

NORTH CAROLINA
WAKE COUNTY

UTILITY REIMBURSEMENT
AGREEMENT

This Utility Reimbursement Agreement (the “**Agreement**”) is made this the _____ day of _____, 2026, by and between the Town of Apex, a municipal corporation under the laws of North Carolina (the “**Town**”) and Greater Raleigh Area Christian Education, Inc., a North Carolina nonprofit corporation (“**GRACE**”). Developer and the Town are collectively referred to as the “**Parties**”.

W I T N E S S E T H:

WHEREAS, GRACE is the owner of certain real property located in Wake County, Town of Apex, North Carolina and more particularly described on Exhibit A of this Agreement (the “**GRACE Property**”) and GRACE and its affiliated entity(ies) plan to develop the Property in accordance with that certain Major Site Plan for the Grace Property approved by the Town (as the same may be amended and/or supplemented from time to time if at all, the “**GRACE Plan**”); and

WHEREAS, GRACE desires to construct potable water lines and all necessary or convenient appurtenances thereto (collectively, the “**Facilities**”) to connect the GRACE Property to certain existing Town potable water infrastructure so that GRACE can develop the GRACE Property in the manner that GRACE desires. GRACE further desires for the Town to accept the public dedication of the Facilities once built and to assume maintenance of the Facilities; and

WHEREAS, to meet its needs, GRACE proposes to arrange for, accomplish, and finance the extension, construction, and installation of the Facilities, upon, across, beneath, and through the GRACE Property (as well as on adjacent properties and other properties necessary for the extension of the facilities) pursuant to Chapter 12 of the Town’s Code of Ordinances; and

WHEREAS, Town has requested GRACE to increase the size of the water lines to be constructed by GRACE along Veridea Parkway from 12 inches to 16 inches in excess of the size required to serve the GRACE Plan and to accommodate additional services to other development within the vicinity of the GRACE Property ; and

WHEREAS, pursuant to North Carolina General Statutes 160A-320, the Town may contract with a developer for public enterprise improvements that are adjacent to or ancillary to a private land development project; and

WHEREAS, the Town has determined that the public cost of the improvement subject to reimbursement will not exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) and that the coordination of separately constructed improvements would be impracticable and therefore, desires to optimize the expansion of its utility infrastructure and related public improvements while minimizing the cost to the Town.

NOW, THEREFORE, IT IS HEREBY AGREED between the Town and GRACE:

1. Recitals. The foregoing recitals shall constitute an integral part of this Agreement, and this Agreement shall be construed in light thereof.

2. Construction of Improvements. GRACE may, at its own expense, construct the Facilities, all of which are more particularly described as “16” Water line” on the preliminary concept redline drawings attached as Exhibit B and incorporated herein by reference (the “Plans”). GRACE shall design, construct and install the Facilities (i) in a good and workmanlike manner, (ii) in compliance with this Agreement, the Town’s policy for reimbursement, Town Specifications, and all applicable Federal, State, and local laws, statutes, ordinances, rules, regulations, policies, approved construction plans, and specifications, and (iii) in accordance with the approved Plans. GRACE hereby represents to the Town, and the Town concurs, that the Facilities are in excess of the size and/or capacity of the facilities required to serve GRACE’s proposed development, and therefore the Facilities are subject to reimbursement pursuant to the Policy.

GRACE shall administer the construction contract without cost or expense to the Town except as provided for in this Agreement, and the Town may require GRACE to file reports of its administration with the Town’s Engineer.

3. Certification, Inspection, and Acceptance of Facilities. Upon completion of construction of the Facilities, GRACE shall provide the Town with written certification and as-built drawings from GRACE’s designated consulting engineering firm that the Facilities are complete and have been constructed and installed in compliance with this Agreement and within appropriate easements or fee simple parcels. GRACE shall provide documentation confirming that all contractors and subcontractors engaged in the execution of this project have been paid in full for their services; subject to GRACE’s right to dispute in good faith amounts claimed by such contractors for which final lien releases or waivers have not been received. The Facilities shall be offered for public dedication to the Town upon completion of construction and shall be subject to inspection and acceptance by the Town. Upon the inspection and acceptance of the Facilities, GRACE shall take any steps necessary to transfer title to and possession of the Facilities, including but not limited to all steps necessary to acquire and transfer to the Town all easement rights, rights-of-way, and all other rights of use, access, ingress and egress, necessary or desirable for the existence, improvement, use, operation, inspection, maintenance, repair, reconstruction, replacement and/or removal of the Facilities. Thereafter, the Town shall own the Facilities and have exclusive possession and control of the Facilities. In the event that any defect or breach of warranty claim becomes known after acceptance and dedication of the Facilities, GRACE agrees either to pursue its rights and claims against the contractor or other party responsible for the defect or breach of warranty and pay over any recoveries to the Town or to assign such rights and claims to the Town as directed by the Town.

4. Approved Project Costs.

a. The “**Approved Project Costs**” are those incremental costs attributed to the construction of the water lines as shown in the estimate provided by GRACE’s Engineer and attached hereto as **Exhibit C**. Costs that are not certified by GRACE’s Engineer and approved by the Town’s Engineer shall not be included in the Approved Project Costs. Approved Project Costs shall not include any costs for designing, bidding, and managing services, or for acquisition of property or easements required for construction of the Facilities. The Approved Project Cost for waterline oversizing is based on an estimate provided by GRACE’s engineer of the incremental cost differential for the construction of upsized water lines instead of water lines sized only for the development under the Grace Master Site Plan. The amount of the Approved Project Costs is subject to the review and approval of the engineer designated by the Town and cost to the Town shall not exceed \$250,000.

b. The Town shall not participate in or be responsible to pay or reimburse any change order increasing the costs of the Facilities unless agreed to by the Town and approved by the Town’s Engineer in writing prior to execution of the change order. In other words, the costs associated with a change order shall be excluded from the Approved Project Costs unless the change order is pre-approved by the Town’s Engineer, which approval will not be unreasonably withheld, conditioned or delayed. GRACE shall immediately upon learning of a proposed change order provide the Town with all the documentation and information needed for the Town to evaluate the proposed change order. In addition, the Approved Project Costs incurred by GRACE in constructing the Facilities shall reflect any cost savings that reduce the amount that GRACE actually pays to construct the Facilities.

5. Reimbursements. The Town shall reimburse the Approved Project Cost as provided below:

a. *Credits.* GRACE shall receive a credit against water capital reimbursement fees otherwise due to the Town from GRACE for the development of the GRACE Property but not yet paid up to a total combined amount of credits that is equal to the total amounts of the Approved Incremental Construction Cost not to exceed \$250,000.

b. *Payments.* If the fee credits are less than the Approved Project Cost, or if no system development fees are currently owed at the time the Facilities are dedicated to and accepted for maintenance by the Town, the Town shall reimburse GRACE the remaining unreimbursed balance of the Approved Project Cost in one lump sum payment to be made to GRACE within thirty (30) days after the Facilities are dedicated and accepted as required by Paragraph 3 above and GRACE waives any rights it may have to additional credits against water capital reimbursement fees with respect to this Agreement.

c. *Approved Project Costs.* The reimbursement referenced in this Paragraph 5 shall be the only credits, reimbursements, payments, compensation or other remuneration to which GRACE shall be entitled in connection with this Agreement. In no event shall the credits,

payment, or reimbursement paid by the Town under this Agreement exceed the Approved Project Cost.

6. Conditions. The obligation of GRACE pursuant to this Agreement is subject to (i) GRACE obtaining agreements satisfactory to GRACE from RXR Len Apex Owner LLC and the North Carolina Children's Hospital to participate in the additional cost of increasing the size of the water line and (ii) GRACE's determination that its participation in increasing the size of the water line will not negatively impact the schedule for completion of the development of the GRACE Property. In the event GRACE cannot determine the conditions will be satisfied, GRACE shall have the right to terminate this Agreement in which event the parties shall have no further rights or obligations under this Agreement.

7. Notices. Any notice given pursuant to this Agreement shall be deemed given if (a) delivered by hand, or (b) delivered by overnight express delivery or (c) sent by email provided that notice will then be followed pursuant to (a) or (b) addressed as follows:

With a copy to: Town of Apex
Attn: Town Attorney
PO Box 250
Apex, NC 27502-0250
laurie.hohe@apexnc.org

With a copy to: W. Robert Everett
NEMA Management, LLC
1020 Southhill Drive, Suite 180
Cary, NC 27513
Telephone: 919-395-2905
Email: reverett@nemamanagement.com

8. Termination for Failure to Complete. If GRACE does not complete construction of the Facilities on or before the fifth anniversary of the full execution of this Agreement absent force majeure

delays (as defined below), the Town may terminate this Agreement and have no further obligations to GRACE.

9. Delay Beyond the Control of the Parties. Neither GRACE nor Town, having taken commercially reasonable precautions, shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by natural disaster, fire, flood, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disobedience, or other event reasonably outside of the parties' control.

10. Indemnification. To the extent permitted by law, GRACE agrees to defend, pay on behalf of, indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex, its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof solely caused by the negligence of GRACE or GRACE's contractors.

11. Anti-Human Trafficking. GRACE warrants and agrees that no labor supplied by GRACE or GRACE's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

12. Insurance. GRACE shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an additional insured by endorsement to the policies. If the policy has a blanket additional insured provision, the contractor's insurance shall be primary and non-contributory to other insurance. Additionally, GRACE shall require all of GRACE's subcontractors to maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000. GRACE shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company. All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of GRACE to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

13. Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, GRACE hereby warrants and agrees that GRACE will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial

customers in connection with this Agreement. For the purposes of this Agreement “protected class” includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

14. E-Verify Compliance. GRACE shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). GRACE shall require all of GRACE’s subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Town shall comply with North Carolina General Statute § 160A-169.1 (E-Verify).

15. Complete Agreement, Modifications, Waiver and Assignment. This Agreement constitutes the entire agreement between the parties hereto and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore had between these parties are merged herein. This Agreement may not be changed, modified, or amended orally, but only by an agreement in writing signed by both the Town and GRACE. No waiver of any of the provisions to this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. This Agreement is not assignable without the written consent of all parties to this Agreement. There are no third-party beneficiaries of this Agreement.

16. No Agency, Joint Venturer Relationship. The Town and GRACE agree to exercise good faith in dealing with each other. The Town and GRACE are not agents, partners, or joint venturers of any kind, and the Town shall have no relationship via this Agreement with any third party with whom GRACE contracts in furtherance of this Agreement.

17. Choice of Law, Jurisdiction, and Venue. This Agreement shall be governed, interpreted and construed under the laws of the State of North Carolina without regard to principles of conflicts of laws. The parties agree that any dispute or other matter concerning this Agreement shall be decided by state or federal courts sitting in Wake County, North Carolina. The parties irrevocably submit to the sole and exclusive jurisdiction of such courts and waive all objections and defenses based on jurisdiction and/or improper or inconvenient venue. The parties agree that this Agreement may be enforced by specific performance.

18. Electronic Signature. Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The Parties hereby consent to use electronic or digitized signatures in accordance with the Town’s Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the Town and GRACE have duly executed this Agreement under seal as of the day and year first above written.

TOWN OF APEX

BY: _____ (SEAL)
Randal Vosburg, Town Manager

ATTEST:

Allen Coleman, Town Clerk

STATE OF NORTH CAROLINA)
WAKE COUNTY)

I, a Notary Public of the County and State aforesaid, certify that Allen Coleman, personally came before me this day and acknowledged that he is Town Clerk of the Town of Apex, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Town Manager, sealed with its corporate seal and attested by him as its Town Clerk.

Witness my hand and official stamp or seal, this the _____ day of _____, 2026.

[AFFIX NOTARIAL STAMP SEAL]

[Signature of Notary Public]

My Commission Expires: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

By: _____
Finance Director

GREATER RALEIGH AREA CHRISTIAN
EDUCATION, INC.

By: _____

Print Name: Eric Bradley

Title: Head of School

By: _____

A. Moss Withers

Chair of Board of Trustees

STATE OF NORTH CAROLINA

COUNTY OF _____

I, a Notary Public of the County and State aforesaid, do hereby certify that Eric Bradley, as Head of School of GREATER RALEIGH AREA CHRISTIAN EDUCATION, INC., a North Carolina company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of GREATER RALEIGH AREA CHRISTIAN EDUCATION, INC., a North Carolina company.

Witness my hand and official stamp or seal, this the _____ day of _____, 2026.

[AFFIX NOTARIAL STAMP SEAL]

[Signature of Notary Public]

My Commission Expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, a Notary Public of the County and State aforesaid, do hereby certify that A. Moss Withers, as Chair of Board of Trustees of GREATER RALEIGH AREA CHRISTIAN EDUCATION, INC., a North Carolina company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of GREATER RALEIGH AREA CHRISTIAN EDUCATION, INC., a North Carolina company.

Witness my hand and official stamp or seal, this the _____ day of _____, 2026.

[AFFIX NOTARIAL STAMP SEAL]

[Signature of Notary Public]

My Commission Expires: _____

Exhibit A

GRACE Property

Being the same property shown as Tract II on certain Plat entitled Boundary Survey for Judith T. Woodell prepared by Bass, Nixon & Kennedy, Inc., dated November 8, 2014 and recorded in Book of Maps 2015, Page 14, Wake County Registry.

Exhibit B
Description of Facilities

Exhibit C
Projected incremental costs