

## AGREEMENT

This Purchase Agreement (inclusive of any and all addenda attached hereto, the "Agreement") is made this \_\_\_\_ day of March, 2019, by and between the County of Buncombe, a body politic and corporate of the State of North Carolina (the "Buyer") and Enka Youth Sports Organization, Inc., a North Carolina non-profit corporation (the "Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN 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:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "**Property**": Tract 1: Being known as an unimproved tract of 14.89+/- acres, and shown as Parcel C on Plat Book 118 at Page 147, Buncombe County, NC Registry, and which is assigned PIN 9617-44-7442-00000 by the Buncombe County Tax Office; and Tract 2: Being known as an unimproved tract of 30.09+/- acres, and being a portion of Parcel E on Plat Book 118 at Page 147, and which is assigned PIN 9617-83-0644-00000 by the Buncombe County Tax Office.

**\$0.00** (b) "**Purchase Price**" shall mean the sum of Zero Dollars (\$0.00), payable on the following terms:

\$ \_\_\_\_\_ (i) "**Initial Earnest Money**" shall mean \_\_\_\_\_ Dollars.

\$ \_\_\_\_\_ (ii) "**Additional Earnest Money**" shall mean \_\_\_\_\_ Dollars.

Upon this Agreement becoming a contract, in accordance with Section 14, the Initial Earnest Money shall be promptly deposited in escrow with \_\_\_\_\_ (the "Escrow Agent"). Upon the expiration of the Examination Period, as defined below, without Buyer having terminated this Agreement, then the Additional Earnest Money shall be deposited with Escrow Agent by Buyer not later than the end of the Examination Period. The Initial Earnest Money and the Additional Earnest Money, collectively, as and when paid, constitutes the "Earnest Money" of this Agreement. All Earnest Money shall be retained in Escrow Agent's Trust Account, which Account does not bear interest.

**\$0.00** (iii) **Cash, balance of Purchase Price**, at Closing in the amount of Zero Dollars (\$0.00).

(c) "**Closing**" shall mean the date and time of recording of the deed. Closing shall occur on or before **December 31, 2024**.

(d) "**Contract Date**" means the date this Agreement has been fully executed by both Buyer and Seller.

(e) "**Examination Period**" shall mean the date of Closing. **TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.**

(f) "**Broker(s)**" shall mean None.

(g) **"Seller's Notice Address"** shall be as follows: c/o Lewis Real Estate, 1091 Hendersonville Road, Asheville, NC 28803; email: [seweidie@blossmangas.com](mailto:seweidie@blossmangas.com).

(h) **"Buyer's Notice Address"** shall be as follows: c/o Buncombe County Board of Commissioners, 200 College Street, Suite 300, Asheville, NC 28801; email: [brownie.newman@buncombecounty.org](mailto:brownie.newman@buncombecounty.org) and [jim.holland@buncombecounty.org](mailto:jim.holland@buncombecounty.org).

**Section 2. Sale of Property and Payment of Purchase Price:** Contingent upon Seller acquiring the Property from Fletcher Partners, Inc., a North Carolina corporation ("Fletcher"), pursuant to an agreement between Seller and Fletcher executed on or about March 1, 2019, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all the Property for the Purchase Price.

**Section 3. Proration of Expenses and Payment of Costs:** Seller and Buyer agree that all property taxes (on a calendar year basis), rents, and utilities or any other assumed liabilities, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed, survey (if needed to comply with applicable ordinances), and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following: **None**. Buyer shall pay its recording costs, costs of any title search, title insurance, survey (unless need to comply with all applicable ordinances), the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following: **None**. Each party shall pay its own attorney's fees.

**Section 4. Deliveries:** Seller shall deliver to Buyer, within five (5) days of the Contract Date, copies of all information relating to the Property in possession of or reasonably available to Seller, including but not limited to: title insurance policies, surveys and copies of all presently effective warranties or service contracts related to any of 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 Buyer and both Buyer's and Seller's 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 both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all surveys prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money to Buyer, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

**Section 5. Evidence of Title:** Seller agrees to convey to Buyer fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, and (b) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages and/or statutory liens, regardless of whether Buyer has objected to them or not. Seller shall not enter into or record any instrument that affects the Property after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

**Section 6. Conditions:** This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). Title to the Property must be insurable at regular rates, subject only to the Permitted Exceptions.

(b) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(c) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, and surveying of the Property in a good and workmanlike manner, shall (in the absence of Closing) repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(c) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Buyer shall have from the Contract Date until Closing to perform the above inspections, examinations and testing, but even though such right extends through Closing, it does not extend the Examination Period, nor does it extend Buyer's termination rights (see below) beyond the Examination Period. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, WHICH BUYER MAY DO, AND PROVIDES WRITTEN NOTICE TO SELLER AND ESCROW AGENT THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY. If Buyer does elect to terminate this Agreement and Seller is not in breach hereof, Buyer will deliver to Seller, within ten (10) days of such termination, one (1) copy of any site plans, surveys, topos, engineering studies, soil tests, and any other studies (other than appraisals) which Buyer has obtained in connection with the Property. Buyer has no obligation to have any such tests, studies or investigations performed.**

**Section 7. Leases.** Seller affirmatively represents and warrants that there are no leases of any kind or nature affecting the Property.

**Section 8. Risk of Loss/Damage/Repair:** Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

**Section 9. Earnest Money Disbursement:** In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money, if any, shall be returned

to Buyer, but such return shall not affect Buyer having the right to obtain specific performance from Seller.

**Section 10. Closing:** At Closing, Seller shall deliver to Buyer, or as Buyer directs, a general warranty deed conveying marketable and insurable fee simple title to the Property and naming Buyer or as Buyer otherwise directs as the deed's grantee, as Buyer has the absolute right to name the deed's grantee; as well as Seller delivering all other documents customarily executed or delivered by a seller in similar transactions, including an owner's affidavit, a lien waiver, and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act) and Buyer shall pay to Seller the Purchase Price at Closing, with the Earnest Money being applied as part of the Purchase Price. The Closing shall be held at the office of Buyer's attorney or such other place as the parties hereto may mutually agree. Possession shall be delivered at Closing.

**Section 11. Notices:** Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or by electronic mail or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

**Section 12. Entire Agreement:** This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

**Section 13. Enforceability:** This Agreement shall become a contract when signed by both Buyer and Seller and each party has received a fully executed Agreement bearing the signatures of both parties; it being expressly agreed that the notice described in Section 12 is not required for the effective communication under this Section 14. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

**Section 14. Adverse Information and Compliance with Laws:**

(a) **Seller Knowledge:** To the best of Seller's knowledge, there are no (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) any environmental contamination of the Property; or (v) governmental assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property. Seller represents that it has not been aware of any assessments or association charges of any kind against the Property.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

**Section 15. Survival of Representations and Warranties:** All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed for a period one (1) year. Seller shall, at or within one (1) year after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other

action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

**Section 16. Applicable Law:** This Agreement shall be construed under the laws of the state of North Carolina.

**Section 17. Assignment:** The rights of the parties to this Agreement are freely assignable, unless otherwise expressly provided by written amendment to this Agreement executed by the parties hereto.

**Section 18. Memorandum of Contract:** Upon being required by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

**Section 19. Authority:** Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

**Section 20. Brokers:** Buyer and Seller represent and warrant to each other that they have not dealt with any real estate agents or brokers in connection with this transaction. Each party shall indemnify and hold the other harmless from any loss, cost or obligation which may be suffered as a result of the foregoing representation being untrue.

**BUYER:**

County of Buncombe

By: \_\_\_\_\_  
Name: Brownie Newman  
Title: Chair

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

Attest:

\_\_\_\_\_

**SELLER:**

Enka Youth Sports Organization, Inc.

By: \_\_\_\_\_  
Name: Stuart Weidie  
Title: President

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

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

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**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.**

\_\_\_\_\_ N/A \_\_\_\_\_  
(Name of Firm)

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

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