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Exclusive Sales Listing Agreement

THIS EXCLUSIVE SALES LISTING AGREEMENT ("Agreement") is made as of the date of execution between Warren County Board of Education, (the "Owner"), and **CBRE, Inc.**, a Delaware corporation (the "Broker").

WITNESSETH:

WHEREAS, Owner is the owner of certain land, buildings and improvements further described as South Warren Elementary located at 216 Shocco Springs Road in Warrenton, North Carolina (the "Property"); and

WHEREAS, Owner desires to engage Broker as the exclusive sales agent for the Property, and Broker, a licensed real estate broker in the State of North Carolina, desires to be engaged as Owner's exclusive sales agent for the Property pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of mutual covenants hereinafter set forth and other good and valuable consideration, including the compensation to be paid as hereinafter set forth, the parties hereto agree for themselves as follows:

1. **EXCLUSIVE SALES AGENT**. Owner gives to Broker the exclusive right to solicit and procure prospective purchasers for the Property during the Term (as defined below) of this Agreement. The listing price for the Property shall be determined by Owner. The sale of the Property shall be on "all cash" terms and on an "as is" basis unless other terms are approved in writing by Owner, in Owner's sole and absolute discretion.
2. **BROKER'S SALES RESPONSIBILITIES**
 - 2.01 Broker shall furnish to Owner, on a monthly basis, a written summary of the activities conducted by Broker in selling the Property during the prior month.
 - 2.02 Broker shall use commercially reasonable efforts to locate a purchaser for the Property and to assist Owner and/or Owner's legal counsel in negotiating terms of sale with such purchaser.
 - 2.03 Broker shall promptly submit to Owner all written offers received by Broker with respect to the Property, and all negotiations after submission of such offers shall be conducted by Owner and/or Owner's legal counsel with the assistance of Broker. Any offer may contain normal and customary contingencies such as those relating to the condition of the Property, title report, and timing of closing. Furthermore, Broker shall keep Owner apprised regularly of any oral proposals made by persons to purchase the Property. In either event, all contracts shall be subject to Owner's approval, in its sole discretion, and shall be executed by Owner. Broker shall not have authority to obligate Owner with regard to any contract contemplated hereunder without Owner's specific, written authorization to do so.
 - 2.04 Broker understands and agrees that any offers presented by the Broker will be subject to the upset bid process pursuant to N.C.G.S. § 115C-518(a) and § 160A-269.
 - 2.05 **BROKER SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX,**

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NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY TO THE AGREEMENT.

3. OWNER'S OBLIGATIONS AND COVENANTS

3.01 Owner agrees to provide Broker all available information and documents regarding the Property to assist Broker in marketing the Property. Owner agrees to disclose to Broker and to prospective purchasers any and all material facts which Owner has knowledge (after reasonable inquiry by Owner) regarding the condition of the property, including but not limited to present and future zoning and environmental matters affecting the Property, structural, mechanical and soils conditions, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks in, on or about the Property. Broker is authorized and legally required to disclose any such information to prospective purchasers and tenants. Owner shall immediately notify Broker in the event that the Property becomes the subject of foreclosure or bankruptcy proceedings prior to the expiration of this Agreement.

Broker shall be entitled to rely on all information provided to Broker by Owner or Owner's agents without a duty for Broker to investigate the truthfulness or accuracy of such information. Broker is authorized to disclose any such information to prospective purchasers, and Owner shall defend and hold Broker harmless from any liability or damages including without limitation attorneys' fees arising from the disclosure or non-disclosure of or in any manner related to any such matters. Owner acknowledges that Broker is not responsible to conduct an inspection (and has not done so) of the Property or to verify the accuracy or completeness of any information provided by Owner to Broker or of a third party inspection provided to Broker by Owner.

3.02 Owner agrees to immediately refer to Broker all inquiries of anyone interested in the Property. Owner warrants and represents that it has not agreed to pay a brokerage or finder's fee or commission related to the sale of the Property to any other broker, finder, or other party, other than Broker, and will not do so during the Term of this Agreement. All negotiations shall be conducted by or through Broker. Broker is exclusively authorized to advertise the Property and exclusively authorized to place a sign(s) on the Property if, in Broker's opinion, such would facilitate the sale of the Property. Owner represents that it is either the fee owner of or otherwise has control over the Property. Owner further represents that it has full authority to enter into this Agreement without violating anyone else's rights, or any other agreements or contractual obligations.

3.03 Owner and Broker appoint the real estate agent(s) that are employed by Broker and that are identified below as the designated individual agent(s) of Owner pursuant to Title 21, Chapter 58, Subchapter 58A, Section .0104 of the North Carolina Administrative Code (hereinafter "Designated Agents"), to the exclusion of all other licensees of Broker.

All agents of Broker not identified herein as Designated Agents shall hereinafter be referred to as "Non-Designated Agents." Designated Agent(s) shall not disclose the confidential information of Owner to any other party or Agent. Owner acknowledges and understands that Broker is a national brokerage firm and that, in some instances, Broker may represent prospective purchasers. Owner desires that the Property be

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presented to such persons and hereby consents and agrees to the representation of such prospective purchaser(s) by Broker. Owner and Broker agree that all Non-Designated Agents shall be considered "Cooperating Brokers" for purposes of this Agreement and the Schedule of Sale Commissions. Owner consents to the representation of such potential buyers by Non-Designated Agents and, in the event that an actual prospective buyer is represented by Non-Designated Team Agents or Designated Agents, we will request that Owner and such prospective buyer consent in writing to dual agency. Owner acknowledges that Non-Designated Agents owe duties of trust, confidence and loyalty exclusively to their clients. The Designated Agents and Non-Designated Agents shall not disclose the confidential information of one principal to the other.

Designated Agent(s) shall represent only the interest of the Owner and shall not, without the Owner's permission, disclose to a purchaser or a broker designated to represent a purchaser:

- (a) that the Owner may agree to a price, terms, or any conditions of sale other than those established by the Owner;
- (b) the Owner's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (c) any information about the Owner which the Owner has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

Designated Agent(s): Chandler Hawkins Lics. #:
281683

- 3.04 Owner acknowledges that Broker is not authorized to practice law and that Owner and its counsel shall be solely responsible for determining the legal sufficiency of any purchase contract and any other documents relating to any transaction contemplated by this Agreement, as well as the tax consequences of any such transaction. Upon being instructed to do so by Owner, Broker will at Owner's expense consult with counsel approved by Owner.
- 3.05 Owner shall incorporate into all contracts and all other agreements related to the sale of the Property a provision stating that Owner has agreed to pay a sale commission to Broker pursuant to this Agreement.
- 3.06 Owner agrees to comply, at Owner's expense, with all laws, rules, codes, ordinances, regulations, orders, notices and any other requirements of any federal, state or local authority, which is now or may hereafter be in effect, relating to the Property.
- 3.07 Owner shall pay Broker for its sales services in the amounts and in the manner and at the times described in Section 4 and **Exhibit A** attached hereto. If payment of any commission is not made when due, the unpaid balance shall bear interest at the lesser of twelve percent (12%) per year or the maximum rate permitted in the State of North Carolina from the original due date of the commission through the date of collection. In the event payment is not made when due, Broker shall also be entitled to all collection costs it incurs, including reasonable attorneys' fees and disbursements.

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- 3.08 Owner acknowledges that CBRE Capital Markets, an affiliated entity, may assist prospective purchasers by providing financing to the purchaser of the Property. Owner acknowledges and agrees that CBRE Capital Markets may earn fees or other compensation in connection with the financing of a sale of the Property; however, in no circumstance shall Owner be liable for compensating CBRE Capital Markets for such role, nor shall such fees or other compensation owed to CBRE Capital Markets reduce the commission owed to Broker pursuant to this Agreement.
- 3.09 Owner acknowledges that all photos, video recordings, advertisements, signage, and marketing materials are the sole and exclusive property of Agent and may not be reproduced or utilized by Owner without the express written consent of Agent.

4. COMPENSATION TO BROKER

4.01 Sales Commissions

- (a) Owner agrees to pay Broker a sales commission in accordance with **Exhibit A** if during the Term Owner enters into an agreement to sell the Property to a purchaser, whether procured by Broker, Owner or any other party, and the sale of the Property subsequently closes (whether during or after the Term). Broker is authorized to cooperate with and to share its commission with other licensed real estate brokers (“Cooperating Brokers”), regardless of whether said brokers represent prospective buyers or act as Broker’s sub-agents.
- (b) Owner further agrees to pay Broker a sales commission in accordance with **Exhibit A** if, within sixty (60) calendar days after the expiration or termination of this Agreement, the Property is sold to, or negotiations continue, resume or commence and thereafter continue leading to the execution of a sale with any person or entity (including his/her/its successors, assigns or affiliates) with whom Broker has negotiated concerning the purchase of the Property (either directly or through another broker or agent) or to whom the Property has been submitted prior to the expiration or termination of this Agreement (“Existing Prospects”). Owner agrees that Broker is authorized to continue negotiations with Existing Prospects. Broker agrees to submit a list of such Existing Prospects to Owner not later than fifteen (15) calendar days following the expiration or termination of this Agreement, provided, however, that if a written offer has been submitted it shall not be necessary to include the offeror’s name on the list. In the event that Owner lists the Property with another broker after the expiration or termination of this Agreement, Owner agrees to provide in the subsequent listing agreement that a commission will not be payable to the new broker with respect to transactions for which Owner remains obligated to pay a commission to Broker under this Agreement. Owner’s failure to do so, however, shall not affect Owner’s obligations to Broker under this Agreement.
- (c) As used within this Agreement, the term “sale” or “purchase”, in reference to the Property, shall include a sale or exchange of the Property, the granting of an option to purchase the Property that is subsequently exercised, or any other transfer, conveyance, or contribution of a controlling interest in the Property or the entity which owns the Property.

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- 4.02 Expenses. Owner agrees to reimburse Broker for reasonable out-of-pocket marketing expenses approved by you, up to a maximum of _____ Dollars (\$_____). Reimbursement is due upon the receipt of an invoice.
- 4.03 Excluded Parties Clause. Broker shall not be entitled to any commission in connection with the sale of the Property to a party listed on the attached **Exhibit B**, if applicable.
- 4.04 Broker Compensation May Require Board Approval. Any fee to Broker in excess of thirty thousand dollars (\$30,000.00) must be approved separately and in writing by the Warren County Board of Education.

5. TERM AND TERMINATION

- 5.01 Term. The term of this Agreement shall be for one (1) year commencing on the date hereof and expiring at midnight on 1/2/2025 (the "Term"), unless sooner terminated by either party hereto pursuant to Section 5.03 (such expiration and termination dates referred to herein as the "End Date").
- 5.02 Early Termination.
- a. At any time during the Term of this Agreement, either party may terminate this Agreement if (i) a petition in bankruptcy is filed by or against the other party or (ii) the other party fails to perform or otherwise materially breaches any provision of this Agreement and does not cure such default on or before the date that is ten (10) days after the non-breaching party gives notice to the breaching party of such default.
- b. At any time during the Term of this Agreement after the day that is one hundred twenty (120) days following the date of this Agreement, Owner or Broker may terminate this Agreement in its sole discretion without cause by giving to the other party hereto at least thirty (30) days prior written notice which shall specify the End Date.
- 5.03 Survival. The obligations of the parties set forth in Sections 3.08, 4, 6 and 8 shall survive any termination of this Agreement.

6. INDEMNIFICATION

- 6.01 Indemnification by Broker. Broker agrees to indemnify and defend Owner from and against all liability, damages, losses and expenses, including, but not limited to, attorney's fees, resulting from claims or causes of action by a third party (collectively, "Claims") to the extent based upon Broker's gross negligence or willful misconduct. In the event that such claim or cause of action is being made by another broker, finder or other party for a brokerage or finder's fee, Broker's obligation to defend and indemnify, if any, is limited to the amount of the commission actually paid to and retained by Broker in connection with the transaction at issue.
- 6.02 Indemnification by Owner. Owner agrees to indemnify and defend Broker from and against all Claims by a third party related to this Agreement or the services provided by Broker in connection with this Agreement and not caused by the gross negligence

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or willful misconduct of Broker, including, but not limited to, Owner providing to Broker incorrect information or failing to disclose to Broker information which should have otherwise been disclosed to such claimant or to Broker.

7. INSURANCE

7.01 Owner, at its expense, will obtain and keep in force:

- (a) Property Insurance. Property insurance on the Property on an all risk and replacement cost basis.

- (b) Certificates. Owner shall furnish Broker with a valid certificate of insurance evidencing the coverages described above. Such certificate must be in a form reasonably acceptable to Broker. All such policies shall be issued by insurance companies licensed to do business in the state where the Property is located.

7.02 Broker, at its expense, will obtain and keep in force, for its benefit, and shall furnish a certificate of insurance to Owner evidencing:

- (a) Worker's compensation – statutory limits;
- (b) Employers' liability - \$500,000;
- (c) Commercial general liability - \$1,000,000 per occurrence and \$2,000,000 aggregate;
- (d) Business auto liability including hired and non-owned auto coverage - \$1,000,000 combined single limit; and
- (e) Umbrella/excess –\$1,000,000 per occurrence and \$1,000,000 aggregate.

8. **CONFIDENTIALITY**. All Confidential Information (as hereinafter defined) shall be treated as confidential by Broker and Designated Agents and shall be disseminated to third parties only with the express consent of the Owner. "Confidential Information" means financial and/or other proprietary information provided by Owner to Broker that Owner designates in writing as confidential at the time it is provided to Broker. Confidential Information does not include material facts or information that (i) was known to Broker at the time it was provided by Owner, (ii) was publicly available at the time it was provided by Owner or thereafter becomes publicly available without breach by Broker of its obligations hereunder or (iii) becomes available to Broker on a non-confidential basis from a source other than Owner or its representatives.

9. **COMPLIANCE WITH LAWS**. The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, the Property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, and The Americans With Disabilities Act. Owner and Agent agree that the Property will be offered in compliance with all applicable anti-discrimination laws. Owner and Agent acknowledge that it is illegal for either of them to refuse to show to or to sell to any person because of the person's race, color, religion, sex, national origin, handicap or familial status.

10. **NOTICES**. All notices or other communications required or permitted under this Agreement shall be in writing and shall be sent by a nationally recognized courier service or personally delivered (including by means of professional messenger service), or sent by registered or

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certified mail, postage prepaid, return receipt requested, to the addresses set forth below, and shall be deemed received when actually received. Notice of a change of address shall be given by notice in the manner set forth in this Section.

To Owner: Warren County Board of Education
109 Cousin Lucy's Lane P.O. Box 110
Warrenton, NC 27589
Attention: Keith Sutton
Telephone: 252-257-3184 Ext. 1225

To Broker: CBRE, Inc.
555 Fayetteville Street, Suite 800
Raleigh, NC 27601
Attention: Thomas A. Fritsch
Telephone: 919.831.8200

11. GENERAL PROVISIONS

11.01 Governing Law. **This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of North Carolina, without regard to conflict of laws principles. The parties agree to exclusive personal jurisdiction and venue in the courts of the State of North Carolina.** In the event that any provision of this Agreement shall be deemed to be unenforceable or void based on any controlling state or federal law, the remaining provisions hereof, and each part, shall remain unaffected and shall continue in full force and effect. No party will be entitled to punitive, special, and/or consequential damages and each party waives all rights to and claims for relief other than for compensatory damages; and

EACH PARTY KNOWINGLY AGREES TO WAIVE ANY AND ALL RIGHTS TO HAVE A DISPUTE ON ANY MATTER RELATING TO, OR ARISING FROM THIS AGREEMENT DETERMINED BY A JURY.

11.02 Entire Agreement; Amendment. This Agreement, including the Exhibits hereto, sets forth the entire agreement and understanding of the parties hereto and there are no collateral or oral agreements or understandings between Owner and Broker with respect to the sale of the Property. This Agreement may be amended, modified or terminated only by written agreement of Broker and Owner.

11.03 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other party.

11.04 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature on this Agreement may be effected by facsimile (with confirmation by transmitting machine) and/or transmitted by portable document format ("pdf") file which shall be treated as an original signature, and any such signature, facsimile, pdf file or copy of this signed Agreement shall be construed and treated as the original and shall be binding as if it were the original.

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- 11.05 Headings. The headings of the Sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.
- 11.06 Third Parties. Nothing contained herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.
- 11.07 Neither party's failure to exercise any of its rights under this Agreement will relieve the other party of its obligations hereunder. Nothing herein is or may be deemed a waiver or full statement of any of either party's respective rights or remedies, whether at law or in equity, all of which are expressly reserved. Each party agrees that each has participated equally in the negotiation and drafting of this Agreement. Each party acknowledges that the person signing this Agreement on its behalf has full authority to execute it.
- 11.08 Owner acknowledges that, prior to the execution of this Agreement, Broker furnished Owner, as Exhibit C to this Agreement, and reviewed with Owner a copy of the brochure, "Working with Real Estate Agents ("Sale Transactions")".

The undersigned hereby acknowledge receipt of a copy of this Agreement and represent and warrant that he/she has full authority to sign this Agreement on behalf of the party for whom he/she signs and that this Agreement binds such party.

OWNER: Warren County Board of Education

By: _____
Name: Keith Sutton
Title: Superintendent
Date: _____, 2024

BROKER:
CBRE, Inc.
Licensed Real Estate Broker: #C13355

By: _____
Name: Thomas A. Fritsch
Title: Senior Managing Director
Individual License No.: 155572
Date: _____, 2024

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EXHIBIT A

SALES COMMISSION TERMS

All commissions owed to Broker pursuant to this Agreement related to the sale of the Property shall be paid by Owner to Broker upon closing of the sale of the Property. Broker is authorized to solicit and cooperate with Cooperating Brokers (defined below). The commission shall be earned and paid on the date title to the Property is transferred to the purchaser.

Broker shall be entitled to receive from Owner a brokerage commission at the following rates:

- A. No Cooperating Broker. For a transaction in which a Cooperating Broker is not involved and entitled to a commission, the commission shall be **six percent (6%)** of the Gross Purchase Price of the Property upon closing of the sale of the Property.
- B. With a Cooperating Broker. For transaction in which a Cooperating Broker is involved and entitled to a commission, the commission shall be **six percent (6%)** of the Gross Purchase Price of the Property upon closing of the sale of the Property. The fee split shall be agreed to by Broker and Cooperating Broker pursuant to a separate agreement.

“Gross Purchase Price” shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities.

Cooperating Broker:

Broker is authorized to solicit and cooperate with other real estate brokers, including Non-Designated Agents who represent prospective purchasers for the Property (“Cooperating Brokers”). For purposes of this Exhibit A and this Agreement, a “Cooperating Broker” is a real estate broker other than the Designated Agent, and who was involved in the procurement of the purchaser, the negotiation of the Contract, and is entitled to a commission. Broker is responsible for paying the fee or commission due to any such Cooperating Broker, provided such Cooperating Broker (i) represents the prospective purchaser pursuant to a written agreement, a copy of which is furnished to Broker, (ii) executes and delivers to Broker a confidentiality agreement, if required by Owner and on Owner’s form, and (iii) executes and delivers Broker’s standard form Cooperating Brokerage Agreement.

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EXHIBIT B

EXCLUDED PARTIES

NONE

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EXHIBIT C

**WORKING WITH REAL ESTATE AGENTS BROCHURE
Form # Rec.4.27**