

**GROUND LEASE  
THE WAKE COUNTY BOARD OF EDUCATION (LANDLORD)  
AND WAKE COUNTY, NORTH CAROLINA (TENANT)**

**THIS GROUND LEASE** (the “Lease”) is made as of this \_\_\_\_ day of \_\_\_\_\_ 2021, (“the Effective Date”), by and between the **WAKE COUNTY**, a public body politic and corporate of the State of North Carolina, hereinafter referred to as "the County/Tenant" and **THE WAKE COUNTY BOARD OF EDUCATION**, a body corporate and county board of education organized and existing pursuant to N.C.G.S. §115C et seq, hereinafter referred to as “the Board/Landlord”); collectively referred to herein as “the Parties”.

**RECITALS:**

**WHEREAS**, in 2008, the Wake County Department of Emergency Medical Services (“EMS”) established a Master Plan for EMS Stations that includes co-location of emergency response units; and

**WHEREAS**, the current population, vulnerability data, and demand for service establish a clear need to deploy additional EMS resources in Garner, NC; and

**WHEREAS**, the Board and County recognize and value that the proposed co-location at Timber Drive Elementary School is geographically well positioned to meet the established need for efficient delivery of EMS services to the community; and

**WHEREAS**, the Board owns a certain parcel of land consisting of 37.79 gross acres, and being identified as Wake County PIN#1700-76-8135 (the “Parent Parcel”) as more particularly described on *Exhibit A* attached hereto and incorporated herein by reference; and

**WHEREAS**, the County desires to construct and operate a new EMS station building and related improvements (the “Station”) on an unimproved portion of the Parent Parcel, being that 3.959 acre area depicted on *Exhibit B* (“Leasehold Parcel”) attached hereto, and the Board has consented to the same; and

**WHEREAS**, the Parties contemplate the County designing, constructing and maintaining ownership of the Station and contemplate Wake County EMS operating the Station; and

**WHEREAS**, the Parties contemplate the Board entering into a ground lease with the County for the Leasehold Parcel, together with other agreements as may be necessary to facilitate the construction and operation of the Station; and

**WHEREAS**, the County has budgeted funds for the planning, design, construction and operation of the Station; and

**WHEREAS**, the Parties desire to enter into a ground lease and confirm their rights and responsibilities; and

**WHEREAS**, the Board is authorized by N.C. Gen. Stat. § 115C-518, § 160A-272 and § 160A-274 to lease its property to the County, and N.C. Gen. Stat. § 153A-11 and § 153A-158 authorizes the County to lease property from the Board.

**NOW THEREFORE**, for good and valuable consideration as expressed herein, the receipt and adequacy of which is hereby acknowledged, Board and County agree as follows:

1. Lease of Leasehold Parcel. Upon the terms and conditions set forth herein, Board hereby leases the Leasehold Parcel identified on *Exhibit B* attached hereto and its exclusive use to the County for the construction and operation of a Station and all related improvements incumbent thereto for the provision of emergency medical services, together with non-exclusive rights of access over and upon all roads existing and to be constructed leading to the Leasehold Parcel for ingress, egress and regress by County, the locations as proposed and depicted on *Exhibit B* attached hereto. The Station shall be constructed by the County in the location depicted on *Exhibit B* and County hereby accepts the exclusive lease on the Leasehold Parcel identified on *Exhibit B*, being the portion of the Parent Parcel identified on *Exhibit A* attached hereto. As of the date of this Lease, Board warrants that the Leasehold Parcel is not subject to any other leases or licenses currently in existence which are inconsistent with the construction and operation of the Station.

2. Term. The term of the Lease (the “Term”) shall commence on November 1, 2021 and terminate on October 31<sup>st</sup>, 2071, unless sooner terminated in accordance with provisions of this Lease, subject to the renewal options in Paragraph 3 of this Lease.

3. Renewal Option. This Lease may be renewed for two (2) additional ten (10) year periods upon the same terms and conditions provided herein with the consent of both Parties. If the County desires to renew the Lease, it shall notify Board in writing of this desire no less than sixty (60) days prior to the end of the Term.

4. Rental. The annual rental for each year of the Term shall be one dollar (\$1.00) payable in advance on the date hereof and thereafter on November 1 of each year. The Board hereby acknowledges receipt of the annual rent for the first year of the Term.

5. Ownership of Improvements. The Parties agree that the purpose of the Lease is to facilitate the County’s design, construction and maintenance of the Station and the Leasehold Parcel; that such work, including the costs associated with surveys and permitting, will be funded by the County; that the Station and all related improvements constructed by the County will be owned by the County; and that, during the Term of the Lease, the County will exclusively occupy and operate the Station as an EMS station.

6. Delivery of Land. Upon complete execution hereof, Board shall have delivered the Leasehold Parcel to County, and County shall have accepted delivery thereof. The Board

represents and warrants that it has no actual knowledge of the presence or disposal on the Leasehold Parcel of hazardous or toxic waste or substances, except as in accordance with applicable law. Except as set forth herein, Board has not made and does not hereby make any express or implied representations or warranties regarding or relating to (i) the condition, suitability, value, marketability, or zoning of the Leasehold Parcel, (ii) the right to use the Leasehold Parcel for any particular purpose or in any particular manner, or (iii) the compliance of the Leasehold Parcel with applicable laws, ordinances, regulations, or orders of any governmental authority. Notwithstanding the above, and at no expense to the Board, Board hereby agrees to cooperate and assist the County with all necessary permits required in association with the construction of the Station and in making any property line adjustments to the Leasehold Parcel as may be necessary to accommodate the site plan and construction of the Station.

7. Construction. As soon as practicable after the Board and County approve and execute this Ground Lease, the County will commence construction of the Station, subject to Board's cooperation and responsibilities as provided herein. Upon completion of construction, and any future renovation of or improvements to the Station or Leasehold Parcel, County shall provide record drawings of said improvements to the Board.

8. Use of the Leasehold Parcel & Parent Parcel. County may use the Leasehold Parcel only for purposes of the construction and operation of an EMS Station, which shall include ancillary uses connected to County emergency operations. For the term of this Lease, Board and County shall not use the Leasehold Parcel or knowingly permit the Leasehold Parcel to be used in violation of any applicable law, ordinance, regulation, or order of any governmental authority (including, but not limited to, zoning ordinances, building codes, and environmental laws), or in any manner that will constitute a nuisance. Board shall have the right to grant or continue any lease, license, or other right in and to the Parent Parcel without Wake County's consent, but shall ensure that any use is not inconsistent with the construction and operation of the Station, including any use that would conflict with the provision of EMS services or that may interfere with the telecommunications essential to 911 operations or vehicular access required for emergency vehicles. All proceeds with respect to any other lease or license of the Parent Parcel shall be the sole property of Board. Any liability or expense caused by or with respect to any other lease or license shall be the sole responsibility of Board.

9. Maintenance & Utilities. Except for any repair or maintenance obligations occasioned by the use of another licensee or lessee, County shall, at its own expense, keep and maintain the Station and Leasehold Parcel in good order and repair and in a clean, safe, and sanitary condition during construction and operation of the Station. County shall arrange and pay for, or cause to be paid for, all electricity, gas, water, sewerage, waste disposal, and other utilities and services required for the Station during the construction and operation of the Station.

10. Taxes. The County is exempt from *ad valorem* taxes. As of the date of this Lease, the Parent Parcel is also exempt from *ad valorem* taxation and shall remain exempt, provided the Parent Parcel remains eligible for constitutional exclusions and/or statutory exemptions under North Carolina law. To the extent that County's use of the Leasehold Parcel subjects Board to *ad valorem* taxes with respect to the Leasehold Parcel, County shall pay or cause to be paid such *ad valorem* taxes. County shall pay or cause to be paid, when and as due, all fees of every kind or nature which are now or may hereafter be imposed or assessed upon or with respect to the Station or Leasehold

Parcel during the Term hereof.

11. Insurance. Board shall maintain all appropriate or desired insurance coverages insuring the Leasehold Parcel or activities on the Leasehold Parcel until such time as the Lease is fully executed by the Parties. As of the Effective Date of this Lease, County shall maintain and require its contractors to maintain from the commencement of construction activities until the termination of this Ground Lease the following insurance, in standard form generally in use in the State of North Carolina, with a responsible and financially viable insurance company or companies authorized to do business in that State:

a. Liability Insurance. Commercial general liability insurance covering bodily injury, death and property damage with a single limit of at least One Million Dollars (\$1,000,000). The insurance required by this subparagraph shall (i) name the The Wake County Board of Education as an additional insured, (ii) contain a contractual liability endorsement, (iii) contain an endorsement requiring thirty (30) days written notice from the insurance company to the Board prior to the cancellation of the insurance or any change in coverage, scope, or limits.

b. Workers Compensation Insurance. Workers compensation insurance sufficient to comply with the applicable laws of the State of North Carolina.

c. Property Insurance. All risk insurance covering the Station in amounts mutually acceptable to the Parties, which acceptance by Board shall not be unreasonably withheld, conditioned or delayed (less the cost of foundations, footings, excavation and paving). The insurance required by this subparagraph shall contain an endorsement requiring thirty (30) days written notice from the insurance company to the Board prior to the cancellation of the insurance or any change in coverage, scope, or limits, and a waiver of any right of subrogation that the insurer may acquire against the Board.

d. Waiver of Subrogation. Each party shall cause each insurance policy obtained by it to provide that each insurance company waives all rights of recovery by way of subrogation against the other party in connection with any damage covered by any such policy to the extent permitted and only if permitted by the terms of such policy of insurance without compromising coverage otherwise available. Neither party shall be liable to the other for any damage caused by any risk covered under any insurance policy required by this Lease.

**County may also elect at any time during the Term of this Lease not to carry the commercial general liability and property damage insurance required by Section 11, above, and to “self-insure” against such risks provided that (i) County has in effect a program of “self-insurance” against such risks, or uses a funded reserve as provided for in N.C.G.S. 153A-435, (ii) County has and maintains a Moody's Investors Service bond rating of “AAA,” and (iii) the failure to carry such insurance does not violate any law, statute, code, act, ordinance, order, judgment, decree, injunction, rule, regulation, permit, license, authorization, or other requirement which is issued by any government or governmental agency with jurisdiction over the Station or which is applicable to County in the conduct of its business. If the County elects to “self-insure” as described above, then, on an annual basis, the County shall provide the Board with a letter of self-insurance. For purposes of this Section, County will require its contractors to carry the commercial general liability**

**coverage during the course of construction.**

12. Indemnity.

a. If allowed by North Carolina law and to the extent it does not operate as a waiver of sovereign immunity and is not inconsistent with County's "Resolution Regarding Limited Waiver of Sovereign Immunity", attached hereto as *Exhibit C*, County shall be responsible for damages arising out of or relating to County's ownership of the Station, County's obligations under this Lease or any occurrence in, upon, or from the Leasehold Parcel caused by the negligence or willful misconduct of the County. However, the foregoing shall not apply to bodily injury, death, or property damage caused by Board's, its agent's, or invitee's sole negligence or willful misconduct. Nothing in this section is intended to affect or abrogate the defense of sovereign or governmental immunity if otherwise available to Wake County.

b. If allowed by law and to the extent allowed by the North Carolina Tort Claims Act, Board shall be responsible for damages arising out of or relating to Board's ownership of the Leasehold Parcel, Board's obligations under this Lease or any occurrence in, upon, or from the Leasehold Parcel caused by the negligence or willful misconduct of Board. However, the foregoing shall not apply to bodily injury, death, or property damage caused by the County's, its agent's, or invitee's sole negligence or willful misconduct. Nothing in this section is intended to affect or abrogate the defense of sovereign or governmental immunity if otherwise available to Board.

13. Ownership of Improvements and Surrender. During the Term hereof, all Improvements and personal property located on the Leasehold Parcel shall be and remain the property of County. County agrees to maintain the Improvements in good condition and in compliance with state building and fire safety codes. Upon the expiration of this Lease or termination in accordance with the provisions herein, the Improvements shall remain with the property and become the sole and exclusive property of the Board, and Wake County shall have no continuing obligation for the removal, maintenance or repair of improvements. At the expiration of the lease, the County shall remove all personal property belonging to the County.

14. Encumbrances, Assignment and Subletting. County shall not assign this Lease or transfer, mortgage, encumber or sublet the Leasehold Parcel and Station without prior written consent from Board, which consent shall be in the Board's sole discretion. The Board's consent to any assignment or subletting on one occasion shall not waive Board's right to require consent on subsequent occasions. No assignment or subletting by County shall constitute a release of County's obligations hereunder, and County shall remain responsible for the full and faithful performance and observance of all of the covenants and conditions to be performed or observed by County hereunder.

15. Damage by Fire or Other Casualty. From the commencement of construction for a period of time through and including the remainder of the Lease, if any of the Improvements are

damaged or destroyed by fire, earthquake, act of God, or other casualty (a "Casualty"), County shall either (i) repair and restore the affected Improvements to substantially the same condition as existed immediately prior to the Casualty, (ii) or raze the affected Improvements and surrender the Leasehold Parcel to the Board. All property insurance proceeds payable with respect to the Improvements shall belong to and be the exclusive property of County.

16. Condemnation. If all or any part of the Station or Leasehold Parcel, or any interest therein, are taken as a result of the exercise of the power of condemnation or eminent domain, including a conveyance in lieu of or in anticipation of the exercise of such power (a "Taking"), the Parties shall proceed in accordance with that condemnation agreement, and the rights and obligations of all affected Parties shall be governed thereby. All compensation awarded for any taking of the Station and related improvements constructed by the County shall be the property of the County and Board hereby assigns any such interest in said portion of an award to the County. All compensation awarded for any taking of the Leasehold Parcel owned by Board shall be the property of the Board and the County hereby assigns any such interest in said portion of an award to Board. Thereafter, if a Taking occurs and the Taking renders the Leasehold Parcel unsuitable for use as an EMS station, both Board and County shall have the option to terminate this Lease by delivery of written notice to that effect to the other party within sixty (60) days after the Taking. If the Lease is not terminated as a result of the Taking, County shall diligently repair and restore the remaining Premises as nearly as possible to their condition immediately prior to the Taking upon receipt of compensation.

17. Warranty. The Board warrants and covenants to the County that: (i) Board owns the Parent Parcel including the Leasehold Parcel in fee simple, (ii) Board has the full right and authority to lease the Leasehold Parcel to County upon the terms and conditions set forth herein and has obtained the requisite approvals in accordance with N.C.G.S. §115D-15; (iii) County shall peacefully and quietly hold and enjoy the Leasehold Parcel on an exclusive basis for the full Term hereof and that Board will not interfere with the operation of the Station or lease, license, or use the Parent Parcel in any way that will interfere with the operation of the Station by the County during the term of this Lease, and (iv) Board will cooperate with the County in executing all such documents as may be required to construct the Station and all related improvements.

18. Memorandum of Lease. Either party may, at any time and at their own expense, cause a memorandum of lease to be recorded in the office of the Register of Deeds for Wake County in a form prescribed by North Carolina law.

19. Other Agreements. Both parties agree to enter into any agreements that may be requested by either Party that are reasonably necessary to preserve or effectuate rights hereunder or agreements required for the construction and operation of the Station and future development of the Board's property, including but not limited to subordination agreements, cross-access and access easements/agreements, right-of-way dedications, and utility easements.

20. Notices. Any notice or other communication given or made pursuant to this Lease shall be in writing and shall be deemed given if (i) delivered personally or by courier, (ii) faxed or delivered via electronic transmission (e-mail), (iii) sent by an overnight express delivery such as Federal Express, or (iv) mailed by registered or certified mail (return receipt requested), postage prepaid, to a party at its respective address set forth below (or at such other

address as shall be specified by the party by like notice given to the other party):

If to Board: The Wake County Board of Education  
Real Estate Services  
111 Corning Road, Suite 100  
Cary, NC 27518  
Attention: Betty L. Parker, Sr. Director

Copy to: Howard, Stallings, From, Atkins, Angell & Davis, PA,  
PO Box 12347,  
Raleigh, NC 27605  
Attention: Kenneth C. Haywood, Esq.

If to County: Wake County  
PO Box 550  
Raleigh, NC 27602  
Attention: County Attorney's Office

Copy to: Wake County Facilities Design & Construction  
PO Box 550  
Raleigh, NC 27602  
Attention: Real Estate Project Manager

All such notices and other communications shall be deemed given on the date of personal or local courier delivery, delivery to overnight courier or express delivery service, or deposit in the United States Mail, and shall be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of delivery by overnight courier or express delivery service, on the date following dispatch, and (iii) in the case of mailing, on the date specified in the return receipt therefore, and (iv) in the case of fax or e-mail, on the date of such delivery.

21. Force Majeure. If either party is delayed, hindered, or prevented from the performance of any act required under this Lease by reason of scarcity of labor or materials, strikes, fire, or any other reasons beyond its control, the performance of the act shall be excused for the period of delay, and the period for the performance of the such act shall be extended for a period equal to the period of such delay.

22. Nature and Extent of Agreement. This Lease and its Exhibits incorporated herein by reference contain the complete agreement of the parties regarding the terms and conditions of the lease of the Leasehold Parcel. There are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This instrument creates only the relationship of lessor and lessee between the parties as to the Leasehold Parcel; and nothing in this Lease shall in any way be construed to impose upon either

party any obligations or restrictions not expressly set forth in this Lease or in an instrument incorporated herein by reference.

23. Severability and Conflicts. If any provision of this Lease or its application to any person or circumstance shall, to any extent, be deemed valid or unenforceable, the remaining provisions of this Lease, and the application of that provision to other persons or circumstances, shall not be affected.

24. Captions. The captions for each section in this Lease have been inserted only as a matter of convenience and for reference, and in no way define, limit or affect the scope or intent of that section.

25. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina applicable to contracts made and to be performed therein.

26. Successors. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

27. Amendment & Remedies Upon Breach. This Lease may not be amended except by written instrument duly executed by each of the parties and, if required by law or any operating procedure of either of the parties, approved by the governing body of each party. To the extent that either party breaches any material provision of this Lease, either party may, at its option, terminate this Lease, but not without providing at least sixty (60) days' notice in writing to the other party and a right to cure the alleged breach within sixty (60) days.

28. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall be deemed to constitute one and the same document.

29. Venue. The parties agree that venue for the prosecution of any state court proceedings shall be Wake County, North Carolina, and any federal court proceeding shall be the Eastern District of North Carolina.

30. Non-appropriation. Board acknowledges that since County is a governmental entity, the construction and operation of a Station and all related improvements incumbent thereto are contingent upon the availability of public funding. The Parties acknowledge and agree that in the event public funds are unavailable and not appropriated for the completion of Construction or the operation of the Station under this Ground Lease, then this Lease shall automatically expire without penalty to Wake County thirty (30) days after written notice to Board of the unavailability and non-appropriation of public funds. It is expressly agreed that County shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Ground Lease but only as an emergency fiscal measure during a substantial fiscal crisis which affects generally all governmental operations. Non-appropriation shall include the reduction or elimination of third party funding appropriated as revenue for the payment of funds required for Construction.



31. Cross-Access & Utility Easement Dedication. Board and County agree to work together to identify and grant the necessary cross-access and utility easements necessary to the Leasehold Parcel as described hereinabove.

**(REMAINDER OF PAGE INTENTIONALLY BLANK)**

**IN TESTIMONY WHEREOF, WAKE COUNTY AND THE WAKE COUNTY BOARD OF EDUCATION** through their authorized officers and by their own hands has hereunto set forth their hands and seals of the day and year first above written.

**WAKE COUNTY**

By: \_\_\_\_\_  
Matthew M. Calabria, Chairman

Attest: \_\_\_\_\_ [SEAL]  
Yvonne C. Gilyard, Clerk to the Board

**STATE OF NORTH CAROLINA**

**COUNTY OF WAKE**

I, \_\_\_\_\_, Notary Public of the County of Wake and State of North Carolina, certify that Matthew M. Calabria personally came before me this day and acknowledged that he is the Chairman of the **WAKE COUNTY BOARD OF COMMISSIONERS**, a body politic existing under the laws of the State of North Carolina, and that by authority duly given and as the act of the **WAKE COUNTY**, the foregoing instrument was voluntarily signed in its name by its Chairman, and voluntarily attested by it's clerk \_\_\_\_\_ for the purposes stated therein.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

My Commission Expires:

[NOTARY SEAL]

**WAKE COUNTY BOARD OF EDUCATION**

By: \_\_\_\_\_  
Keith A. Sutton, Chair

Attest: \_\_\_\_\_  
Cathy Q. Moore, Secretary

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public of the County of Wake and State of North Carolina, certify that Cathy Q. Moore personally appeared before me this day and acknowledged that she is the Secretary of the WAKE COUNTY BOARD OF EDUCATION, a body corporate existing under the laws of the State of North Carolina, and that by authority duly given and as the act of the WAKE COUNTY BOARD OF EDUCATION, the foregoing instrument was voluntarily signed in its name by its Chair, and voluntarily attested by herself as Secretary for the purposes stated therein.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

My Commission Expires:

[NOTARY SEAL]

**EXHIBIT A**  
**DESCRIPTION OF PARENT PARCEL**  
[The Exhibit follows this Page]

## EXHIBIT A



PIN: 1700768135  
PIN Ext: 000  
Real Estate ID: 0090293  
Map Name: 1700 12  
Owner: WAKE COUNTY BOARD OF  
EDUCATION  
Mail Address 1: RE SERVICES DIRECTOR  
Mail Address 2: 1551 ROCK QUARRY RD  
Mail Address 3: RALEIGH NC 27610-4145  
Deed Book: 002252  
Deed Page: 00324  
Deed Acres: 37.79  
Deed Date: 6/14/1974  
Building Value: \$13,103,209  
Land Value: \$1,453,700  
Total Value: \$14,556,909  
Billing Class: Exempt  
Description: GR PT BNDY TIMBER DR SCHOOL  
SITE BM1996 -00598  
Heated Area: 79757  
Street Name: TIMBER DR  
Site Address: 1601 TIMBER DR  
City: GARNER  
Planning Jurisdiction: GA  
Township: St. Mary's  
Year Built: 1997  
Sale Price: \$0  
Sale Date:  
Use Type: SCHOOL



0 215 430 860 ft  
1 inch = 400 feet

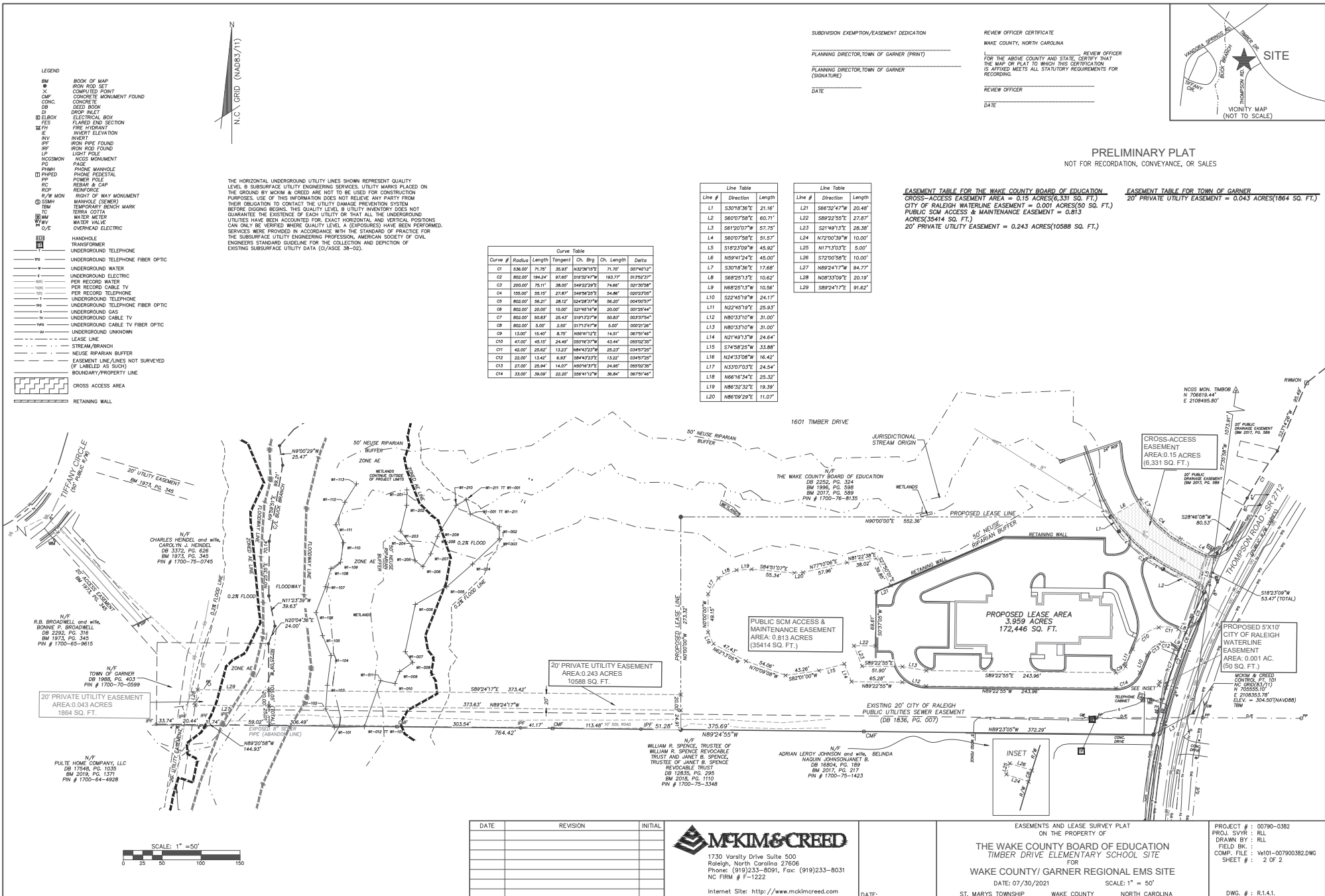
### **Disclaimer**

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**EXHIBIT B**  
**DESCRIPTION OF LEASEHOLD PARCEL**  
[The Exhibit follows this Page]



# EXHIBIT B



**EXHIBIT C**

“Resolution Regarding Limited Waiver of Sovereign Immunity”  
[The Exhibit follows this Page]



## EXHIBIT C

Wake County Board of Commissioners October 6, 2003, states specifically that Wake County does not waive immunity for purposes of any legal proceeding. You may obtain a copy of the Resolution adopted by the Wake County Board of Commissioners at the following web site: <http://www.wakegov.com/general/commissioners/>, under "MEETING MINUTES & AGENDAS," click on "Board's Adopted Minutes."

### RESOLUTION REGARDING LIMITED WAIVER OF SOVEREIGN IMMUNITY

WHEREAS, SL 2003-175, amending N.C. Gen. Stat. §153A-435(a), provides that a county may use a funded reserve instead of purchasing insurance against liability claims and may adopt a resolution that deems such a funded reserve to be treated as the purchase of insurance for purposes of N.C. Gen. Stat. §153A-435; and,

WHEREAS, Wake County has created such a funded reserve and desires to waive the County's governmental immunity to the limited extent provided in this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE WAKE COUNTY BOARD OF COMMISSIONERS:

1. The County will waive sovereign immunity and immunity for public officials acting in their official capacity only, and only to the extent set forth herein.
2. This resolution applies only to claims arising on or after July 1, 2003.
3. This resolution is intended only to waive the County's immunity in the limited circumstances described herein. It is not intended to alter or expand the County's liability, to limit or waive available defenses, to waive immunity from certain types of damages, or to affect any principle of law other than waiver of sovereign immunity and immunity for public officials acting in their official capacities. The County retains the right to assert any affirmative or other defense to a claim. Notwithstanding the foregoing, for purposes of this Resolution only and only to the extent provided in this Resolution, the County waives the "public duty" defense for the County and for its officials acting in their official capacity.
4. The County will waive immunity only for those claims proximately caused by the negligence of the County or a County employee or official covered by R-85-99, "Resolution Establishing Uniform Standards Under Which Claims or Civil Judgments Sought or Entered Against County Officers and Employees Shall be Paid," as it is from time to time amended.
5. The County will pay only the following damages if proven to be proximately caused by the incident:
  - A. Property damage
  - B. Medical expenses
  - C. Chiropractic expenses or physical therapy expenses for not more than three consecutive months
  - D. Lost wages for time authorized out of work by physicians licensed to practice medicine in North Carolina when compensation for all or part of those wages is not available from other sources
  - E. Demonstrable out of pocket expenses, excluding attorney's fees

6. The County specifically does not waive immunity for claims or damages for pain and suffering or for any other element of damage not listed herein. The County will make no payment for diminution in value of motor vehicles.

7. In no event shall claims paid in any fiscal year pursuant to this Resolution exceed the amount budgeted in that fiscal year to the self insured funded reserve or any account established for that purpose. The Board of County Commissioners reserves the right to fund or not to fund such account annually in its sole discretion. The County Manager is directed to establish procedures governing the making of payments from this fund. Said procedures may include procedures regarding the timing and method of such payments and may include provisions requiring the pro-ration of claims in order to assure that payments in a fiscal year do not exceed available funds.

8. As a condition for the payment of any claims under this Resolution the Claimant must execute a complete release of the County and its employees, officials and/or agents in both their individual and official capacities for all elements of the claim.

9. Waiver of immunity pursuant to this Resolution is limited to the voluntary settlement of claims. Settlements are not available under this Resolution after the institution by Claimant of any legal proceeding regarding the claim against the County, its officials, employees, or agents.

**RESOLUTION AMENDING R-85-99  
REGARDING UNIFORM STANDARDS FOR PAYMENT  
OF CLAIMS INVOLVING COUNTY OFFICERS AND EMPLOYEES**

WHEREAS, R-85-99 adopted on May 20, 1985, provides standards and procedures for the payment of claims and defense of lawsuits brought against County officers and employees; and

WHEREAS, the intent of that Resolution is to provide protection for employees of the Sheriff and Register of Deeds on the same terms and conditions as employees and officials of the County.

NOW, THEREFORE BE IT RESOLVED, that R-85-99, adopted on May 20, 1985, is hereby amended to clarify that the phrase "officers and employees" as used in that Resolution also applies to officers and employees employed by the Wake County Sheriff and Register of Deeds.

This Resolution shall be effective upon adoption, and shall serve to ratify any prior decision made by the County Manager and/or County Attorney to provide such coverage to officers and employees of the Sheriff and/or Register of Deeds under the provisions of R-85-99.