

NORTH CAROLINA

WAKE COUNTY

**OFFER TO PURCHASE AND CONTRACT**

WHEREAS, SOUTHEASTERN RESIDENTIAL HOLDINGS, LLC. ("Buyer") hereby agrees to purchase and Wake County Board of Education ("Seller") hereby agrees to convey a parcel of land at 2618 Forestville Road, Raleigh, NC, being described as having Wake County PIN 1748-43-5922, totaling 80.802 acres more or less, further identified as located in the City of Raleigh, Wake County North Carolina, as described in deeds recorded in Deed Book 13277, Pages 2503 and 2510, Wake County Registry, and being more particularly described in Exhibit "A" as attached hereto and incorporated herein by reference, together with all improvements located thereon (except as hereinafter described) and all appurtenances thereto belonging or appertaining, and all right, title and interest which Seller may have in all creeks, streams, rights-of-way, easements, roads, streets and ways bounding said property (the "Property").

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein contained 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 of Forty-Seven Thousand Two Hundred Fifty Dollars per Acre, which amounts to Three Million Eight Hundred Seventeen Thousand Eight Hundred Ninety-Four and 50/100 (\$3,817,894.50) Dollars shall be paid as follows:

A. An initial good faith Earnest Money deposit of Five Percent (5%) of the Purchase Price in the amount of One Hundred Ninety Thousand Eight Hundred Ninety-Seven and 73/100 (\$190,897.73) Dollars (sometimes referred to herein as the "Deposit") shall be paid by Buyer to be delivered to the law office of Boxley, Bolton Garber & Haywood, LLP, upon execution of this Offer to Purchase and Contract by Buyer with the delivery of this Offer to Purchase and Contract. In accordance with the statutory requirements to the upset bid process, this Earnest Money will be held pending the upset bid period. Should Buyer's, bid as evidenced by this offer to Purchase and Contract, not be upset by any other bid and should Seller agree to accept the terms and conditions hereof by their execution then the earnest money deposit will be held in trust until the sale is closed, at which time it will be credited to Buyer. In the event that the closing conditions have been satisfied and Buyer fails, refuses or is unable to close the transaction in accordance with the terms of this Offer To Purchase and Contract, where such performance is not otherwise excused, Seller will retain the deposit as liquidated damages.

B. Buyer shall pay Seller the balance of the purchase price at closing by certified check, official bank check, or wire transfer of funds, said amount being the sum of Three Million Six Hundred Twenty-Six Thousand Nine Hundred Ninety-Nine and 77/100 (\$3,626,999.77) Dollars.

2. **CONDITIONS:** The obligation of Buyer to purchase the Property is subject to the satisfaction at or prior to closing of the following conditions:

A. Title must be delivered at closing by Special Warranty Deed and must be fee simple marketable title, free of all encumbrances and assessments, other than utility easements and unviolated restrictive covenants, neither of which materially affect the developability

or value of the Property and such other encumbrances as may be assumed or specifically approved by Buyer during its title search (to be conducted during the Due Diligence Period), and must be insurable (in standard ALTA form owner's policy of title insurance) by a title company of Buyer's choosing. The Property must have legal access to a public right-of-way. Notwithstanding the foregoing, all title matter(s) susceptible of satisfaction and removal at or prior to closing by the payment of money, including without limitation unpaid mortgages, judgments, taxes, sewer and water charges, and assessments, shall be satisfied and/or removed by Seller on or prior to closing.

B. The receipt by Buyer of all written agreements, arrangements and other evidence satisfactory to Buyer to a commercially reasonable standard to the effect that (a) public sewer treatment and capacity is immediately available from any applicable authorities and agencies on a permanent basis for the effluent from the Property as intended to be developed by Buyer, (b) sufficient public water and storm drainage are immediately available and/or fully approved to service adequately, as determined by Buyer in a commercially reasonable standard the Property as intended to be developed by Buyer, and (c) electric, cable, gas and other utilities are available at the Property, all of (a), (b) and (c) at connecting fees and expenses that are not greater than those which are customary and ordinary for similar developments in the vicinity of the Property in effect on the date of this Offer to Purchase and Contract.

C. The receipt by Buyer of variances, special use permits, and environmental approvals necessary for the development of the Property. Seller agrees to cooperate with Buyer's attempt to satisfy these conditions, including, but not limited to, executing all necessary applications, and appearing at meetings with governmental agencies. Seller's cooperation will not be unreasonable conditioned, delayed or withheld.

D. There shall be no material adverse change in the condition of or affecting the Property not caused by Buyer between the time of Buyer's inspection of the Property during the Due Diligence Period and the date of Closing, including, but not limited to, (a) environmental contamination, and (b) access.

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 Buyer elects not to waive the satisfaction of any unsatisfied conditions, Buyer shall have the right to rescind the Offer to Purchase and Contract and recover all of its earnest money deposit.

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 hereof and (as a condition precedent to Buyer's obligations hereunder) on the date of closing as though such representations and warranties were made at such time and shall survive the passing of title:

A. ASSESSMENTS: Seller warrants that there are no encumbrances or special assessments, either pending or confirmed, for sidewalk, paving, sewer, water, or other improvements on or adjoining the Property.

B. CLAIMS AND SUITS: Seller has not entered into any agreement including leases or rental agreements or other options to purchase or other agreements with reference to the Property and neither Seller nor the Property are subject to any claim, demand, suit, unfiled lien, proceeding or litigation of any kind, pending or outstanding, or to the knowledge of Seller, threatened or likely to be made or instituted which would in any

way be binding upon Buyer or its successors or assigns or affect or limit Buyer's full use and enjoyment of the Property or which would limit or restrict in any way Seller's right or ability to enter into this Offer to Purchase and Contract and consummate the sale and purchase contemplated hereby.

C. TITLE MATTERS. There is no default or breach by Seller nor, to the best of Seller's knowledge, any other party thereto, under any covenants, conditions, restrictions or easements which may affect the Property or any portion or portions thereof which are to be performed or complied with by the owner of the Property, and no condition or circumstance exists which, with the giving of notice or the passage of time, or both, would constitute a default or breach by Seller nor, to the best of Seller's knowledge, any other party thereto, under any such covenants, conditions, restrictions, rights-of-way or easements.

D. CONDEMNATION. There is no pending or, to the best of Seller's knowledge, threatened condemnation, expropriation, eminent domain, change in grade of public street or similar proceeding affecting all or any portion of the Property; Seller has received no written or oral notice of the same; and Seller has no knowledge that any such proceeding is contemplated.

5. SELLER COVENANTS: Between the date of execution of this Offer to Purchase and Contract and the date of closing:

A. MAINTAIN PROPERTY: Seller shall maintain the Property in its present state of repair and in substantially the same condition as on the date hereof.

B. NO FURTHER ENCUMBRANCES: Seller shall not enter into any lease, agreement of sale, option, or any other agreement or contract affecting the Property, nor shall Seller grant any easements or further encumber the Property, without the prior written consent of Buyer.

C. COMPLIANCE WITH LAWS: Seller shall comply with all covenants, conditions, restrictions, laws, statutes, rules, regulations and ordinances applicable to the Property (collectively, the "Applicable Laws").

D. HAZARDOUS SUBSTANCES: Seller shall not use, manufacture, store, generate, handle, or dispose of any Hazardous Substances at the Property, or use or permit the Property to be used for such purposes, or emit, release or discharge any such Hazardous Substances into the air, soil, surface water or groundwater comprising the Property. Notwithstanding any language to the contrary, Seller acknowledges that it presently uses the Property for the parking, maintenance, repair and refueling of a portion of its bus fleet, and for print shop operations. Buyer consents to the Seller's continued use for such purposes until Seller's possessory rights cease on the Property provided the same is conducted in compliance with all applicable laws.

E. PROPERTY DAMAGE: Seller shall not remove or damage any structures, fixtures, systems, improvements, standing trees, shrubbery, plants, landscaping or soil now in or on the Property during the term of this Offer to Purchase and Contract. Seller shall not dispose of any trash, debris, building materials or organic material (including, without limitation, trees and stumps) onto the Property. In the event that such disposal has occurred prior to the date hereof, Seller shall remove all such materials at Seller's expense prior to the closing.

6. PRORATIONS AND ADJUSTMENTS: Unless otherwise provided, the following items shall be prorated and adjusted between the parties or paid at closing:
  - A. All late listing penalties, if any, shall be paid by Seller.
  - B. Seller shall be responsible for the payment of the brokerage commission to Clyde A. Douglass, III, in an amount equal to two and one-half percent (2.5%) of the purchase price. Seller, by its execution hereof, states that it has not been represented by any real estate broker in this transaction. Seller agrees to indemnify and hold the Buyer harmless against any real estate commission claimed by any third-party in violation of this representation. Buyer, by its execution hereof, states that other than Clyde A. Douglass, III, it has not been represented by any real estate broker in this transaction and it agrees to indemnify and hold the Seller harmless against any real estate commission claimed by any third-party in violation of this representation.
7. LABOR AND MATERIAL: Seller shall furnish at closing an affidavit and indemnification agreement in a form satisfactory to Buyer showing that all charges for labor or materials, if any, furnished to the Property within 120 days before the date of closing have been paid and agreeing to indemnify Buyer against all loss from any claim arising therefrom.
8. 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. Buyer shall pay for recording the deed. Buyer and Seller shall each pay their respective attorneys fees.
9. ASSIGNMENT: This Offer to Purchase and 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 an affiliate of Buyer, or take title to the Property at closing in an entity affiliated with Buyer.
10. BINDING EFFECT: This Offer to Purchase and 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 Offer to Purchase and Contract which (i) by its nature and effect is required to be observed, kept or performed after the closing, or (ii) was required to be observed, kept or performed prior to closing but was not so observed, kept or performed prior to 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 they have full and complete power and authority to enter into this Offer to Purchase and Contract in accordance with all the provisions contained herein and that there is no person or entity that has any interest in the Property other than the parties to this Offer to Purchase and Contract.
13. INSPECTION AND DUE DILIGENCE PERIOD:
  - A. INSPECTION. From the date hereof through closing, Buyer and Buyer's agents or employees shall have the right to enter upon the Property at reasonable times with the prior written authorization of Seller to survey the Property and to conduct such other inspections, tests and studies as Buyer may deem necessary (collectively, the

"Inspections"). Buyer and/or its agents, representatives, contractors, subcontractors and consultants shall be adequately insured regarding such work. Seller shall grant Buyer's reasonable requests for entry upon the Property with the agreement that Buyer shall not unreasonably interfere with Seller's use of the Property or damage the Property and provided further that Buyer shall leave the property in substantially the same or better condition as it was prior to the entry thereon by Buyer or its agents or employees or, in the event of any damage to the Property, Buyer shall repair and restore the Property substantially to its prior condition. Buyer agrees to indemnify and hold harmless Seller from any loss or damage to persons or property, including reasonable attorneys' fees, arising out of the entry upon the property by Buyer, its agents or employees, or arising out of the inspections that Buyer, its agents or employees may conduct pursuant to this Paragraph, provided that such loss or damage was not caused by Seller or its agents.

B. DUE DILIGENCE PERIOD. Buyer and Seller further agree that within one hundred twenty (120) days after the date this Offer to Purchase and Contract has been fully executed (the "Due Diligence Period"), should Buyer desire not to purchase the Property as a result of its studies or for any other reason whatsoever, Buyer shall have the right to terminate this Offer to Purchase and Contract upon written notice to Seller, in which case the earnest money deposit shall be returned to Buyer, this Offer to Purchase and Contract shall be deemed null and void and there shall be no further liability of the parties hereunder other than Buyer's indemnification obligation set forth in Paragraph 13A. above. Failure to notify Seller prior to the expiration of the Due Diligence Period shall act as Buyer's election to waive this contingency. Notwithstanding the foregoing, if Buyer has completed its due diligence studies, but has made a commercially reasonable effort and has not completed those items specified in Paragraph 2C on or before the expiration of the initial one hundred twenty (120) day Due Diligence Period, then Buyer shall have the right to extend the Due Diligence Period, at no charge, for an additional period of up to sixty (60) days by delivery of written notice to Seller on or before the initial expiration of the Due Diligence Period.

14. CONDITION OF PROPERTY: Except as set forth herein, Buyer shall purchase the Property in an "as-is, with all faults" condition and hereby acknowledges and agrees that it is relying solely upon its own inspections, investigations and analyses of the Property in entering into this Offer to Purchase and Contract and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material from Seller or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding the Property, other than those set forth herein and in the documents delivered at Closing.
15. RISK OF LOSS: The risk of loss prior to closing due to casualty, which shall include personal property, shall be upon the Seller. If, prior to closing, any portion of the Property is condemned, Buyer shall have the option of (i) terminating this Offer to Purchase and Contract, in which event this Offer to Purchase and Contract shall be null and void and Buyer shall be paid the Deposit, or (ii) proceeding with the closing, in which event the entire condemnation proceeds shall be delivered to Buyer at closing hereunder (and, in connection with the foregoing, Seller expressly acknowledges and agrees that Seller will not settle any proceeding or agree to any condemnation award or compensation without Buyer's prior written consent, given or withheld in Buyer's sole discretion), or, if Seller has not yet received such proceeds, then the right to receive such proceeds shall be assigned to Buyer at closing hereunder by instrument acceptable to Buyer. Buyer shall exercise its option within fifteen (15) days after it receives written notice from Seller of any such condemnation together with all information reasonably

necessary for Buyer to make an informed decision, including, without limitation, the amount of any proposed condemnation proceeds.

16. POSSESSION: Exclusive possession of the Property free and clear of occupancy by all persons, firms or corporations, whether or not under claim of right or color of title, shall be delivered to Buyer at closing on the conditions required in this Offer to Purchase and Contract. Seller shall deliver at Closing such affidavits as may be required by Buyer's title insurance company in order to issue the title policy free of any exception for tenants or parties in possession.
17. TIME IS OF THE ESSENCE: Time is of the essence with regard to the terms and conditions contained in this Offer to Purchase and Contract.
18. CLOSING: The parties agree to execute any and all documents and papers necessary in connection with the closing and transfer of title (including, without limitation, a closing or settlement statement and a Certificate and Affidavit of Non-Foreign Status by Seller) on or before the date which is thirty (30) days following the expiration of the Due Diligence Period. The deed is to be made to the party designated by Buyer during the thirty (30) days prior to closing.
19. COUNTERPARTS: This offer shall become a binding contract when signed by both Buyer and Seller in four (4) counterparts with an executed counterpart being retained by each party.
20. CONSTRUCTION: No provision of this Offer to Purchase and Contract shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.
21. SEVERABILITY: In case anyone or more of the provisions contained in this Offer to Purchase and Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Offer to Purchase and Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
22. SELLER REMEDIES CUMULATIVE: The rights and remedies of Seller specified in this Offer to Purchase and Contract shall be cumulative and in addition to any other rights and/or remedies otherwise available, whether or not specified in this Offer to Purchase and Contract.
23. 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 Offer to Purchase and 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.
24. COMPLETE AGREEMENT: This Offer to Purchase and Contract contains the entire contract between the parties hereto regarding the subject matter hereof and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Offer to

Purchase and Contract not specifically set forth herein. It may not be modified orally or in any manner except by agreement in writing by the parties hereto.

25. DEFAULT AND REMEDIES:

A. BUYER DEFAULT: Should Buyer fail to perform any of Buyer's obligations under this Offer to Purchase and Contract within thirty (30) days after receipt of written notice from Seller (or in the event of a monetary default, ten (10) days after receipt of written notice from Seller), then Seller as its sole and exclusive remedy shall have the right to terminate this Offer to Purchase and Contract and receive and keep the earnest money deposit as liquidated damages.

B. SELLER DEFAULT: Should Seller fail to perform any of Seller's obligations under this Offer to Purchase and Contract within thirty (30) days after receipt of written notice from Buyer (or in the event of a monetary default, ten (10) days after receipt of written notice from Buyer), then Buyer shall have the right either (i) to terminate this Offer to Purchase and Contract and receive a return of the earnest money deposit, or (ii) to specifically enforce this Offer to Purchase and Contract against Seller and recover its costs of enforcement, including reasonable attorney's fees, provided however that if specific performance is unavailable, then Buyer shall be entitled to pursue any other right, power or remedy available to Buyer at law or in equity.

26. MISCELLANEOUS:

A. Buyer and Seller agree to cooperate with each other and to take such further actions as may be requested by the other in order to facilitate the timely purchase and sale of the Property, and Buyer's development of the Property following closing. Accordingly, Seller agrees to execute (and record if necessary) such other documents reasonably requested by Buyer as part of its developmental approvals.

B. If any date on which a time period scheduled to expire herein is a Saturday, Sunday or holiday, the subject date shall be extended to the next business day.

C. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be deemed given when dispatched for delivery by hand, by nationally-recognized overnight express delivery service, by U. S. registered or certified mail, return receipt requested, postage prepaid, or by electronic transfer with prompt telephone confirmation, to the addresses set out below each party's signature, or at such other addresses as are specified by written notice delivered in accordance herewith. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing.

D. This Contract shall be construed and interpreted under the laws of the State of North Carolina. The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa.

27. DELIVERY OF INFORMATION. Seller shall make reasonably available to Purchaser copies of the following items, to the extent they are in the possession of Seller, within seven (7) days of the full execution of this Agreement.

- a. all boundary and topographic surveys;
- b. all construction drawings for the development of the Property;
- c. all title reports and title insurance policies;
- d. all soils and geotechnical reports;
- e. all zoning minutes, certifications, agreements and related documents;
- f. all reports, documents and surveys regarding rock or soil tests;
- g. all Wetlands studies;
- h. all flood studies; and
- i. all environmental studies.

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

Date of Offer: April 22, 2013

Date of Acceptance by Board of Education: \_\_\_\_\_

Buyer: SOUTHEASTERN RESIDENTIAL HOLDINGS, LLC

By:   
ALLEN NASON, Member

Seller:

WAKE COUNTY BOARD OF EDUCATION

By: \_\_\_\_\_  
Chair

Attest: \_\_\_\_\_  
Superintendent

Exhibit "A"

Lying and being in being in the City of Raleigh, Wake Forest Township, Wake County, North Carolina, and being more particularly described as follows:

BEING ALL of the tract shown on map entitled "Exempt Subdivision and Recombination Survey for Wake County Board of Education H-6 School Site" recorded in Book of Maps 2008, Pages 1999-2003, Wake County Registry. The subject property contains 80.802 acres, has a street address of 2618 Forestville Road, Raleigh, Wake County NC, and has been assigned Wake County PIN #1748435922. See also deeds recorded in Book 13277 at Pages 2503 and 2510, Wake County Registry on October 20, 2008.

