

## OFFER TO PURCHASE AND CONTRACT

For valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyers offer to purchase and Seller upon acceptance agrees to sell and convey the Property on the terms and conditions of this Offer To Purchase and Contract and any addendum, modification and Exhibit made in accordance with its terms (together the "Contract").

1. **Terms:** The terms listed below shall have the respective meaning as used in real estate sales.
  - (a) Seller: **Charlotte Mecklenburg Historic Landmarks Commission**
  - (b) Buyer: **Tyson Bates and Regina Church-Bates**
  - (c) Property: The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon and the fixtures and personal property listed in Paragraph 2 below.  
Address: **Holbrooks Road, Huntersville, NC 28078**

Legal Description: **All of Lot 1B as shown on that map recorded in Map Book 51, Page 936 in the Mecklenburg County Public Registry (See attached Exhibit C)**

The PIN/PID or other identification number of the Property is: **019-093-06**

(d) **\$409,296.26**      **Purchase Price: Four Hundred Nine Thousand Two Hundred Ninety-Six and 26/100ths Dollars, (\$409,296.26) paid in U.S. Dollars AT CLOSING made payable and delivered to Seller**

**\$10,000.00**      **Earnest Money Deposit – paid \$5,000.00 at execution of Contract and \$5,000.00 at the end of the Feasibility Period (Time is of the Essence)**

**\$399,296.26**      **Balance to be paid at Closing.**

(e) **Escrow Agent: Prosser D. Carnegie** is holding the Earnest Money Deposit. Prosser D. Carnegie may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

(f) **Effective Date:** The date that: (1) the last one of Buyers and Seller has signed or initialed this offer or the final counteroffer, if any, and (2) such signing or initialing is communicated to the party making the offer or counteroffer, as the case may be.

(g) **Settlement Date:** The parties agree that Settlement will take place within **twenty (20) days** after the expiration of the **Feasibility Period, upon receipt of notice from the Buyer's lender that the Buyer's loan is ready to close or by 3:00 pm on the One Hundred and Fiftieth (150<sup>th</sup>) day from the Effective Date of this Contract, whichever is later**, (the "Settlement Date"), unless otherwise agreed in writing by both parties, at a time and place designated by Buyers. **Time is of the Essence for this Settlement Date.**

(h) **Closing:** The completion of the legal process which results in the transfer of title to the Property from Seller to Buyers, which includes the following steps: (1) the Settlement; (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing

attorney's receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed which shall take place on the Settlement Date or the following business day. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse all necessary funds, then the Closing shall be suspended and the Settlement deemed delayed until there is resolution of the discovered issue or the parties agree to terminate this Contract.

(i) Any assessment that has been approved prior to Settlement whether or not it is fully payable at time of Settlement shall be paid by Seller. Any assessment that is under formal consideration but which has not been approved prior to Settlement will be paid by Buyer.

2. **FIXTURES AND EXCLUSIONS:**

(a) The Buyer is purchasing all fixtures and personal property of every kind located in the improvements on the Property. Buyer and Seller attach no value to the fixtures or personal property transferred herein.

3. **BUYER'S FEASIBILITY PERIOD:**

(a) **Feasibility Period. Property is being sold "AS IS"** so there will be no Due Diligence Period for mechanical, structural, electrical, environmental, pest or any other inspection concerning the condition of the Property. **Buyer shall have until 4:00 PM on the 45th** day from the date the Effective Date to investigate the feasibility of placing an educational facility in the Property. During the Feasibility Period, Buyers, at Buyers' expense, shall be entitled to conduct all desired surveys, appraisals, loan options and any and all governmental requirements to operate an educational facility on the Property. **Time is of the Essence for this Feasibility Period.**

Buyers will defend, indemnify and hold Seller and its members, and their respective officers, directors, shareholders, employees and agents, harmless from any and all claims and demands, liability, loss, expense, costs and obligations on account of, or arising out of or alleged to be arising out of, Buyers', their agents and consultant's activities on the Property.

(b) **Repair/Improvement Negotiations/Agreement:** Buyers acknowledge and understand **THE PROPERTY IS BEING SOLD IN ITS CURRENT CONDITION AND BUYERS FULLY ACCEPT SUCH PROPERTY CONDITIONS.**

(c) **Buyer's Obligation to Repair Damage:** Buyers shall, at Buyers' expense, promptly repair any damage to the Property resulting from any activities of Buyers and Buyers' agents and contractors, but Buyers shall not be responsible for any damage caused by accepted practices approved by any N.C. licensed professional performing reasonable appraisals, surveys and feasibility studies of the Property. This repair obligation shall survive any termination of this Contract.

(d) **Indemnity:** Buyers shall indemnify and hold Seller harmless from all loss, damage, claims, suits, costs and attorney's fees, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyers and Buyers' agents and contractors relating to the Property. Buyer is fully aware of the condition of the Property and assumes any and all risks for the Buyers, Buyers' agents, employees, independent contractors or invitees. This indemnity shall survive this Contract and any termination hereof.

(e) **Buyers' Right to Terminate:** Buyers shall have the right to terminate this Contract for any reason or no reason, by delivering to Seller written notice by mail or by email of termination (the "Termination Notice") during the Feasibility Period, *TIME BEING OF THE ESSENCE*. If Buyers timely deliver the Termination Notice, this Contract shall be terminated and the Earnest Money Deposit shall be refunded to Buyers. In the event the Buyers do not terminate within the Feasibility Period, both Buyers and Seller agree and consent the Earnest Money shall be paid immediately to the Seller and is non-refundable.

**CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.**

**4. Buyers Representations:**

(a) **Loan:** Buyers represent they will be obtaining a loan to purchase the Property and upfitting in the amount of **\$5,900,000.00** and that **Buyers shall provide to Seller a firm loan commitment in said amount from Buyer's lender at least 10 days prior to Closing as determined in Paragraph 1(g) above. *Time is of the Essence* for this Paragraph 4(a).**

(b) **Other Property:** Buyers do not have to sell or lease other real property in order to complete purchase.

(c) **Performance of Buyers' Financial Obligations:** To the best of Buyers' knowledge, there are no other circumstances or conditions existing as of the date of this offer that would prohibit Buyers from performing Buyers' financial obligations in accordance with this Contract, except as may be specifically set forth herein.

**5. Buyers Obligations:**

(a) **Responsibility for Certain Costs:** Buyers shall be responsible for all costs with respect to the appraisal, title search, title insurance, recording the deed and for preparation and recording of all instruments required.

(b) It is agreed between the Buyer and Seller that Buyer may be allowed access to the Property to make repairs and improvements prior to Closing on condition of the following:

(i) Buyer represents that the labor and material which will be used to repair and/or improve the Property is being donated to the Buyer.

(ii) Buyer shall provide to the Seller an executed lien waiver from each and every entity or individual which supplies labor and/or material to the Property.

(iii) Buyer shall provide to Seller copies of the contractor's license and workers compensation insurance coverage of each and every entity or individual which supplies labor and/or material to the Property.

(iv) Buyers shall indemnify and hold Seller harmless from all loss, damage, claims, suits, costs and attorney's fees, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyers and Buyers' agents and contractors relating to the Property. Buyer is fully aware of the condition of the Property and assumes any and all risks for the Buyers, Buyers' agents, employees, independent contractors or invitees. This indemnity shall survive this Contract and any termination hereof.

(c) **Buyers shall provide to Seller a firm loan commitment in the amount of \$5,900,000.00 from Buyer's lender at least 10 days prior to Closing as determined in Paragraph 1(g) above. *Time is of the Essence* for this Paragraph 5(c).**

(d) **Buyers' Failure to Comply or Breach:** If after the Feasibility Period, Buyers fail to comply with any of Buyers' obligations under this Contract or Buyers breach any provision of this Contract, and Seller elects to terminate this Contract as a result of such failure or breach, then the Earnest Money Deposit shall be paid to the Seller as full and complete liquidated damages because of the difficulty, inconvenience, and uncertainty of ascertaining actual damages for such default.

**6. Seller Representations:**

(a) **Seller makes no representations or warranties concerning the Property. Property is being sold "AS IS", "WHERE IS".**

**7. Seller Obligations:**

(a) **Evidence of Title:** Seller has delivered to Buyers copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, and easements relating to the Property. Seller authorizes: (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyers agents and attorneys; and (2) the Property's title insurer to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyers and attorneys.

**Authorization to Disclose Information:** Seller authorizes: (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyers and Buyers' 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 Buyers and Buyers' attorneys; (3) the closing attorney to release and disclose any Seller's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction and Buyers' lender(s).

(b) **Access to Property/Walk-Through Inspection:** Seller shall provide reasonable access to the Property (including working, existing utilities) through the earlier of Closing or possession by Buyers, including, but not limited to, allowing Buyers an opportunity to conduct a final walk-through inspection of the Property.

(c) **Affidavit and Indemnification Agreement:** Seller shall furnish at Settlement an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyers and Buyers' title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Property as described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyers, Buyers' lender(s) and Buyers' title insurer against all loss from any cause or claim arising therefrom.

(d) **Good Title, Legal Access:** Seller shall execute and deliver a **SPECIAL WARRANTY DEED** for the Property in recordable form no later than Settlement, which shall convey fee simple title, without exception for mechanics' liens, and free of any other liens, encumbrances or defects, except: ad valorem taxes for the current year (prorated through the date of Settlement); all matters of

survey; all matters of record; utility easements and unviolated covenants, conditions or restrictions that do not materially affect the value of the Property; and such other liens, encumbrances or defects as may be assumed or specifically approved by Buyer in writing. The Property must have legal access to a public right of way.

(e) **Deed, Excise Taxes and Fees:** Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Contract. The deed is to be made to: **Tyson Bates and Regina Church-Bates.**

(f) **Seller's Failure to Comply or Breach:** If Seller fails to materially comply with any of Seller's obligations under this Paragraph or Seller materially breaches this Contract, and Buyers elect to terminate this Contract as a result of such failure or breach, then the Earnest Money Deposit shall be refunded to Buyers as full and complete liquidated damages because of the difficulty, inconvenience, and uncertainty of ascertaining actual damages for such default. There shall be no further remedies available to the Buyer.

**8. Condition of Property at Closing: THE PROPERTY IS BEING SOLD IN ITS CURRENT CONDITION, "AS IS".**

9. **Risk of Loss:** The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, Buyers may terminate this Contract by written notice delivered to Seller or Seller's agent and the Earnest Money Deposit shall be refunded to Buyers. In the event Buyers do NOT elect to terminate this Contract, Buyers shall be entitled to receive, in addition to the Property, any of Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property being purchased. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed.

10. **Possession:** Possession, including all means of access to the Property (keys, codes, garage door openers, etc.), shall be delivered upon Closing as defined in Paragraph 1(h).

11. **Other Provisions and Conditions:** Attached Exhibits A, B and C are incorporated by reference as if fully set forth herein.

12. **Assignments:** This Contract may not be assigned without the written consent of all parties.

13. **Parties:** This Contract shall be binding upon and shall inure to the benefit of Buyers and Seller and their respective heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

14. **Survival:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

15. **Entire Agreement:** This Contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties.

16. **Notice; Conduct of Transaction:** The parties agree that any action between them relating to the transaction contemplated by this Contract may be conducted by electronic means, including the

signing of this Contract by one or more of them and any notice or communication given in connection with this Contract. Any written notice or communication in connection with the transaction contemplated by this Contract may be given to a party or a party's agent by sending or transmitting it transmitted to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Any notice or communication to be given to a party herein, and any fee, deposit or other payment to be delivered to a party herein, may be given to the party or to such party's agent. Seller and Buyer agree that the "Notice Information" and "Acknowledgment of Receipt of Monies" sections below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.

17. **Execution:** This Contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument, and the parties adopt as their seals the word "SEAL" beside their signatures below.

18. **Computation of Days/Time of Day:** Unless otherwise provided, for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made.

This offer shall become a binding contract, subject to the terms and conditions contained herein, on the Effective Date.

Buyer:

\_\_\_\_\_  
Tyson Bates

Date: \_\_\_\_\_

\_\_\_\_\_  
Regina Church-Bates

Date: \_\_\_\_\_

Seller: **Charlotte-Mecklenburg Historic  
Landmarks Commission**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Dan L. Morrill

**EXHIBIT A**

**ADDENDUM TO  
OFFER TO PURCHASE AND CONTRACT  
by and between  
TYSON BATES AND REGINA CHURCH-BATES, As Buyers  
And CHARLOTTE-MECKLENBURG HISTORIC LANDMARKS COMMISSION, as Seller**

**THIS ADDENDUM** is incorporated herein to the OFFER TO PURCHASE AND CONTRACT (hereinafter "Agreement") attached hereto among the above parties, and these terms are an integral part of said Agreement. However, should the terms contained herein be in conflict with the terms as contained in the Agreement, the terms contained in this Addendum shall control.

**Deliveries.** At the time of Seller's execution of this Agreement, Seller has provided the following documentation to Buyers:

- a. Copy of survey in Seller's possession. – **previously provided to Buyer**
- b. Copy of Seller's title insurance policy. – **previously provided to Buyer**
- c. Phase 1 Environmental Assessment. - **previously provided to Buyer**
- d. Copy of Historic Designation - **previously provided to Buyer**
- e. Copy of Restrictions on Property - **previously provided to Buyer**

**Evidence of Title.** Contract is amended to add the following provision:

In addition to the matters described above, Buyers specifically acknowledge Seller has disclosed the Property has been designated as a historic property and that, in addition, the Property will be conveyed subject to restrictive covenants ("Historic Restrictions") recorded of record to guarantee its preservation, a copy of which draft restrictions have been provided to Buyer. Due to said designation and the recordation of the Historic Restrictions, any renovations, additions, and/or repairs to the Property must be completed in compliance with these Restrictive Covenants and the regulations regarding historic properties, including the guidelines incorporated in the Secretary of the Interior's Standards for Rehabilitation. Buyer agrees that it understands these requirements, including specifically, but not limited to, the requirement of obtaining a Certificate of Appropriateness from the Seller prior to commencement of any renovation or repair of the structure located on the Property (known as the "Torrence Lytle School") or changes in the land, including specifically a prohibition against demolition of the buildings located on Lot 1B as described in the Contract.

**Notices.** All notices under the contract may also be made by using a nationally recognized overnight delivery service, and shall be deemed to have been properly given on the date deposited with a nationally recognized overnight delivery service, such as Federal Express or UPS or by electronic mail. In addition, notice as required therein shall also be provided to:

Buyer: \_\_\_\_\_  
\_\_\_\_\_

Buyer's Attorney: \_\_\_\_\_  
\_\_\_\_\_

Seller: Charlotte Mecklenburg Historic Landmarks Commission  
2100 Randolph Road  
Charlotte, NC 28207  
704-376-9115  
[danmorrill2@gmail.com](mailto:danmorrill2@gmail.com)

Seller's attorney:  
Prosser D. Carnegie

PO Box 363  
Davidson, NC 28036  
Phone: 704-507-7791  
Sandy.dblaw@gmail.com

**Additional Provisions.** The Contract is further amended by the addition of the following sections:

***Time is of the Essence.*** Time is of the essence in the performance of all obligations under this Contract. Unless business days are specifically referenced, any reference in this Contract to time periods shall, in the computation thereof, include Saturdays, Sundays, and legal holidays but any time period provided for in this Contract which shall end on a Saturday, Sunday, or legal holiday shall extend to 5:00 p.m. on the next full business day.

## **EXHIBIT B**

**This Exhibit B shall be recorded one minute prior any recording of the deed and any deed of trust.**

Prepared by: Prosser D. Carnegie  
And Return to: Dr. Dan Morrill, 2100 Randolph Rd., Charlotte, NC 28207



STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

**HISTORIC PRESERVATION AGREEMENT  
AND RESTRICTIONS (Including Right of  
First Refusal and Option Rights)**

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between **CHARLOTTE-MECKLENBURG HISTORIC LANDMARKS COMMISSION**, a North Carolina Commission organized pursuant to N.C. G.S. 160A-400.7 under the laws of the State of North Carolina (hereinafter referred to as the "**Commission**"), and any and all persons, firms, corporations, or other entities hereinafter acquiring any interest in the real property described herein.

**WITNESSETH:**

**WHEREAS**, the Commission is the owner of certain property known as Torrence Lytle School, North Carolina, more specifically described as follows:

**BEING ALL of Lot 1B as shown on the Map of WAYMER CENTER, MAP 2, as recorded in Map Book 51 at Page 936 in the Office of the Register of Deeds of Mecklenburg County, North Carolina; reference to which is hereby made for a more particular description.**

**Together with an Easement over the property designated as "Total Use Easement" on the plat referenced above for the purposes provided in this deed. Under the easement granted herein, Grantee shall use the easement area as a side yard for Lot 1B, and shall have the absolute and exclusive right to use and develop the easement area in any manner that benefits Lot 1B. Grantee herein shall be responsible for all maintenance of the Total Use Easement. Grantor herein shall have no right to use nor any obligation to maintain the Total Use Easement.**

**The easement granted herein shall run with the land and shall constitute a burden upon the Lot 1A as shown on the plat of the Waymer Center as referenced above and shall inure for the benefit of Lot 1B. The easement provided for herein shall inure to the benefit of and be binding upon the respective successors, assigns, heirs, tenants, and invitees of each party hereto and shall remain in full force and effect and shall be unaffected by any change in ownership of either parcel or by any change of use, demolition, reconstruction, expansion, or other circumstances.**

**Grantor herein cannot convey property encumbered by the Total Use Easement to Grantee without violating local zoning ordinances, and the purpose of this easement is to provide to Grantee as much control as possible without transferring fee simple ownership. It is the intent of the parties that the value of this easement for taxation purposes shall be the equivalent of the fee simple value.**

and which property has certain permanent improvements situated thereon consisting of two (2) school building, which property is commonly known as the "Torrence Lytle School" (said improvements and real property hereinafter referred to as the "Property"; and

**WHEREAS**, the Commission is a commission established pursuant to N.C. G. S. 160A-400.7 to protect historic structures to ensure that they are preserved and maintained for the benefit of future generations; and

**WHEREAS**, the North Carolina General Assembly has enacted the Conservation and Historic Preservation Agreements Act validating restrictions, easements, covenants, and conditions appropriate to the preservation of a structure or site historically significant for its architecture and historical association; and

**WHEREAS**, Grantor now desires to sell the Property and desires to place these restrictive covenants upon the Property for the purpose of preserving said property, after its conveyance to another party (which party and its assignees shall be referred to herein as “owner” or “then owner”).

**NOW, THEREFORE**, the Property is hereby made subject to the following easements, covenants, and restrictions:

1. These covenants shall be administered solely by the Charlotte-Mecklenburg Historic Landmarks Commission, a historic commission established pursuant to N.C.G.S. Chapter 160A, its successors in interest or assigns; and in all subsequent conveyances of the Property, the Commission, its successor in interest or assigns, shall be the sole party entitled to administer these covenants. In the event that the Commission or its successors in interest by corporate merger cease to exist then, in such event, the Commission shall assign all of its rights and interest in these easements, covenants, and conditions subject to such duties and obligations which it assumes hereby, to a non-profit corporation or governmental agency which exists for substantially the same purposes as the Commission itself (as described hereinabove). If no such corporation be available for such assignment, then under such circumstances, such assignment shall be made to the State of North Carolina Department of Cultural Resources, Division of Archives and History, which shall be the sole party entitled to administer these covenants.

2. The exterior of the Torrence Lytle School shall be maintained, repaired, and administered in accordance with the Secretary of the Interior's Standards for Rehabilitation (in effect as of March, 1990, and incorporated herein by express reference, and hereinafter referred to as the “Standards”) so as to preserve the historical integrity of features, materials, appearances, workmanship, and environment of the Property. Maintenance shall be continuously provided using the same materials and workmanship prescribed by the Standards. A copy of the Standards is available from the Commission at its regular place of business in Charlotte, North Carolina.

3. No alteration and no physical or structural change and no changes in the material or surfacing shall be made to the exterior of the Torrence Lytle School without the prior written approval of the Commission.

4. No addition shall be constructed to the Torrence Lytle School and no additional structure shall be built upon the Property unless the plans and exterior designs for such structure or addition have been approved in advance in writing by the Commission. Such approval shall not be unreasonably withheld and refusal of approval shall be based solely upon adverse impact to architecturally or historically significant features of the Property. The Commission in reviewing the plans and designs for any addition or additional structure shall consider the following criteria: exterior building materials; height; fenestration; roof shapes, forms, and materials; surface textures; expression of architectural detailing; scale; relationship of any additions to the main structure; general form and proportion of structure; orientation to street; setback; spacing of buildings, defined as the distance between adjacent buildings; lot coverage; use of local or regional architectural traditions; and effect on archeological resources.

5. Neither the Torrence Lytle School nor any part thereof or any structure currently located on the Property may be removed or demolished without the prior written approval of the Commission.

6. Removal or alteration of interior architectural features such as the floors, wallcoverings, doorways, stairways, and ceilings, and other elements which contribute to the architectural significance of the Torrence Lytle School, cannot be made without obtaining a Certificate of Appropriateness by the Commission.

7. All owners and occupants of the Property shall abide by all federal, state, and local laws and ordinances regulating the rehabilitation and use of the Property.

8. The Property shall not be used for the dumping or storing of trash, garbage, waste, or other unsightly or offensive material.

9. No noxious, offensive, or illegal activity shall be carried on the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to community.

10. No hazardous or toxic substances, materials, or waste shall be used, generated, stored, or disposed of in, on, or under, or transported to or from the Property, unless written permission is obtained from the Commission. For purposes of this section, hazardous materials shall include all solid, liquid, or gaseous materials defined or regulated as wastes under any federal statute or regulation and any state or local law, regulation, or ordinance applicable to the Property and shall further include all other substances defined or regulated as pollutants or as hazardous, toxic, infectious, or radioactive substances under any federal statute or regulation and any state or local law, regulation, or ordinance applicable to the Property, all as amended from time to time. Without limitation on the foregoing, the term hazardous materials shall include used or waste oils regulated under any federal, state, or local law, regulation, or ordinance.

11. The Property shall be insured against damage by fire or other catastrophe. If the Property is damaged by fire or other catastrophe to an extent not exceeding fifty percent (50%) of the insurable value of those portions of the building, then the owner shall rebuild those portions of the Property in accordance with the Standards as referenced in Paragraph 2 hereinabove.

12. Representatives of the Commission shall have the right to enter the Property at reasonable times, after giving reasonable notice, for the purpose of inspecting the Property and any other building and grounds to determine if there is compliance with the terms of these covenants. The Commission shall also have the right to place a commemorative plaque on the Property to indicate its historic significance and once placed on the Property, Owner shall maintain said plaque in its original placement.

13. In case of any contemplated sale of the Property or any portion thereof by any owner of the Property, first refusal as to any bona fide offer of purchase must be given to the Commission, its successors or assigns. Any owner of the Property must give notice to the Commission of its intention to sell the property and specifically must give notice of the listing of the Property with any realtor, multiple listing service, or public advertisement for sale. If the Commission so decides to purchase, it shall notify the then owner of its willingness to but upon the same terms within seventy-two (72) hours of receipt of written notice of such bona fide offer. Failure of the Commission to notify the then owner of its intention to exercise this right of first refusal within such seventy-two (72) hour period shall free the owner to sell pursuant to the bona fide offer. This right of refusal shall be a covenant that will run with the land and be binding on all persons, partnerships, corporations, or other entities owning any interest in the Property and their heirs, and successors and assigns for a period of twenty-one (21) years in addition to the lifetime of the following individuals: Jeffrey Rae Sterritt, Michael Morrill Sterritt, Dan Morrill Paradis, all lives in being at the time of the execution of this document, and being the grandchildren of Dan Morrill, executive director of Charlotte-Mecklenburg Historic Landmarks Commission.

14. In the event of a violation of these covenants and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to the Commission. No failure on the part of the Commission to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Commission shall discharge or invalidate such covenant or restriction or any other covenant, condition, or restriction hereof, or affect the right of the Commission to enforce the same in event of a subsequent breach or default.

15. In the event of a violation of covenants contained in Paragraphs 2, 3, 4, 5, and 6 hereof, the Commission shall give the then owner written notice of the nature of the violation and the then owner shall correct the same within ninety (90) days next following the giving of said notice. If said violation is not corrected within the said ninety (90) day period, the Commission shall have the following rights and remedies in addition to all other remedies contained herein:

a. The Commission shall have the right and easement to go upon such portion of the Property to repair, maintain, and correct the violation of these restrictions. Owner shall promptly reimburse the Commission for all sums expended by the Commission to correct any restriction violations. The Commission shall also have a lien enforceable in accordance with the provisions of North Carolina General Statute §44A against

the Property for all sums expended to correct the violation of these restrictions pursuant to this paragraph. Such lien shall be subordinate to the interest of any mortgagee, irrespective of when its interest attached, and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction; and

- b. The Commission shall also have an option to purchase the Property, under the terms contained in this paragraph. The purchase of the Property shall be at a price equal to the then market value of the Property, subject to restrictive covenants, as determined by agreement of the then owner and the commission, or in the absence of such agreement, by a committee of three appraisers, one to be selected by the Commission, one to be selected by the then owner, and the other to be designated by the two appraisers selected by the Commission and the then owner respectively. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the Property, any right to repurchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.

16. The covenants specified herein and these restrictions shall be covenants and restrictions running with the land, which shall be binding on all persons, partnerships, corporations, or other entities owning any interest in the Property, and their heirs, successors, and assigns. Unless otherwise provided, the covenants and restrictions set forth above shall run in perpetuity and shall terminate and be of no further force or effect only in the event that the Torrence Lytle School is damaged beyond restoration as a result of fire or other catastrophe. Damage beyond restoration is defined as damage to an extent exceeding fifty percent (50%) of the insurable value of the building. Should any covenant or restriction be declared unenforceable, it shall not affect the enforceability of the other covenants and restrictions contained herein.

**IN WITNESS WHEREOF**, the Commission has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal duly affixed hereto, the day and year first above written.

**CHARLOTTE-MECKLENBURG HISTORIC LANDMARKS COMMISSION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, \_\_\_\_\_, Notary Public for said County and State, certify that \_\_\_\_\_, either being personally known to me or proven by satisfactory evidence (said evidence being a State-issued driver's license), personally came before me this day and acknowledged that he/she is \_\_\_\_\_ Chairman of **CHARLOTTE-MECKLENBURG HISTORIC LANDMARKS COMMISSION**, a North Carolina Commission organized pursuant to N.C. G.S. 160A-400.7, and that by authority duly given and as the act of the Commission, he/she, as \_\_\_\_\_ Chairman of said Commission, executed the foregoing on behalf of the Commission.

Witness my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2019.

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

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

(Notary Seal)

## **EXHIBIT C**

BEING ALL of Lot 1B as shown on the Map of WAYMER CENTER, MAP 2, as recorded in Map Book 51 at Page 936 in the Office of the Register of Deeds of Mecklenburg County, North Carolina; reference to which is hereby made for a more particular description.

Together with an Easement over the property designated as "Total Use Easement" on the plat referenced above for the purposes provided in this deed. Under the easement granted herein, Grantee shall use the easement area as a side yard for Lot 1B, and shall have the absolute and exclusive right to use and develop the easement area in any manner that benefits Lot 1B. Grantee herein shall be responsible for all maintenance of the Total Use Easement. Grantor herein shall have no right to use nor any obligation to maintain the Total Use Easement.

The easement granted herein shall run with the land and shall constitute a burden upon the Lot 1A as shown on the plat of the Waymer Center as referenced above and shall inure for the benefit of Lot 1B. The

easement provided for herein shall inure to the benefit of and be binding upon the respective successors, assigns, heirs, tenants, and invitees of each party hereto and shall remain in full force and effect and shall be unaffected by any change in ownership of either parcel or by any change of use, demolition, reconstruction, expansion, or other circumstances.

Grantor herein cannot convey property encumbered by the Total Use Easement to Grantee without violating local zoning ordinances, and the purpose of this easement is to provide to Grantee as much control as possible without transferring fee simple ownership. It is the intent of the parties that the value of this easement for taxation purposes shall be the equivalent of the fee simple value.