

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF BUNCOMBE

THIS LEASE AGREEMENT, made and entered into as of the \_\_\_\_\_ day of April, 2023 by and between **THE BUNCOMBE COUNTY BOARD OF EDUCATION**, (hereinafter called the "Board of Education"), and **THE COUNTY OF BUNCOMBE**, (hereinafter called the "County").

**W I T N E S S E T H:**

That, subject to the terms and conditions hereinafter set forth, the Board of Education hereby lets and leases unto the County and the County does hereby accept as tenant of the Board of Education, that certain real property (hereinafter called the leased premises) located in the County of Buncombe, State of North Carolina, and more particularly described in Exhibit A attached hereto and made a part hereof.

**THE TERMS AND CONDITIONS OF THIS LEASE ARE AS FOLLOWS:**

1. This Lease shall begin as of the 1<sup>st</sup> day of May 2023 and shall exist and continue until and including the 30<sup>th</sup> day of April, 2033. This lease is made in accordance with N.C.G.S. §160A-274(b).
2. During the initial term and any renewal term of this Lease, the County shall pay to the Board of Education an annual rental of One and No/100 Dollar (\$1.00).
3. The County acknowledges that it has inspected the leased premises, that the leased premises are being leased in "as is" condition, that no representation as to the condition of the leased premises has been made by the Board of Education, and that no promise to alter, repair, or improve the leased premises has been made by the Board of Education.
4. The County shall not use the leased premises or permit the leased premises to be used for any unlawful purposes or permit any unlawful act in and upon the leased premises.
5. The County shall be solely responsible for the security of the leased premises.
6. The Board of Education shall have no obligation to maintain the leased premises.
7. The County shall provide and pay for all electricity, telephone service, water, garbage disposal, sewage disposal, heat, air conditioning, or any other service, utility, commodity, or service.
8. The County shall not commit or suffer to be committed any waste or damage to the above-described leased premises.

9. It is agreed that the County shall remove from the leased premises all permanent improvements, furniture, equipment, trade fixtures, and other property owned and placed on the leased premises by the County, at or before the termination of this Lease. Upon the termination of this Lease, the leased premises shall be returned to the Board of Education free of any and all hazardous or toxic substances, waste, materials, or residue.

10. The County is self-insured for general liability for claims up to \$500,000 and maintains excess general liability coverage up to \$7,000,000 per occurrence: Including coverage for bodily injury and property damage. In addition, the County is self-insured for workers' compensation and maintains excess workers' compensation coverage per statutory requirement and carries \$1,000,000 of employer's liability insurance.

11. Indemnity. The County agrees, to the extent permitted by North Carolina law, to indemnify, defend, and hold harmless the Board of Education and their officers, agents and employees from any third party claims, damages, or loss for personal injury or property damage sustained or claimed to have been sustained by any person or firm on or about the leased premises, or for any claim arising out of or from the negligent acts or omissions of the County in connection with the performance of this Lease.

12. The County may sublet the leased premises or any portion thereof for nonprofit, tax exempt purposes and uses without the prior written consent of the Board of Education; provided, however, that in the event of such subleasing, the County shall, nevertheless, remain primarily liable to the Board of Education for the payment of all rents and for the full performance of all of the County's covenants and conditions contained in this Lease.

13. The County shall require any subtenant to carry the following minimum insurance coverage:

- a. Worker's Compensation – at the statutory limits in compliance with applicable State and Federal laws. The Contractor shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.
- b. Employer's Liability - with minimum limits of \$1,000,000 each accident/\$1,000,000 disease each employee/\$1,000,000 disease policy limit.
- c. Commercial General Liability - covering all operations performed by the Contractor with a minimum limit of \$1,000,000 per occurrence with a \$3,000,000 aggregate.
- d. Professional Health Care Liability - covering the Contractor's acts, errors, or omissions in the rendering of or failure to render professional health care services with a minimum limit of \$1,000,000 per occurrence with a \$3,000,000 aggregate
- e. Business Automobile Liability - covering all owned, non-owned, and hired vehicles used in performance of the contract. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per NCGS 20-279.21.
- f. Excess or Umbrella Liability – shall extend an additional \$1,000,000 limit / \$3,000,000 aggregate over the underlying commercial general liability, professional health care liability, and business auto liability insurance. Any

additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

14. In the event that the County shall violate any or any part of the terms and conditions of this Lease, the Board of Education shall have, in addition to all other remedies at law or in equity, the right to terminate said Lease by giving the County written notice to quit and vacate the leased premises on or before a date and time stated in said notice, and from and after the date and time stated in the notice, the Board of Education shall be entitled to possession of the leased premises and may take immediate possession thereof without legal process. However, any delay or failure by the Board of Education in terminating this Lease or any choice of remedies as provided herein or in otherwise enforcing its rights with respect to any such violation shall not operate as a waiver of such rights of the Board of Education or deprive the Board of Education of such rights or constitute an election of an exclusive remedy or limit such rights in any way.

15. Any notice, request, instruction, legal process, or other document to be given hereunder shall be in writing and, except as otherwise provided or directed in writing by the parties, shall be delivered personally or mailed by certified mail, return receipt requested, as set forth below:

To the County:

The County of Buncombe  
Buncombe County Courthouse  
200 College St.  
Asheville, North Carolina 28801  
Attention: Michael Frue, County Attorney

To Board of Education:  
The Buncombe County Board of Education  
175 Bingham Road  
Asheville, North Carolina 28806  
Attention: Dr. Robert Jackson, Superintendent

16. This Lease may be modified only by written agreement signed by the Board of Education and the County.

17. This Lease shall be binding upon and shall inure to the benefit of the Board of Education and the County, their successors, and assigns.

18. The Parties agree that a memorandum of this Lease will be recorded in the Buncombe County Public Registry but that this Lease itself will not be so recorded.

19. This Lease shall not be terminated by application of the doctrine of merger, except by mutual consent of the Parties.

IN WITNESS WHEREOF, the Board of Education and the County have hereunto set their hands and seals in duplicate originals, one of which has been retained by the Board of Education and one of which has been retained by the County, the day and year first above written.

THE BUNCOMBE COUNTY  
BOARD OF EDUCATION

By: \_\_\_\_\_  
Ms. Ann Franklin, Chair

Attest:

By: \_\_\_\_\_  
Dr. Robert Jackson,  
Superintendent and Ex-Officio Secretary

THE COUNTY OF BUNCOMBE

By: \_\_\_\_\_  
Brownie Newman,  
Chair of the Board of Commissioners

Attest:

By: \_\_\_\_\_  
Lamar Joyner  
Clerk of the Board of Commissioners,

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the State and County aforesaid, certify that Dr. Robert Jackson, personally appeared before me this day and acknowledged that he is Superintendent and Ex-Officio Secretary of **THE BUNCOMBE COUNTY BOARD OF EDUCATION**, a body corporate, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its Chair, sealed with its corporate seal and attested by him as Superintendent and Ex-Officio Secretary.

Witness my hand and official stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

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

My Commission Expires:  
\_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public for said County and State, has personal knowledge of the identity of Lamar Joyner, and hereby certifies that said Lamar Joyner, Clerk to the Board, personally appeared before me this day and acknowledged that he is Clerk to the Board of Commissioners of County of Buncombe and that Brownie Newman is the Chairman of the Board of Commissioners of Buncombe County, and that by authority duly given and as the act of the County of Buncombe, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by himself as its Clerk as the act and deed of the County of Buncombe, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the \_\_\_ day of \_\_\_\_\_, 2023.

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

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

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]

## EXHIBIT A

Being that tract of land located in Biltmore Township, Buncombe County, North Carolina, described as follows:

BEGINNING at a point in the southern margin of U.S. Highway 74, which point is located at the northernmost corner of the A. C. Reynolds Middle School property owned by The Buncombe County Board of Education and runs thence with the southern margin of U.S. Highway 74 South 62 degs. 29 mins. East 442.80 feet to a point in the entrance drive to the A. C. Reynolds Middle School; thence with the centerline of the entrance drive leading from U.S. Highway 74 to the A. C. Reynolds Middle School five courses and distances as follows: South 27 degs. 04 mins. 27 secs. West 78.40 feet to a point; South 27 degs. 55 mins. 17 secs. West 112.96 feet to a point; South 30 degs. 36 mins. 34 secs. West 64.17 feet to a point; South 36 degs. 20 mins. 10 secs. West 62.76 feet to a point; and South 40 degs. 50 mins. 37 secs. West 60.11 feet to a point; thence leaving the entrance drive to A. C. Reynolds Middle School North 50 degs. 21 mins. 21 secs. West 509.56 feet to a steel pin in a concrete monument; thence North 17 degs. 29 mins. East 179.63 feet to a steel pin in a concrete monument; thence North 78 degs. 34 mins. East 146.35 feet to the place and point of BEGINNING, saving and excepting therefrom all land lying between the western or northwestern margin of the access road leading to the A. C. Reynolds Middle School and said centerline of the access road leading to the A. C. Reynolds Middle School described above. Being a portion of that 3.89 acre tract of land shown on an unrecorded survey for Reynolds Volunteer Fire Department dated March 1, 1991, prepared by McAbee & Associates, P.A., Registered Land Surveyors.

Less and excepting that portion of the adjacent property conveyed to the North Carolina Department of Transportation by the Lessor for the widening of U.S. Highway 74.

The above referenced tract is encumbered by and subject to the right of way for U.S. Highway 74 to its full legal width.