

STATE OF NORTH CAROLINA

WAKE COUNTY

FIRST AMENDMENT TO LEVEL 4 JOINT USE AGREEMENT FOR THE BASEBALL FIELD, MULTIPURPOSE FIELD, GRAVEL WALKING TRACK, HARD COURT PLAY AREA, 3-5 PLAYGROUND, DESIGNATED PARKING AREA AND DRIVE ACCESS AT BAUCOM ELEMENTARY SCHOOL

The Wake County Board of Education, hereinafter referred to as “Board,” and the Town of Apex, hereinafter referred to as “Town” agree to the following amendments to the LEVEL 4 JOINT USE AGREEMENT FOR THE BASEBALL FIELD, MULTIPURPOSE FIELD, GRAVEL WALKING TRACK, HARD COURT PLAY AREA, 3-5 PLAYGROUND, DESIGNATED PARKING AREA AND DRIVE ACCESS AT BAUCOM ELEMENTARY SCHOOL made and entered into between the parties on July 1, 2007 (the “Agreement”):

**WITNESSETH:**

WHEREAS, Town and Board entered into the Agreement referenced hereinabove to confirm the rights and responsibilities of the parties for the development, maintenance, joint use and programming of certain recreational improvements on the Baucom Elementary School (School) campus; and

WHEREAS, Town and Board have a mutual interest in providing adequate programming facilities for Board and Town joint use for community parks and recreation; and

WHEREAS, Town and Board have successfully operated the Board facilities as agreed upon and approved by all Parties in the original Agreement; and

WHEREAS, as part of its Capital Improvement Plan, Board has funded and is undertaking a major renovation project for the School campus which will include a site redesign and building replacement and that will require temporary campus closure and relocation of the teachers, students and staff to another facility; and,

WHEREAS, as a result of the Board project, all of Town’s licensed areas as described in Section 5 of the Agreement will be directly impacted by construction, will be relocated to some extent and will be unavailable during the project which will effect Town activity programming and scheduling; and

WHEREAS, Board has timely notified Town of the planned new construction and renovations on Board property that are necessary to meet educational program needs; and

WHEREAS, Board has collaborated with Town and consulted in the planning and design of the major renovation project to coordinate the improvement and relocation of the Town Licensed Areas to support future programming of the facilities for Board and Town joint use for community parks and recreation; and

WHEREAS, Board anticipates that the project construction activities will proceed on or about February 15, 2023, and that project substantial completion will occur in time to support School reopening for the 2024-2025 school year, during which period shared use under the Agreement will be tolled; and

WHEREAS, upon undertaking operations pursuant to the Agreement, the parties have collaboratively identified certain aspects of the Agreement for which minor modifications are needed to provide clarity as to the parties' respective rights and responsibilities un the Agreement from and after Board's completion of the major renovation project; and

WHEREAS, Section 2 of the Agreement provided for an initial twenty-five (25) year term from the date of execution, which Town and Board desire to extend to continue its successful relationship; and

WHEREAS, in the interest of providing the best service with the least possible expenditure of public funds, cooperation between the Town and Board is necessary; and

WHEREAS, this Agreement is entered into pursuant to North Carolina General Statutes, Article 20, Part 1 of Chapter 160A.

**NOW, THEREFORE**, in consideration of the mutual goals and promises contained herein, and the mutual benefits to result therefrom, the Parties agree to amend the Agreement in the following manner:

1. Amendment of Section 2. To continue their successful joint use relationship, Town and Board agree to extend the initial twenty-five (25) year term of the Agreement which establishes an end date of June 30, 2032, for an initial twenty-five (25) year term which will establish a new end date of June 30, 2057.
2. Amendment of Section 5: The parties agree that Section 5 of the Agreement shall be stricken and replaced in its entirety with the following language:

“5. Town's Licensed Areas.

The Board hereby gives and grants to the Town permission to use certain areas at BES (designated as Town Licensed Areas on Attachment B) pursuant to the terms of this Agreement:

- A. Baseball Field with lights
- B. Multipurpose Field
- C. Walking Track Around Multipurpose Field Play Areas
- D. Hard Court Play Area
- E. 3rd-5<sup>th</sup> Grade Playground
- F. Designated Parking Areas (49 planned spaces) and Drive Access

3. Amendment of Section 16: The parties agree that Section 16 of the Agreement shall be stricken and replaced in its entirety with the following language:

“16. Notices.

All notices, requests, approvals, or consents required to be given hereunder shall be in writing and hand delivered or sent by facsimile; electronic transmission, certified mail, return receipt requested, postage prepaid, or by a national overnight delivery service, and addressed as follows (or to any other address that the party to be notified may have designated to the sender by like notice):

Board: The Board of Education  
Wake County Public School System  
111 Corning Road, Suite 100  
Cary, North Carolina 27518  
Attention: Senior Director of Real Estate Service

Town: Town Manager  
Town of Apex  
P. O. Box 250  
Apex, North Carolina 27502

Such notices shall be deemed received on receipt on confirmation of receipt of transmission if sent by facsimile or electronic transmission (or alternatively, in the case of electronic transmission, upon receipt by sender of a responsive e-mail from one or more recipient of the electronically transmitted notice), or upon actual receipt or refusal of delivery if sent via certified mail or overnight delivery service.”

4. Amendment to Section 20.B. (Replacement of Attachment B): Attachment B of the which provides the Diagram Showing Town Licensed Areas as described in Section 20.B. is hereby replaced in its entirety with Exhibit B attached hereto and incorporated by reference.
5. Amendment to Section 21. The parties agree that Section 21 of the Agreement shall be stricken and replaced in its entirety with the following language:

“21. Agreement in Counterparts.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original; such counterparts shall together constitute but one agreement. Delivery by facsimile or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.”

6. Addition of Section 22. The parties agree that a new Section 22 shall be added to the Agreement by insertion in its entirety of the following language:

“22. Effective Date.

The Effective Date of this First Amendment to the Agreement shall be the date of last execution by Town and Board.”

7. In all other respects, except as specifically amended hereinabove, the Agreement remains unchanged and all of its terms remain in full force and effect and as a binding agreement between the parties.

**IN WITNESS WHEREOF**, Town and Board have each approved this First Amendment and have caused it to be signed and attested by its duly authorized officers for the purposes therein expressed.

**WAKE COUNTY BOARD OF EDUCATION**

\_\_\_\_\_  
Lindsay Mahaffey, Board Chair (SEAL)

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Superintendent/Secretary (SEAL)

NORTH CAROLINA

WAKE COUNTY

The undersigned, a Notary Public of the County and State aforesaid, hereby certified that Cathy Q. Moore personally appeared before me this day, and being duly sworn by me, acknowledged that she is Superintendent/Secretary of the Wake County Board of Education, and that by authority duly given and as the act of the Board the forgoing instrument was signed by its Chair, sealed with its corporate seal and attested by her as its Superintendent/Secretary.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

My Commission expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
(SEAL)

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act (G.S. 155C-441(a)).

\_\_\_\_\_  
WCPSS Finance Officer

**TOWN OF APEX**

\_\_\_\_\_ (SEAL)  
\_\_\_\_\_ Town Manager

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_ (SEAL)  
Clerk

NORTH CAROLINA

WAKE COUNTY

The undersigned, a Notary Public of the County and State aforesaid hereby certified that \_\_\_\_\_ personally appeared before me this day and being duly sworn by me acknowledged that he/she is \_\_\_\_\_ Town Clerk of the Town of Apex, and that by authority duly given and as the act of the Town, the forgoing instrument was signed by its Mayor, sealed with its corporate seal and attested by him/her as its \_\_\_\_\_ Town Clerk.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

My Commission expires: \_\_\_\_\_  
(SEAL) \_\_\_\_\_  
Notary Public

Attachment B:  
Diagram Showing Town Licensed Areas

