

## AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this “Agreement”) is made June \_\_\_\_, 2017 (the “Effective Date”) by and between **The Stowe Foundation, Inc.** and **Carstarphen Family Foundation** (collectively, “Seller”), and **The Gaston County Board of Education** (“Buyer”).

For and in consideration of the mutual promises set forth in this Agreement 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:**

(a) “Property” shall mean that certain property consisting of approximately 78.54 acres along South Point Road in Belmont, Gaston County, North Carolina, being Gaston County Tax Parcel Number 216910, together with all easements, rights, benefits and appurtenances thereto.

(b) “Purchase Price” shall mean **Four Million Two Hundred Thousand and No/100 Dollars (\$4,200,000.00)**, payable as follows:

i) “Earnest Money” in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00) to be deposited upon full execution of this Agreement with Johnston, Allison & Hord, P.A., 1065 E. Morehead Street, Charlotte, NC 28204 (the “Escrow Agent”). The Earnest Money shall be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the applicable provisions of this Agreement.

ii) Cash at Closing from Buyer in the amount of Four Million One Hundred Eighty Thousand and No/100 Dollars (\$4,180,000.00).

(c) “Closing” shall mean the date and time of recording of the deed. Closing shall occur on a date agreed to by Buyer and Seller **on or before July 31, 2017**.

(d) “Contract Date” shall mean the Effective Date.

(e) “Examination Period” shall mean the period commencing on the Contract Date and expiring **at 5:00 p.m. on July 15, 2017**.

(f) Seller’s notice address shall be as follows:

P.O. Box 351  
Belmont, NC 28012

With required copy to:

Johnston, Allison & Hord, P.A.  
1065 E. Morehead Street  
Charlotte, NC 28204  
Attn: William C. Isenhour  
Email: [wisenhour@jahlaw.com](mailto:wisenhour@jahlaw.com)

except as same may be changed pursuant to Section 11.

(g) Buyer's notice address shall be as follows:

W. Jeffrey Booker, Superintendent  
Gaston County Schools  
943 Osceola Street  
Gastonia, NC 28054  
Email: [jbooker@gaston.k12.nc.us](mailto:jbooker@gaston.k12.nc.us)

With required copy to:

Sonya C. McGraw, Attorney  
Gaston County Schools  
943 Osceola Street  
Gastonia, NC 28054  
Email: [scmcgraw@gaston.k12.nc.us](mailto:scmcgraw@gaston.k12.nc.us)

With required copy to:

Kevin Bringewatt  
Bringewatt & Snover, PLLC  
P.O. 453  
Davidson, NC 28026  
Email: [kevin@bringewattsnoverlaw.com](mailto:kevin@bringewattsnoverlaw.com)

except as same may be changed pursuant to Section 11.

**Section 2. Purchase and Sale of the Property; Bargain Sale:** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Agreement, the Property. Buyer hereby acknowledges that it is Seller's intent to effectuate a "bargain sale" of the Property, i.e., a sale to a charitable organization or governmental entity at a price below fair market value as defined by IRS Publication 561 and Internal Revenue Code (IRC) Section 170 wherein the difference is considered a charitable contribution under applicable sections of the IRC.

**Section 3. Proration of Expenses and Payment of Costs:** All items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated by the parties as of the date of Closing, including, without limitation, taxes and

assessments, charges, and other income or charges, as the case may be, assessed against or derived from the Property; *provided, however*, Buyer shall be solely responsible for payment of any “rollback” or other deferred taxes due in connection with a change in use of the Property, including, without limitation, any interest due on those “rollback” or other deferred taxes. Any such proration based on an estimate may, at request of either Buyer or Seller, be subsequently readjusted upon receipt of adequate evidence to establish the correctness of the amount so estimated. Seller shall pay deed stamps and other conveyance fees or taxes and for the cost of preparing the deed and other customary documents for Closing. Buyer shall pay the deed recording costs, Buyer’s own due diligence costs and any “rollback” taxes as provided above. Buyer shall also pay all costs of the title search and the cost of Buyer’s title insurance policy and survey. Seller and Buyer shall pay for their own legal fees.

**Section 4. Title and Permitted Exceptions:** Seller shall convey to Buyer fee simple marketable title to the Property by special warranty deed, subject only to the Permitted Exceptions (as defined below). Seller represents and warrants to Buyer that Seller is the fee simple, record owner of the Property, and at Closing, Seller shall deliver to Buyer fee simple marketable title to the Property, free and clear of any lien, encumbrance or exception, other than matters of record (or which would be revealed by a current, accurate survey of the Property) affecting the Property as of the Contract Date that Seller does not agree to cure in accordance with Section 5(a) below and taxes not yet due and payable (“Permitted Exceptions”).

**Section 5. Buyer’s Conditions:** This Agreement and the obligations of Buyer under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer) of the following conditions:

(a) **Title Review and Examination:** Buyer may, at Buyer’s expense, cause a survey and title examination to be made of the Property. In the event that such survey and/or title examination shall show that Seller’s title is not marketable fee simple or shall contain any other defects of survey or title not acceptable to Buyer, then Buyer may provide written notice to Seller before the expiration of the Examination Period of any such survey and/or title defects or objections (collectively, “Objections”), and Seller shall have five (5) days (the “Seller Review Period”) to either: (i) deliver notice to Buyer of its intent to cure, prior to Closing, all of the Objections; or (ii) notify Buyer of its election not to cure any or all of the Objections. If Seller does not expressly agree in writing, within the Seller Review Period, to cure the Objections, then Buyer shall have five (5) days (the “Buyer Response Period”) to either: (a) terminate this Agreement by delivering a termination notice to Seller, in which case the Earnest Money shall be returned to Buyer and neither party shall have any further rights, liabilities or obligations hereunder except for those rights, liabilities and obligations expressly stated herein to survive termination hereof; or (b) waive the Objections that Seller does not agree to cure and close the purchase and sale subject to such disapproved matters without an adjustment to the Purchase Price. If Buyer does not terminate this Agreement within the Buyer Response Period, Buyer shall conclusively be deemed to have elected option (b) above. All matters of title or survey to which Buyer does not object before the expiration of the Examination Period, and all Objections which Seller does not expressly agree, in writing, to cure as set forth above, shall be deemed to be Permitted Exceptions. Notwithstanding anything contained in this Section 5(a) or Section 4, Seller shall, at Seller’s expense and in a manner acceptable to Buyer, be required to cure at or before Closing any mortgage, deed of trust, lien (except for any liens arising from Buyer’s

activities with respect to the Property under Section 5(d) below), judgment or other similar monetary exception or encumbrance to title to the Property (or any portion thereof).

(b) **Intended Use:** If Buyer determines, before the end of the Examination Period, that use of the Property for the Buyer's intended use will (or may) violate any private restrictions, zoning ordinances or other governmental regulations, then Buyer may terminate the Agreement by written notice to Seller before the end of the Examination Period, in which case the Earnest Money shall be returned to Buyer and neither party shall have any further rights, liabilities or obligations hereunder except for those rights, liabilities and obligations expressly stated herein to survive termination hereof.

(c) **Same Condition of the Property:** Seller agrees to continue to manage the Property in the same manner between the Contract Date and Closing as it is currently being managed. Seller agrees to enter into no agreements or contracts that will be binding on Buyer or the Property following the date of Closing without Buyer's prior written consent. In addition, Seller shall not cancel, modify, renew or extend any existing contract, nor waive any default under or accept any surrender of any such contract, without in each case obtaining the prior written consent of the Buyer. If, at any time after the Contract Date and until the date of Closing, the Property is not in materially the same condition as on the Contract Date, ordinary wear and tear excepted, then Buyer may terminate this Agreement, in which case the Earnest Money shall be returned to Buyer and neither party shall have any further rights, liabilities or obligations hereunder except for those rights, liabilities and obligations expressly stated herein to survive termination hereof. Notwithstanding the foregoing, Buyer shall have no right to terminate this Agreement as a result of damage to the Property caused by Buyer and/or its agents.

(d) **Buyer's Inspections:** Buyer and Buyer's agents or representatives shall have the right to enter upon and access the Property for the purpose of inspecting, examining, testing and surveying the Property. Buyer shall have the right to review and inspect all contracts and other agreements affecting or related to the Property in Seller's actual possession and shall be entitled to review such books and records of Seller which relate to the ownership, operation and/or maintenance of the Property. Buyer agrees to repair any and all damage caused, in whole or in part, by Buyer, its owners, employees, agents or contractors, and return the Property to its condition prior to such damage, which obligation shall survive Closing or any termination of this Agreement. Further, Buyer agrees to indemnify and hold Seller harmless from any claims, damages, and costs filed against Seller directly as a result of any negligence or willful misconduct of Buyer or Buyer's owners, employees, agents, or contractors in connection with such access on the Property by Buyer pursuant to this Section 5(d). Notwithstanding anything in this Agreement to the contrary, Buyer shall not perform a Phase II environmental site assessment or any other intrusive testing upon the Property without Seller's prior written consent. Buyer shall give Seller reasonable written notice (which in any event shall not be less than two (2) business days) before entering the Property, and Seller may have a representative present during any and all examinations, inspections and/or studies on the Property. **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, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

(e) **Seller's Performance under this Agreement:** Seller has performed and observed all of the terms, conditions, covenants and obligations under this Agreement on Seller's part to be performed or observed (including, without limitation, executing and delivering to Buyer all of the Closing documents required from Seller pursuant to this Agreement and conveying to Buyer marketable fee simple title to the Property in accordance with Section 4 above).

**Section 6. Leases:** Seller affirmatively represents and warrants that there are no leases affecting the Property.

**Section 7. Environmental and Hazardous Materials:** Seller represents and warrants to Buyer that it has no actual knowledge of the presence, disposal or that there is no presence or disposal within, on, in, under or about the Property of any 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 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) 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 331 of the Clean Water Act, 33 U.S.C. Sec. 1251, et. seq. (33 U.S.C. 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec. 1371), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et. seq. (42 U.S.C. Sec. 6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et. seq. (42 U.S.C. 9401).

**Section 8. Risk of Loss and Damage/Repairs:** Until the Closing, the risk of loss or damage to the Property shall be borne by Seller. If, prior to Closing, either (i) any part of the Property is (or may be) taken by eminent domain or deed in lieu thereof, (ii) any condemnation proceedings are commenced or threatened, or (iii) any portion of the Property is damaged by fire or other casualty, then, in any such event, Buyer shall have the option, by written notice to Seller, to terminate this Agreement. If Buyer does not terminate this Agreement, then this Agreement shall remain in full force and effect, and Seller shall assign, transfer and set over to Buyer at Closing all of Seller's right, title and interest in and to any condemnation awards or insurance proceeds (as applicable) that may be paid for any such taking or casualty (as applicable), or, if such award or proceeds (as applicable) have already been paid to Seller, then the amount of such paid award or proceeds (as applicable) shall be deducted from the Purchase Price (i.e., Buyer shall receive at Closing a credit against the Purchase Price for the amount of such award or proceeds). Notwithstanding anything in this Section 8 to the contrary, Seller shall not bear any risk of loss prior to Closing for damage to the Property caused by Buyer and/or its agents.

**Section 9. Default:** In the event of a material breach of this Agreement by Seller that is not cured within ten (10) days after written notice thereof from Buyer, and provided that Buyer is not then in default hereunder, then Buyer shall have the right, as its sole and exclusive remedy, to either (i) terminate this Agreement, in which event the Earnest Money shall be returned to Buyer and neither party shall have any further rights, liabilities or obligations hereunder except for

those rights, liabilities and obligations expressly stated herein to survive termination hereof, or (ii) file a suit for specific performance solely with respect to Seller's obligation to close on the sale of the Property to Buyer by executing and delivering the documents required under Section 10 hereof, provided that any such suit for specific performance is filed by Buyer within sixty (60) days after the expiration of the ten (10)-day cure period set forth above. Buyer hereby expressly waives any and all other remedies available to it at law or in equity. In the event of a material breach of this Agreement by Buyer that is not cured within ten (10) days after written notice thereof from Seller (except for Buyer's performance at Closing, for which there is no notice requirement or cure period), and provided that Seller is not then in default hereunder, then Seller may, as its sole and exclusive remedy, terminate this Agreement and receive the Earnest Money as liquidated damages, it being difficult if not impossible to quantify damages resulting from a breach by Buyer.

**Section 10. Closing:** The Closing shall consist of the execution and delivery by Seller to Buyer of a special warranty deed and other documents customarily executed by a seller in similar transactions, including, without limitation, owner's affidavit and lien waiver and a non-foreign affidavit; and the payment by Buyer to Seller of the Purchase Price in accordance with the terms of this Agreement. At Closing, Buyer shall also execute (i) IRS Form 8283 and, if requested by Seller, a "bargain sale" letter (as more particularly provided in Section 27 below), and (ii) a License Agreement and any such instrument reasonably requested by Seller to further grant to Seller the License (as defined in Section 28 below). The Closing shall be held at the office of Seller's attorney or at such other place as the parties hereto may mutually agree, or by mail. Possession shall be delivered to Buyer by Seller at Closing.

**Section 11. Notices:** All demands, notices, approvals, consents, requests, and other communications hereunder shall be deemed to have been given when the writing is delivered if given or delivered (a) by hand, (b) by electronic mail, (c) one business day after being deposited with a nationally-recognized overnight carrier, or (d) three (3) days after being mailed, if mailed, by first-class, registered or certified mail, postage prepaid, and addressed as set out in Section 1(f) as to Seller and in Section 1(g) as to Buyer. Either party may change their notice address or electronic mail address by providing written notice to the other party of such change.

## **Section 12.**

**A. Seller's Representations and Warranties:** In addition to other representations and warranties of Seller expressly contained herein, Seller represents and warrants to Buyer that Seller has duly and validly authorized and executed this Agreement and has full right, title, power and authority to enter into this Agreement and to carry out all of its terms, none of which will result in any breach or constitute a default under any agreement or other instrument to which Seller is a party or by which Seller or the Property may be bound or result in the imposition of any lien or encumbrance upon the Property. Seller shall indemnify, defend and hold harmless Buyer and Buyer's affiliates, agents, employees, officers, members, managers and representatives from and against all losses, costs, expenses (including, without limitation, attorney's fees and court costs), claims, damages and liabilities in connection with (or arising out of) any of the foregoing representations or warranties or other representations or warranties contained in this Agreement being false or incorrect. **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER HEREBY**

**ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT IT HAS AN OPPORTUNITY TO INSPECT THE PROPERTY AS SET FORTH IN SECTION 5(D) HEREIN, AND, AS SUCH, THE PROPERTY SHALL BE CONVEYED AT CLOSING TO BUYER IN “AS IS, WHERE IS” CONDITION WITH NO REPRESENTATIONS OR WARRANTIES WHATSOEVER. ALL OF SELLER’S REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT SHALL NOT REQUIRE ANY DUTY OF INDEPENDENT INQUIRY ON BEHALF OF SELLER AND SHALL RELATE SOLELY TO THE PERIOD OF TIME FROM AND AFTER SELLER’S ACQUISITION OF THE PROPERTY.**

**B. Buyer’s Representations and Warranties:** Buyer represents and warrants to Seller that (a) Buyer has the power, right and authority to enter into and perform all of the obligations required of Buyer under this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby, and the individual executing this Agreement and the instruments referenced herein on behalf of Buyer has the power, right and authority to bind Buyer; (b) Buyer has taken all requisite action and has obtained all requisite consents, releases and permissions in connection with entering into this Agreement and the instruments and documents referenced herein or required under any covenant, agreement, encumbrance, law or regulation with respect to the obligations required hereunder, and no consent of any other party is required for the performance by Buyer of its obligations hereunder; (c) this Agreement is, and all agreements, instruments and documents to be executed and delivered by Buyer pursuant to this Agreement shall be, duly authorized, executed and delivered by Buyer, and (d) this Agreement is, and all agreements, instruments and documents to be executed and delivered by Buyer pursuant to this Agreement shall be, valid and legally binding upon Buyer and enforceable in accordance with their respective terms. Buyer shall indemnify, defend and hold harmless Seller and Seller’s affiliates, agents, employees, officers, members, managers and representatives from and against all losses, costs, expenses (including, without limitation, attorney’s fees and court costs), claims, damages and liabilities in connection with (or arising out of) any of the foregoing representations or warranties or other representations or warranties contained in this Agreement being false or incorrect.

**Section 13. Survival of Representations and Warranties:** All representations, warranties, covenants and agreements made by the parties hereto shall survive the termination of this Agreement and/or Closing and delivery of the deed for a period of three (3) months.

**Section 14. Applicable Law:** This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina.

**Section 15. Headings:** The paragraph headings are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this Agreement or any provision hereof.

**Section 16. Severability:** The provisions of this Agreement are intended to be independent. If any provision hereof should be declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, then such illegality or invalidity shall not affect the remainder of this Agreement.

**Section 17. Counterparts; Facsimiles:** This Agreement may be executed in multiple counterparts which, when assembled, shall constitute one original. A counterpart executed by facsimile transmission or scan and email shall be deemed an original.

**Section 18. Business Days:** If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

**Section 19. Time of the Essence:** Time is of the essence as to all provisions of this Agreement.

**Section 20. Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, successors and assigns.

**Section 21. Entire Agreement:** This Agreement constitutes the entire agreement of the parties and may not be amended except by written instrument executed by Seller and Buyer.

**Section 22. 1031 Exchange:** Either party may consummate the purchase or sale of the Property as part of a so-called like kind exchange ("Exchange") pursuant to 1031 of the Internal Revenue Code of 1986, as amended, and the other party shall diligently and promptly cooperate with the party performing the Exchange, including, without limitation, promptly executing and delivering to the other party any commercially reasonable Exchange documents.

**Section 23. Assignment:** Buyer shall have no right to assign its rights under this Agreement except for an assignment to an entity owned or controlled by Buyer; provided, however, that no such assignment shall relieve Buyer of any of its obligations hereunder until Closing and any and all surviving obligations are complete.

**Section 24. Binding Agreement:** This Agreement shall become a contract when a signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 11 is not required for effective communication for the purposes of this Section.

**Section 25. Broker:** Seller represents to Buyer that Seller has not dealt with any real estate broker or agent in connection with this transaction, except for Robert C. Clay with Coldwell Banker Commercial MECA. Buyer represents to Seller that Buyer has not dealt with any real estate broker or agent in connection with this transaction. Each party shall indemnify and hold the other harmless from any other claim or demand made by any other broker or agent with respect to this transaction because of acts or omissions of such party.

**Section 26. Appraisal:** A qualified appraisal will be obtained and paid for by Seller to determine the value of the Property for the purpose of the donation to the Buyer (the "Appraisal"). The Appraisal shall be done by a qualified appraiser ("Appraiser") that complies with the requirements of Section 170 of the Internal Revenue Code, the regulations, rulings and other pronouncements of the Internal Revenue Service, including current IRS Publication 561. A copy of the appraisal will be provided to Seller and Buyer and dated a date no later than 60 days prior to the Closing.



**Section 27. IRS Form 8283:** Upon receipt of the special warranty deed for the Property at Closing, Buyer shall sign and deliver Internal Revenue Service Form 8283 to Seller for the appraised value. The form will represent that Buyer is a duly established corporate body formed and existing in accordance with Article 5 of Chapter 115C of the General Statutes of North Carolina and a political subdivision of the State of North Carolina as described in Internal Revenue Code Section 170(c)(1) qualified to receive federal tax deductible contributions pursuant to the Internal Revenue Code 170. In addition to IRS Form 8283, if requested by Seller, Buyer shall deliver a “bargain sale” letter in a form mutually agreed to by Seller and Buyer.

**Section 28. License to Harvest Timber:** Notwithstanding anything contained herein to the contrary, Buyer hereby acknowledges and agrees that Seller shall have a nonexclusive and limited license to enter upon and use that certain approximately 31 acre portion of the Property fronting South Point Road for the purpose of harvesting timber from the Property for a period of six (6) months after Closing (the “License”), which License shall be memorialized in a License Agreement mutually acceptable to both Seller and Buyer to be signed at the Closing; which shall include reasonable provisions to not damage trees in areas likely to be “tree save” areas on the to be developed middle school. Seller and Buyer agree to work together in good faith (and consult with City of Belmont Planning staff regarding likely tree save areas) to finalize the form of the License Agreement during the Examination Period. Buyer covenants and agrees that it shall do or cause to be done all such further acts, and shall execute and deliver, or cause to be executed and delivered, all such further instruments reasonably requested by Seller to grant the License to Seller.

[ SIGNATURES APPEAR ON FOLLOWING PAGE(S) ]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**BUYER:**

**THE GASTON COUNTY BOARD OF  
EDUCATION**

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

[ SIGNATURES CONTINUE ON FOLLOWING PAGE(S) ]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**SELLER:**

**THE STOWE FOUNDATION, INC.**

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

**CARSTARPHEN FAMILY FOUNDATION**

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

**The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.**

\_\_\_\_\_  
Johnston, Allison & Hord, P.A.  
(Insert name of Escrow Agent Above)

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