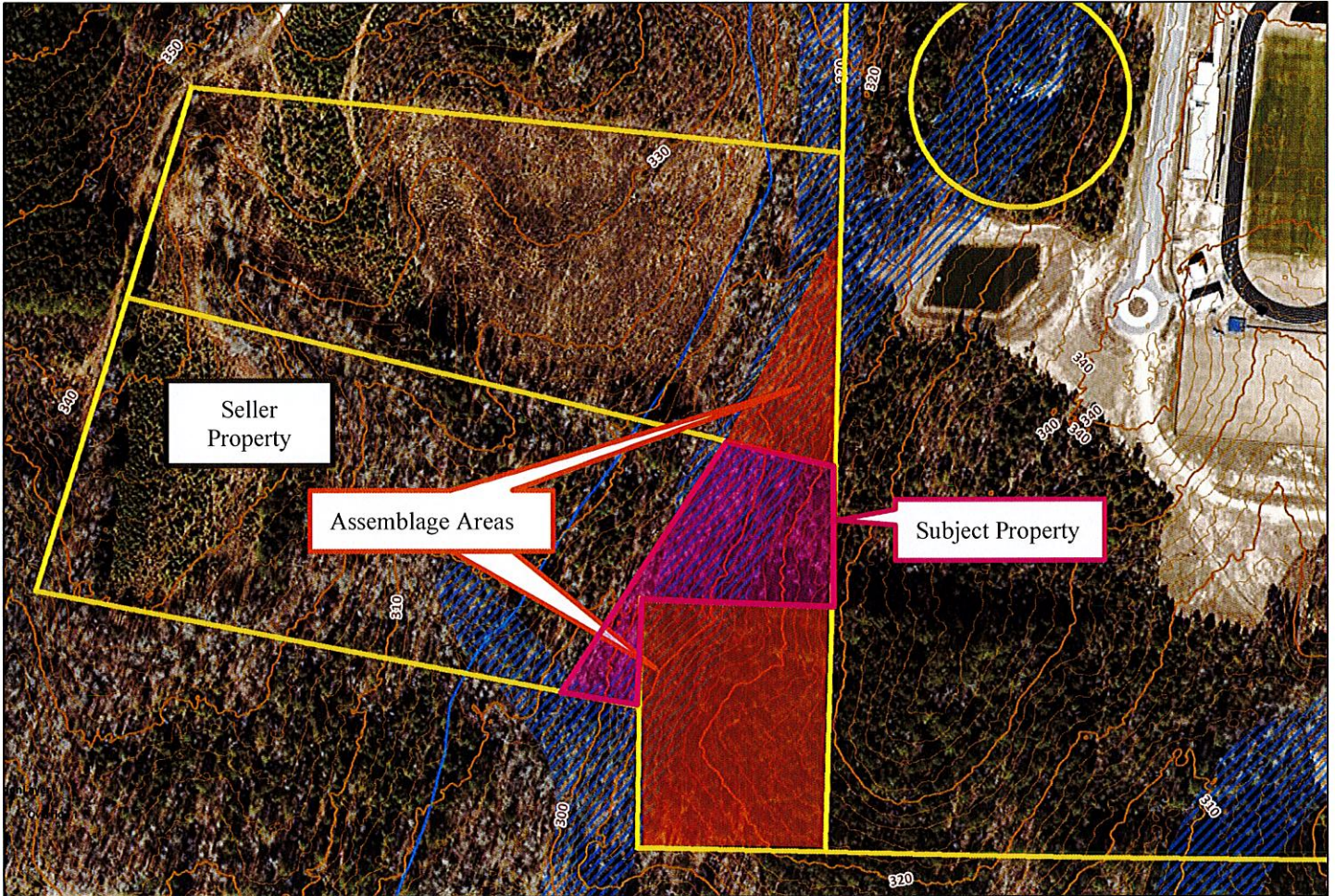


Exhibit "C"

COVID-19 ADDENDUM TO OFFER TO PURCHASE AND CONTRACT

THIS ADDENDUM TO OFFER TO PURCHASE AND CONTRACT by and between Varya LLC ("Seller") and The Wake County Board of Education ("Buyer") for the Property is attached to and made a part of the Offer to Purchase and Contract ("Contract").

Buyer and Seller acknowledge and understand that an event related to the world-wide Coronavirus (COVID-19) pandemic may arise or has arisen that could make it unduly burdensome or impossible for Buyer or Seller to exercise their rights and/or perform their obligations under the Contract, including but not limited to, delay by the Wake County Board of Commissioners to approve Buyer's purchase of the Property, and approve funding and disbursement to Buyer of sufficient funds to pay the full balance of the Purchase price all as stated in Section 2. B of the Contract, any of the due diligence requirements set forth in Section 2. C of the Contract, any requirements imposed upon Seller to perform or satisfy, travel restrictions which prevent the attendance of a party or Closing attorney at the place of Settlement on the Closing Date, closures of governmental or private offices and institutions required to close and record real estate transactions in the county where the Property is located, or conditions which would result in a violation of law in the recording of any documents required under the Contract ("COVID-19-Related Restriction"). Buyer and Seller therefore agree to the following:

1. Extension of Deadlines. If, notwithstanding Buyer and/or Seller's good faith efforts, a COVID-19-Related Restriction makes it unduly burdensome or impossible for Buyer or Seller to exercise a right or perform an obligation in accordance with the terms of the Contract, Buyer and Seller agree that the party subject to the COVID-19-Related Restriction shall give as much notice as possible under the circumstances, in writing, to the other party, including a description of the COVID-19-Related Restriction, and that in such event, all deadlines in the Contract that have not expired shall be extended by 30 days. Buyer and Seller agree that this extension of deadlines shall take place one time only, whether extended by Buyer, Seller or both parties, unless Buyer and Seller agree in writing to a further extension or extensions.

2. Completion of transaction. If, following an extension of deadlines in accordance with paragraph 1, any relevant COVID-19-Related Restriction no longer applies, Buyer and Seller will make a good faith effort to complete the transaction contemplated by the Contract as soon as reasonably possible.

3. Inability to complete transaction. If, following the last agreed-upon Closing date, Buyer or Seller are unable to complete the transaction contemplated by the Contract within the number of days specified in paragraph 1 due to a then-existing COVID-19-Related Restriction for which notice was given according to this Addendum, the Contract shall become null and void unless waived or extended by Buyer and Seller as provided above. In the event the Contract becomes null and void hereunder, the Earnest Money Deposit shall be refunded to Buyer.

4. Delay In Closing. Buyer and Seller agree that in the event either party gives notice of a COVID-19-Related Restriction according to this Addendum, any delay in Closing shall be governed by the provisions of this Addendum.

All capitalized terms used herein that are undefined shall have the meaning set forth in the Contract. In the event of a conflict between this addendum and the contract this addendum shall control.



**Wake County
Board of Education**
CHIEF OF SCHOOLS/REAL ESTATE SERVICES
PRECIS

Subject

OFFER TO PURCHASE AND CONTRACT: LAND ACQUISITION: MULTIPLE OWNERS -
SOUTHWESTERN WAKE COUNTY/WESTERN APEX (APEX FRIENDSHIP ES)

**Department, Board/Staff Liaison(s), and any Presenters from
Outside the District**

Wade Martin – Assistant Superintendent of School Choice, Planning & Assignment

Betty Parker – Senior Director, Real Estate Services

Main Points

Terms and conditions of an Offer to Purchase and Contract have been reached with 3 Boys Capital, LLC, 1071 Classic Road, LLC and the Heirs of Maude Harris Stewart and Floya Harris Richardson to acquire an assemblage of land totaling ± 5.75 acres located in or near the Southwest Wake County/Western Apex area. The assemblage property is further identified as being all or a portion of parcels having Wake County PIN 0720-49-3535, PIN 0720-49-6990 and PIN 0720-59-0123.

Fiscal Implications

Land cost of \$630,000.00 would come from the Land Acquisition Component of the ongoing Capital Improvement Plan Funds.

Savings

Not applicable.

Recommendation for Action / Next Steps

Board approval is requested.