

CONTRACT TO PURCHASE REAL ESTATE

THIS CONTRACT TO PURCHASE REAL ESTATE (“Agreement”) is made and entered into this ____ day of _____, 2015, by and between **CARTWRIGHT FARMS PARTNERSHIP**, a Tennessee General Partnership; **ROBERT THOMAS CARTWRIGHT**; and **ROBERT T. CARTWRIGHT, Trustee of the CLARA S. CARTWRIGHT NON-EXEMPT RESIDUARY TRUST**, created pursuant to the terms of the **Clara S. Cartwright Revocable Trust dated October 31, 1995, as amended** (collectively, the “Seller”), and **THE COLLIERVILLE SCHOOL DISTRICT**, a Tennessee Local Education Association, or its assigns (the “Buyer”).

WITNESSETH:

Whereas, Cartwright Farms Partnership, a Tennessee General Partnership, is the owner of real property located in Shelby County, Tennessee, consisting of approximately 22.886 acres of land situated east of Parcel Two described below and west of the centerline of the blue line stream that meanders generally southeast from the northwest corner of Tax Parcel No. D0258 00027 and then southwest near the southeast corner of Parcel Two described below, being part of Tax Parcel No. D0258 00027, as more particularly described as Parcel One on Exhibit “A” attached hereto and incorporated herein; and

Whereas, Robert Thomas Cartwright, individually, and Robert T. Cartwright, Trustee of the Clara S. Cartwright Non-Exempt Residuary Trust, created pursuant to the terms of the Clara S. Cartwright Revocable Trust dated October 31, 1995, as amended, are each fifty percent (50%) owners of real property located in Shelby County, Tennessee, consisting of approximately the north 135.472 acres of land located at 888 E. Shelby Drive, Shelby County, Tennessee, being part of Tax Parcel No. D0258 00036, as more particularly described as Parcel Two on Exhibit “A” attached hereto (the Parcel One and Parcel Two properties described on said Exhibit “A” being hereinafter collectively referred to as the “Property”). References to the Property, whether collectively or separately, include any improvements thereon located at the above address and all easements, rights and privileges appurtenant thereto.

Whereas, Seller desires to sell to Buyer and Buyer desires to purchase from Seller the Property; and

Whereas, the parties hereto desire to set forth herein the terms and conditions of the sale.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties agree as follows:

1. Sale of Property. Seller hereby covenants and agrees to sell and convey the Property, or cause it to be conveyed, by good and sufficient general warranty deeds to Buyer upon and subject to the terms and conditions set forth herein, the sale contemplated under this Agreement being in lieu of Buyer’s contemplated condemnation of the Property.

(a) The purchase price shall be approximately **Three Million Nine Hundred**

Fifty-Eight Thousand Nine Hundred Fifty and 00/100 Dollars (\$3,958,950.00) based on Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) per acre, subject to survey (the "Purchase Price"). The Purchase Price shall be payable by wire transfer of One Million and 00/100 Dollars (\$1,000,000.00) at Closing (as hereafter defined), of which the Earnest Money (as defined below in Section 1(b)) is a part, with the remaining Two Million Nine Hundred Fifty-Eight Thousand Nine Hundred Fifty and 00/100 Dollars (\$2,958,950.00) being paid with a purchase money promissory note to Seller due and payable on March 31, 2016, with interest thereon accruing at the fixed rate of three and 25/100 percent (3.25%) per annum (the "Note"). Buyer shall have the option of paying the Note in its entirety at any time prior to maturity. Buyer shall also have the option of paying all cash at Closing.

(b) Upon full execution and delivery to all parties of this Agreement, Buyer will deposit with Chicago Title Insurance Company ("Title Company") the sum of Five Thousand and 00/100 Dollars (\$5,000.00) to be held as earnest money ("Earnest Money"), subject to the terms and conditions hereinafter set forth. The parties agree to execute an escrow agreement and to provide all information required by the Title Company to set up the Earnest Money in an escrow account. If the sale and purchase are consummated, Buyer shall be given credit for the Earnest Money plus any and all interest accrued thereon at the date of Closing toward the purchase of the Property. Should Buyer, in its sole discretion, during its Review Period (as defined in Section 2 below), determine that the conditions of the Property are acceptable, and should the governing board of Buyer approve the purchase by Buyer of the Property, and if financing is received by Buyer acceptable to Buyer as to its terms and source, then Buyer shall give notice to Seller by the end of the Review Period and any extensions thereof, and the parties shall proceed to Closing. If Buyer gives notice that the contingencies set forth in Section 7 below have failed or if Buyer does not give notice to Seller that said contingencies have been met by the end of the Review Period and any extensions thereof, then this Contract shall terminate, and the Earnest Money plus any and all interest earned thereon shall be returned to Buyer, and this Agreement shall be terminated in all respects without any further rights or obligations of the parties except as otherwise set forth herein. After Buyer's notice that all contingencies have been met, all Earnest Money shall become non-refundable except as otherwise set forth in this Agreement, or unless Seller remains in breach of any provision of this Agreement following any applicable cure period.

2. Review Period. Buyer shall have the right until September 30, 2015 ("Review Period") to make such inspections of the Property as Buyer deems reasonable and necessary and otherwise inspect the general condition of the Property and its suitability for Buyer's operations thereon, at Buyer's expense. Buyer shall have the right to extend the Review Period for two (2) periods of thirty (30) days each upon payment of an additional Ten Thousand and 00/100 Dollars (\$10,000.00) Earnest Money for each extension.

In order to facilitate Buyer's due diligence review of the Property, Seller has provided or shall provide to Buyer true and correct copies of all of the following information to the extent Seller is in possession of such information: agreements, studies, easements, existing surveys, plans, inspections, specifications and the like affecting or relating to the ownership, use or operation of the Property including, without limitation, restrictive covenants, conditions and restrictions, easement agreements, environmental studies, underlying documents, documents affecting title to the Property,

documentation relating to real estate taxes and assessments, and all citations, reports and correspondence from and with any governmental agencies.

3. Closing. Closing (the "Closing") of the sale and purchase of the Property shall occur at a mutually convenient time and location in Memphis, Tennessee after the expiration of the Review Period and any extensions thereof, but not later than thirty (30) days after the expiration of the Review Period, as may be extended.

On the date of Closing of the sale and purchase of the Property, the Closing shall occur as follows, subject to the satisfaction of all of the terms and conditions of this Agreement:

- (a) Each party shall deliver to the other party appropriate evidence to establish the authority of such party to enter into and close the transaction contemplated hereby.
- (b) Seller shall convey to Buyer marketable fee simple title by general warranty deeds, duly executed and in recordable form, subject only to Permitted Exceptions (as hereinafter defined).
- (c) Seller shall deliver to Buyer Sellers' Affidavits in standard title company form required to issue the most current and appropriate ALTA title insurance policies as required herein.
- (d) Seller shall deliver to Buyer affidavits for purposes of Section 1445 of the Internal Revenue Code, as applicable.
- (e) Buyer and Seller shall execute and deliver the items required by this Agreement, and Buyer shall have obtained any and all required third party consents and financing in connection therewith.

4. Title and Survey. Promptly after the complete execution hereof by Buyer and Seller, Buyer shall obtain an owner's title insurance commitment (the "Commitment") to issue the most recent and appropriate ALTA-Form title insurance policy insuring marketable fee simple title to the Property to Buyer in an amount equal to the Purchase Price and, if not provided by the Title Company, Seller shall provide Buyer with copies of all of the documents referenced in said Commitment within five (5) days after request therefor from Buyer. The Commitment, said owner's title policy and any mortgagee's title policy shall be issued by Chicago Title Insurance Company. Seller shall pay the costs of the title searches, and Buyer shall pay the title premiums for the owner's and any mortgagee's title policies.

At the earliest practicable date from the date hereof, Buyer shall deliver to Seller a survey of the Property (the "Survey") certified to Buyer, Seller, lender (if applicable) and Title Company. So long as Seller approves of the Survey and legal descriptions, such legal descriptions shall be attached as Exhibit "A" to this Agreement and used as applicable in the general warranty deeds from Seller to Buyer.

5. Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows as to their respective Parcel One or Parcel Two:

- (a) Seller is the owner in fee simple of the Property and has full and absolute authority to sell the same as set forth herein, and no person or entity other than Buyer has any right or option to acquire the Property;
- (b) Seller will not sell or otherwise further encumber the Property during the period from the execution of this Agreement until Closing;
- (c) Seller is not a party to any litigation or administrative proceedings affecting the Property or any part thereof or affecting Seller's right to sell the Property or any interest therein or the use thereof, and there is no pending or, to the best of Seller's knowledge, threatened litigation or administrative proceedings affecting the Property or any part thereof or affecting Seller's right to sell the Property or any interest therein or the use thereof. Seller shall give Buyer notice of the institution of any such proceedings, or of its knowledge of any such threatened proceedings, within three (3) days of receipt of the institution or threat of such proceedings, and in any event prior to the Closing;
- (d) Neither the Property nor any portion thereof is or will at the time of Closing be subject to a claim of adverse possession, and no party other than Seller is (nor shall be at Closing) in possession of the Property.
- (e) To the best of Seller's knowledge, the Property complies with all applicable laws, rules, codes, ordinances, and regulations of any duly constituted governmental authority in all material respects. Seller has received no notice from any governmental entity or authority notifying Seller that it is in violation of any applicable governmental, zoning, fire, building, health, or life and safety codes or regulations with regard to any of the Property.
- (f) There is not now pending nor, to the knowledge of Seller, threatened, nor are there any facts or circumstances to Seller's knowledge that could result in any action, claim, suit or proceeding (including, but not limited to, condemnation or similar proceedings) before any court or governmental agency or body whatsoever adversely affecting the Property or its use or operation, or which could constitute or establish a cloud on the title to the Property. Seller shall give prompt written notice to Buyer of any such proceeding of which Seller receives prior to Closing.
- (g) Seller warrants and represents that, to the best of Seller's knowledge: (i) no hazardous or toxic materials including, without limitation, any asbestos or asbestos-containing materials, polychlorinated biphenyls, solid, liquid, gaseous or thermal irritant or contaminant or any substances defined as or

included in the definition of "hazardous substances," "hazardous wastes," or "toxic substances" under any applicable federal or state laws or regulations and including materials to be recycled, reconditioned or reclaimed (collectively hereinafter referred to as "Hazardous Material"), are or have been manufactured, used, located on, installed in, transported to or from, generated, stored, buried, released, allowed to escape, discovered upon, or disposed of (collectively referred to as an "Incident") on or in a location that has or will adversely affect the Property; (ii) the Property is in full compliance with requirements of all applicable federal, state and local laws, ordinances and regulations relating to any Hazardous Material (collectively "Hazardous Material Laws"); (iii) the Property is not subject to any federal or state investigation evaluating whether any remedial action is needed to respond to an Incident of or with any Hazardous Material; (iv) the Property is not subject to any federal, state, or local liens in connection with remedial action needed or taken to respond to any Hazardous Material; (v) the Property is not the subject of claims made or threatened by any third party against Seller or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Material or Hazardous Material Laws; and (vi) no notices, requests, investigations or settlements are proposed, threatened, anticipated or in existence with respect to the presence, suspected presence, or potential presence of any Hazardous Material on or about the Property from any source.

- (h) To the best of Seller's knowledge, the information furnished to Buyer pursuant to the provisions of this Agreement is accurate and complete in all material respects, and shall be updated at or prior to Closing so as to be accurate and complete in all material respects as of Closing.
- (i) To the best of Seller's knowledge, all other documents either furnished or to be furnished to Buyer by Seller pursuant to this Agreement are, or will be, at their delivery true, accurate, and complete in all material respects as of the date therein indicated.
- (j) Seller has full authority to enter into and execute this Agreement as well as any and all documents, instruments and certificates pertaining to this transaction.

Except for Seller's warranties as set forth in this Agreement and any of the documents executed by Seller at Closing, no warranties or representations are being made by Seller with respect to the Property, either express or implied, written or oral.

6. Representations of Buyer. Buyer represents and warrants to Seller that the execution hereof does not result in the breach of any legally binding written or oral agreement to which Buyer is bound, and that Buyer has full authority to enter into and execute this Agreement as well as any and all documents, instruments and certificates pertaining to this transaction.

7. Contingencies. This Agreement and the obligations of Buyer and Seller hereunder shall be subject to the satisfaction of each of the following conditions precedent:

- (a) All representations and warranties of Seller set forth in Section 5 hereof being materially true and correct, and Seller having materially complied with all of the provisions and conditions set forth herein to be complied with by Seller unless otherwise waived by Buyer.
- (b) Seller being able to convey marketable fee simple title to the Property to Buyer subject to no exceptions other than the Permitted Exceptions (as hereinafter defined).
- (c) There shall be no material adverse change in the matters reflected in the Commitment.
- (d) If Seller is a party to any litigation or administrative proceeding affecting the Property or any part thereof or that would affect Buyer's use thereof, then Seller shall be responsible therefor and shall either: (i) pay any and all of its expenses relating to such litigation or administrative proceeding (including any costs, expenses, fees (including attorneys' fees and court costs), fines, penalties, claims, judgments, settlements, demands, damages and losses incurred in connection therewith), and shall use its best efforts to conclude the same favorably with respect to the Property and Buyer, and shall indemnify and hold Buyer, its officers, directors, employees and agents, harmless from any and all costs, expenses, fees (including without limitation attorneys' fees and court costs), liabilities, obligations, damages, demands, claims, judgments, settlements and losses incurred by Buyer, its officers, directors, employees or agents, arising therefrom, related thereto or in connection therewith, which indemnity and hold harmless shall survive the Closing, expiration or termination of this Agreement; or (ii) terminate this Agreement immediately upon written notice to Buyer, in which case this Agreement will become null and void and of no further effect without further action required of the parties. Buyer shall have the right to waive this contingency if Seller chooses (ii) hereof, and Seller's termination shall then be voided.
- (e) Buyer's ability to obtain, in the amount of the Purchase Price, the most recent and appropriate ALTA form owner's title insurance policy and lender's title insurance policy, as applicable, including such ALTA endorsements as may be desired by Buyer and/or lender, insuring the Property without exceptions other than as acceptable to Buyer and lender (the "Permitted Exceptions") and other exceptions which are usual and customary for commercial real estate transactions in Shelby County, Tennessee.

- (f) There has been no material adverse change in the condition of the Property subsequent to Buyer's completion of the inspection of the Property.
- (g) The governing board of Buyer shall have (i) approved the transactions contemplated by this Agreement and (ii) authorized Buyer to proceed to Closing.
- (h) Buyer has received the One Million Dollar (\$1,000,000.00) down payment from the Town of Collierville to purchase the Property on terms and from sources acceptable to Buyer in its sole subjective discretion.
- (i) The Town of Collierville has obtained approval to issue and sell bonds sufficient to support the purchase of the Property and the construction of a high school on the Property, and has committed to transfer said funds to the Buyer for that purpose.

8. Expenses and Prorations. Upon the Closing of the sale and purchase of the Property, the expenses of this transaction and Closing prorations shall be paid as follows:

- (a) All ad valorem taxes and special assessments on the Property imposed for the calendar year of Closing shall be prorated as of the date of Closing. However, if Closing shall occur before the tax rate for such year is fixed, the amount of such taxes and special assessments for the immediately preceding calendar year shall be utilized for such proration, and any difference in actual and estimated property taxes for the year of Closing shall be adjusted between the parties upon receipt of written evidence thereof. Seller shall be responsible for and satisfy all taxes and special assessments for all calendar years prior to the calendar year of Closing, including roll-back taxes. The provisions of this paragraph shall survive the Closing of this transaction.
- (b) Seller will pay the fees for the title searches in connection with the issuance of the Commitment. Buyer will pay for the premium for the issuance of the owner's and any mortgagee's title insurance policies for the Property.
- (c) Buyer will pay for the cost of the Survey of the Property.
- (d) Seller will pay for the preparation of the general warranty deeds.
- (e) Buyer will pay all transfer taxes and recording costs incurred in recording the general warranty deeds.
- (f) Each party will pay its own attorneys' fees.
- (g) Seller and Buyer will each pay one-half (1/2) of the escrow fee to the Title Company.

- (h) Buyer will pay all costs and expenses associated with obtaining financing.
- (i) Each party will pay all other costs and fees customarily payable by a buyer or seller in a commercial real estate transaction in Shelby County, Tennessee.

9. Right of Entry. At any time following the execution of this Agreement and upon reasonable notice to Seller or its agent, Buyer and its duly authorized representatives shall have the right to enter upon the Property for the purposes of making engineering or architectural studies, surveys, test borings, soil bearing tests, environmental audits, and such other inspections and investigations of the Property as Buyer may deem necessary or advisable, provided that Buyer shall not unreasonably interfere with Seller's use and occupancy of the Property. Buyer shall indemnify and hold Seller harmless from and against any and all claims, costs or expenses arising from or in connection with Buyer's or its representatives' activities upon the Property, their use thereof or entry thereon, which indemnity and hold harmless shall survive the Closing, expiration or termination of this Agreement. Buyer hereby agrees to repair any damages caused by Buyer's acts or omissions in connection with its activities upon the Property. The provisions of this paragraph shall survive the termination of this Agreement or the Closing of this transaction.

10. Default. The following provisions shall govern the rights of the parties hereto in the event that the transaction contemplated by this Agreement fails to close or a party otherwise defaults on an obligation provided for post-Closing:

- (a) In the event Seller shall fail to close and defaults, except for a default caused by Buyer's default, then Buyer shall be entitled to compel specific performance by Seller of the terms of this Agreement. Buyer shall have the right to specific performance to compel Seller to transfer the title to the Property by general warranty deeds to Buyer with Buyer retaining the right to fully occupy and utilize the Property after Closing. Alternatively, Buyer may terminate this Agreement and this Agreement shall thereafter be null and void and of no further force or effect, except for Buyer's obligations under Section 9 hereof, and Buyer's remedies shall be the return to it of the Earnest Money, plus its documented and paid (or payable) costs and expenses incurred in pursuing the transaction contemplated by this Agreement (including, without limitation, fees and expenses of attorneys, accountants, engineers, property inspectors, surveyors and any other persons or entities engaged by Buyer in connection herewith) as compensatory damages (not to exceed Fifty Thousand and 00/100 Dollars (\$50,000.00)), and to enforce the indemnification obligations of Seller under Section 7(d) of this Agreement.
- (b) In the event Buyer shall fail to close and defaults, except for default caused by Seller's default, then this Agreement shall thereafter be null and void and of no further force or effect, and Seller's only remedy shall be to receive the Earnest Money as liquidated damages and to enforce Buyer's obligations under Section 9 of this Agreement.

11. Risk of Loss. The risk of loss or damage to the Property prior to the Closing of this transaction shall be borne by Seller. If all or any portion of the Property shall be taken by eminent domain or be the subject of condemnation proceedings, or fire or other casualty results in damage to the Property, Seller shall promptly notify Buyer. Buyer will then, within ten (10) days of receiving Seller's notice, elect to either (i) complete the purchase of the Property at the agreed upon Purchase Price, in which event Buyer shall be entitled, in the event of condemnation, to receive all awards paid or payable with respect to such taking or condemnation proceedings, or, in the event of fire or other casualty, to receive all insurance proceeds therefor, or (ii) terminate this Agreement in all respects, and the Escrow Money, plus all accrued interest thereon, shall be returned to Buyer, and the parties shall have no further rights or obligations hereunder, except for any rights or obligations specifically identified as surviving termination of this Agreement. Seller shall execute and deliver to Buyer on the date of Closing hereunder all documents as may be necessary to effect the full assignment and collection of any such awards and proceeds if Buyer elects to complete the purchase of the Property.

12. Assignment. Buyer shall have the right to assign, transfer or convey its rights hereunder without the prior written consent of Seller.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and it is understood and agreed that all undertakings and agreements heretofore made between the parties concerning the subject matter hereof are merged herein.

14. Notices. Any notice, request, demand, instruction or other communication hereunder shall be in writing and, except as otherwise provided herein, shall be deemed to have been duly given if delivered (1) by hand; (2) by a prepaid reputable overnight delivery service providing receipt upon delivery; (3) by facsimile transmission (FAX) providing confirmation of transmittal; (4) electronic transmission (email) providing confirmation of receipt; or (5) seventy-two (72) hours after being sent by the United States Postal Service by first class, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To Buyer at:
The Collierville School District

Attention: _____

With a copy to:
Evans Petree PC
1000 Ridgeway Loop Road, Suite 200
Memphis, TN 38120
Attn: Mike Marshall

To Seller at:
Cartwright Farms Partnership

With a copy to:
Evans Petree PC
1000 Ridgeway Loop Road, Suite 200
Memphis, TN 38120
Attn: Woods Weathersby

Robert T. Cartwright, both
Individually and as Trustee

With a copy to:
Evans Petree PC
1000 Ridgeway Loop Road, Suite 200
Memphis, TN 38120
Attn: Woods Weathersby

Change of address may be effected by any party by giving notice thereof as provided herein.

15. Modification. This Agreement may not be changed orally, but may only be changed by an agreement in writing signed by Buyer and Seller.

16. Binding Effect. The provisions of this Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

17. Time. Time is of the essence of this Agreement. In the event that the time period for any act to be taken or notice to be given hereunder expires on a date which is a Saturday, Sunday or legal holiday, then such time period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

18. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit the provisions contained herein.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

20. Broker and Commission. Buyer represents and warrants that it is not, and has not been, represented by any broker or agent. Buyer will indemnify and hold Seller harmless from any and all claims for commissions alleged to be due to any broker or agent asserting entitlement to commission by virtue of their representation of Buyer. Seller represents and warrants that it is not, and has not been, represented by any broker or agent. Seller shall indemnify and hold Buyer harmless from any and all claims for commissions or any other remuneration due to any broker or agent asserting entitlement to commission by virtue of their representation of Seller. The provisions of this paragraph shall survive the closing of this transaction.

21. Counterparts. This Agreement may be executed in any number of counterparts, any one or all of which shall constitute the agreement of the parties.

22. Offer and Acceptance. The effective date of this Agreement shall be deemed to be the date that it is timely executed, unaltered by Seller and by Buyer.

23. Attorney Fees. In the event of a dispute hereunder, the prevailing party in any litigation shall be entitled to its attorney fees, court costs, and other litigation expenses (including those incurred on appeal) from the non-prevailing party.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their duly authorized representatives, as of the date first set forth above.

BUYER:

THE COLLIERVILLE SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

SELLER:

PARCEL ONE:

CARTWRIGHT FARMS PARTNERSHIP, a Tennessee
General Partnership

By: _____

Name: _____

Title: _____

SELLER:

PARCEL TWO:

Robert Thomas Cartwright

**Robert T. Cartwright, Trustee of the Clara S. Cartwright
Non-Exempt Residuary Trust, created pursuant to the
terms of the Clara S. Cartwright Revocable Trust dated
October 31, 1995, as amended**

Exhibit "A"

Legal Description of Property

(Parcel One – 22.886 acres, being part of Tax Parcel ID# D0258 00027)

(Parcel Two – North 135.472 acres of Tax Parcel ID# D0258 00036)