

OFFER TO PURCHASE AND CONTRACT

THIS OFFER TO PURCHASE AND CONTRACT, including any and all addenda attached hereto (hereinafter "Agreement"), is by and between the Transylvania County Board of Education ("Buyer"), and Brian Shelton and Deedra Shelton ("Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given to them as set forth adjacent to each term.

(a) **"Property":**

☒ If this box is checked, "Property" shall mean the property described on **Exhibit A** attached hereto and incorporated herein by reference, together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on **Exhibit A**. (For information purposes, the tax parcel number of the Property is: 8552786395000.)

\$100,000.00

(b) **"Purchase Price"** shall mean the sum of ONE HUNDRED THOUSAND DOLLARS NO/100 Dollars, *payable on the following terms:*

\$2,500.00

(i) **"Due Diligence Fee"** shall mean TWENTY FIVE HUNDRED AND NO/100 Dollars made payable and delivered to Seller by the Contract Date. The Due Diligence Fee paid to Seller shall be non-refundable, regardless of whether Buyer terminates the Agreement prior to the expiration of the Examination Period.

\$1,000.00

(ii) **"Earnest Money"** shall mean ONE THOUSAND AND NO/100 Dollars. Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with CAMPBELL SHATLEY, PLLC to be applied as a partial payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.

\$99,000.00

(iii) **Cash, balance of Purchase Price**, at Closing in the amount of NINETY NINE THOUSAND AND NO/100 Dollars.

(c) **"Closing"** shall occur on or before a date that is sixty (60) days after the expiration of the Examination Period.

- (d) **"Contract Date"** means the date this Agreement has been fully executed by both Buyer and Seller, and the purchase price and Agreement have been given final approval by the Transylvania County Board of Commissioners and the Transylvania County Board of Education, respectively.
- (e) **"Examination Period"** shall mean the period beginning on the Contract Date and extending for a period of ninety (90) days from the Contract Date, exclusive of the Contract Date itself.
TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.
- (f) **"Seller's Notice Address"** shall be as follows:
Brian and Deedra Shelton
305 Woodyard Lane
Rosman, NC 28772
Email: thesheltons2013@gmail.com

except as same may be changed pursuant to Section 12.

- (g) **"Buyer's Notice Address"** shall be as follows:
Transylvania County Board of Education
c/o Dr. Jeff McDaris, Superintendent
225 Rosenwald Lane
Brevard, NC 28712
Email: jmcдарis@tcsnc.org

With copy to:

Campbell Shatley, PLLC
c/o Kris Caudle
674 Merrimon Ave.
Suite 210
Asheville, NC 28804

except as same may be changed pursuant to Section 12.

- (h) Additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference.

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

DES DES

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments, and utilities, or any other assumed liabilities, if any, shall be prorated as of the date of Closing. Provided, however, that any taxes for prior years that come due or are subject to recapture due to a deferral shall be borne solely by the Seller. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following: N/A.

Buyer shall pay recording costs, costs of any title search, title insurance, survey, and the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following: N/A.

Each party shall pay its own attorney's fees. In the event of a dispute between the Parties regarding the enforceability of the Agreement, each party shall be responsible for its own attorney's fees in any civil action.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies, surveys, and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes that (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than the Seller's default, then Buyer shall return to Seller all materials, if any, delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable) and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys, and other information relating directly to the Property prepared by or at the request of Buyer or its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy, or correctness thereof.

Section 5. Evidence of Title: Seller agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances, and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (if applicable), and (c) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"), provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages, or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on **Exhibit A**) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, which must be made expressly and in writing) of the following conditions:

(a) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(b) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(c) **Inspections:** Buyer and its agents or representatives, at Buyer's expense and at all times, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises, and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections, and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or relating directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property. However, Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential to any person except to its attorneys, accountants, lenders, and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality as permitted by law. Buyer assumes all responsibility for the acts of itself and its agents or representatives in exercising its rights under this Section 6(c) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations, and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY FOR ANY REASON OR NO REASON AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, SELLER SHALL RETAIN THE NON-REFUNDABLE DUE DILIGENCE**

FEE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY. In the event that the Buyer chooses not to purchase the Property pursuant to this subsection 6(c), the Buyer agrees to share with the Seller the results and reports of the inspections the Buyer caused to be performed during the Examination Period.

Section 7. Leases (Check one of the following, as applicable):

☒ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not - "Leases") and the following provisions are hereby made a part of this Agreement.

- (a) All Leases shall be itemized on **Exhibit B**;
- (b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;
- (c) Seller represents and warrants that as of the Contract Date, there are no current defaults (or any existing situation which with the passage of time or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted, or threatened to be asserted by either Seller or a tenant under the Lease.
- (d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at or before Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.
- (e) Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreement in such form as may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property, of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4)

and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including without limitation, any material waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. § 1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money shall be forfeited, but such forfeiture shall not affect any other remedies available to Seller for such breach. NOTE: In the event of a dispute between Seller and Buyer over the return or forfeiture of Earnest Money held in escrow by a licensed real estate broker, the broker is required by state law to retain said Earnest Money in its trust or escrow account until it has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction, or alternatively, the party holding the Earnest Money may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a general warranty deed, to be made to the Transylvania County Board of Education, unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit A, an owner's affidavit, lien waiver forms and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. Each Seller's spouse shall join in the conveyance, as required by applicable law. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, provided, however, that the Buyer agrees to permit the Seller to continue growing and cutting hay upon the Property until the Buyer needs the Property vacated to be developed for its intended use. The Seller's use of the Property pursuant to this section shall further be contingent upon the parties entering into a satisfactory license agreement which shall provide for the Seller's indemnification of the Buyer, provision of insurance, and agreement to repair damage to the Property resulting from such use, and for the Buyer to provide an agreed-upon notice period for Seller to vacate the property and cease its further




use. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until Closing has taken place.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered by hand-delivery and/or electronic mail to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 13. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any): None.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law & Venue: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina. The Parties agree that the proper venue for any claims brought hereunder is in the county in North Carolina where the Board's Central Office is located.

Section 18. Assignment: This Agreement is not assignable.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. 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.

Section 20. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.


Section 21. Binding Effect: This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 22. Captions and Headings: The captions and headings throughout this Contract are for convenience and reference only and the words contained therein shall in no way be held to define or add to the interpretation, construction or meaning of any provision of this Contract.

Section 23. Recording: This Contract shall not be recorded in any public registry.

Section 24. Pre-Audit Certification: Execution of the Pre-Audit Certification below is a condition precedent to the effectiveness of the signatures set-forth below.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]



BS DCS

BUYER

The Transylvania County Board of Education

By: 

Name: Dr. Jeff McDaris

Title: Superintendent

Date: 7/26/21**SELLER**By: 

Name: Brian Shelton

Date: 7/23/21**SELLER**By: 

Name: Deedra Shelton

Date: 7/23/21

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act.

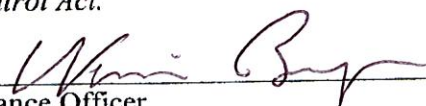

Finance OfficerDate: 7/23/21

EXHIBIT A

Being all the lands, easements, privileges, and appurtenances described in that deed date June 12, 2020 from Wanda L. Owen, single, to the Sellers, recorded in Deed Book 924 at pages 700-702 of the Transylvania County Public Registry, and being more particularly described therein as follows:

BEGINNING on an iron pin in the eastern margin of Broad Street, common corner of Lots 22 and 24 as show on the old plat of the Town of Rosman and runs thence with the eastern margin of Broad Street, N 27 deg W. (passing an iron pin, common corner of Lots 24 and 26, at 50 ft.) 75 ft. to stake; thence N 63 deg E 115 ft. to a stake located S 63 deg W 25 ft. from the center line of the Southern Railway tracks; thence S 27 deg. E (passing an iron pin corner of Lots 22 and 24; thence with the line between said lots, S 63 deg. W 115 ft to the BEGINNING.

Being all of the Lot 24 and the southern half of Lot 26 as shown on the old plat of the Town of Rosman, formerly known as the town of Toxaway, which lot is identical to Lots 24 and 26 as shown on the plat of Rosman Realty Company as recorded in Plat Book 3, page 14 in the office of the Register of Deeds of Transylvania County.

Included with this conveyance is the underground storage tank system existing on the real property.


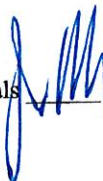


EXHIBIT B
(Additional Contingencies)

In addition to and not in limitation of the inspections that the Buyer is entitled to make pursuant to section 6(c) of this Agreement, the Buyer shall be entitled to make specific inspections, examinations, assays, borings, core samples, drillings and/or any other means of assessment in the sole discretion of the Buyer to determine the fitness of the Property for the Buyer's intended use, including but not limited to assessment of wetlands disruption or reclamation, geotechnical exploration and/or seismic assessments, and/or testing of soil suitability for supplies of potable water and the disposal of wastewater. If the Buyer determines, prior to the expiration of the Examination Period and in its sole discretion, that the Property is unsuitable for its intended use do to conditions related to these or any other inspections or examinations, the Buyer may terminate this Agreement and shall in that event be entitled to a full refund of the Earnest Money. The terms of section 6(c) of this Agreement shall apply to investigations and environmental assessments made pursuant to this contingency.

This Agreement is contingent on the Buyer's intended use of the Property being and remaining legally permissible through the Closing Date, and must not be prohibited by any law, regulation, or other authority of any kind or description, including but not limited to zoning laws or environmental regulations. Provided, however, that where one or more administrative or legal process may be employed to render the Buyer's intended use of the Property permissible, the Buyer may in its sole discretion and at its sole expense elect to engage in such process. Then and in such event, the Seller agrees to reasonably cooperate with the Buyer successfully complete such process.

This Agreement is contingent, as a condition subsequent, upon approval in open session by the Transylvania County Board of Education, upon a duly called meeting of the Board. Buyer agrees to use its best efforts to secure such approval as required by law, but in no case later than thirty (30) days after acceptance of this Agreement by Seller.

This Agreement is further contingent, as a condition subsequent, upon approval of the purchase price by the Board of County Commissioners for Transylvania County pursuant to G.S. §115C-426.

