

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

REAL PROPERTY EXCHANGE AGREEMENT

THIS AGREEMENT, is made and entered this ____ day of _____, 2022, by and between the **City of Hendersonville**, a North Carolina municipal corporation (“City”) and The Henderson County Board of Public Education, a North Carolina limited liability Board of Education (the “Board of Education”);

WITNESSETH

THAT WHEREAS, the City, is the owner of that property, commonly known as “Berkeley Park, being that property shown on Plat Slide 7333 of the Henderson County Registry, having acquired it by that deed recorded in Deed Book 1363 at Page 221 of the Henderson County Registry, said property being hereinafter referred to as “Berkeley Park,”; and

WHEREAS, the Board of Education, is the owner of that property, commonly known as Edwards Park, being that +/- 1.47 acre parcel of property shown on plat slide 13621 of the Henderson County Registry, having acquired it by that deed recorded in Book 825 at Page 670 of the Henderson County Registry, less that portion of Edwards Park conveyed to the County of Henderson as described in Deed Book 3804 Pages 70 – 71 recorded in the Henderson County Registry, said remaining portion of the +/- 1.47 acre parcel being hereinafter referred to as “Edwards Park,”; and

WHEREAS, the City of Hendersonville wishes to acquire Edwards Park, for the relocation of the Laura Corn Mini-Golf; and

WHEREAS, the Board of Education wishes to acquire approximately 16 acres of Berkeley Park, including the historic baseball stadium, for Hendersonville High School athletic facilities, the approximate 16 acres being substantially shown and identified as “+/- 16.0 acre parcel” on Exhibit A, attached hereto and incorporated herein by reference, said +/- 16.0 acre parcel being hereinafter referred to the “+/- 16.0 Acre Tract; and

WHEREAS, the City of Hendersonville is willing to convey the +/- 16.0 Acre Tract and pay \$250,000, to the Board of Education in exchange for the Board of Education’s conveyance of Edwards Park to the City. The +/- 16.0 Acre Tract and Edwards Park are sometimes collectively referred to in this Agreement as the “Exchanged Properties”; each an “Exchange Property”); and

WHEREAS, the City of Hendersonville is willing to give the Board of Education an option to purchase the +/- 21.34 acre remaining portion of Berkeley Park located on the north side of Balfour Road if not used or conveyed by the City for economic development purposes, upon the terms set forth hereinbelow, said +/- 21.34 acres being shown and identified on the attached Exhibit A as “+/- 21.34 acre parcel,” and referred to hereinafter as the “Berkeley Remainder Tract”; and

WHEREAS, NCGS 160A-274 authorizes the City and Board of Education to sell, lease convey or exchange properties with each other upon such terms as their governing boards deem advisable.

NOW THEREFORE THIS AGREEMENT, that for an in consideration of the mutual terms and promises contained hereinbelow, the sufficiency of which is hereby acknowledged by all parties hereto, the parties agree as follows:

1. WHEREAS CLAUSES. The Whereas clauses above are incorporated herein and made an integral part of this Agreement.
2. EXCHANGE AGREEMENT. The parties agree to the following terms and conditions:
 - a. The City will convey the +/- 16.0 Acre Tract to the Board of Education. The conveyance shall be subject to the following specific encumbrances in favor of the City:
 - i. The City shall have the right to reserve a 20 foot utility easement for the City's existing sewer subject to the same terms and conditions as are in the City's standard utility easement deeds. The centerline of the 20 foot utility easement shall coincide with the existing sewer lines. Additionally, the City shall have an additional 10 foot construction easement on each side of the 20 foot utility easement to be available for use by the City during periods of time that active construction, maintenance or repair activities of the City are occurring within the 20 foot utility easement. The utility easement shall be available to the City for the placement of water, sewer, stormwater, but not conduit for the purpose of telecommunications facilities, such as fiber.
 - ii. The City shall have the right to reserve a 30 foot greenway easement around the entire perimeter of the +/- 16.0 Acre Tract. Additionally, the City shall have an additional 10 foot construction easement having one of its boundaries running coincident with the inner boundary of the 30 foot greenway easement to be available for use by the City during periods of time that active construction, maintenance or repair activities of the City are occurring within the 30 foot greenway easement. The greenway easement shall be dual purpose, and shall also be permitted to be used the placement of utilities within the easement, including water, sewer, stormwater, and conduit infrastructure for the purpose of telecommunications facilities, such as fiber. Additionally, the City shall be permitted to allow economic development grading and activity as needed within this 30 foot greenway easement should the balance of the Berkeley Mills Property be used by the City for economic development purposes and Balfour Road be relocated. Lastly, the City shall grant concurrent use of the greenway easement to the Board of Education for use by the Henderson County public schools for cross-country athletics purposes; provided, however, that construction of a greenway within the greenway easement by the City shall be subject to available funding.

- iii. From and after the conveyance of the +/- 16.0 Acre Tract to the Board of Education, the Board of Education shall assume full responsibility for maintenance of the entirety of the +/- 16.0 Acre Tract, including all facilities located thereon. The terms of this paragraph shall survive closing on the conveyance of the +/- 16.0 Acre Tract to the Board of Education.
- iv. From and after the conveyance of the +/- 16.0 Acre Tract to the Board of Education, the Board of Education shall assume full responsibility for maintenance of the water service line serving the restroom/concession building on the +/- 16.0 Acre Tract. The City shall be responsible only for the maintenance of the associated meter(s). Location and placement of the meter(s) shall at times remain subject to the sole discretion of the City. The terms of this paragraph shall survive closing on the conveyance of the +/- 16.0 Acre Tract to the Board of Education.
- v. The City shall retain an access easement across the entirety of the +/- 16.0 Acre tract for the purposes of exercising all of its rights with respect to the utility easement, the greenway easement, and maintenance of the meter.
- b. The City will pay \$250,000 to the Board of Education at closing, representing the difference in value between the Exchange Property conveyed to the Board of Education, and the Exchange Property received by the City pursuant to this Exchange Agreement (excluding the property to be put under option, the Berkeley Remainder Tract).
- c. The Board of Education will convey Edwards Park to the City. This conveyance shall be without restrictions imposed by the Board of Education in the deed. The County of Henderson has formally declined to negotiate for the acquisition of Edwards Park.
- d. The City will grant an option to the Board of Education for the Berkeley Remainder Tract upon the following terms:
 - i. The option shall only be effective if the Berkeley Remainder Tract is not used or conveyed by the City for economic development purposes within a reasonable time from the date of closing on Exchanged Properties, and once effective, the option shall be valid for a term of one year;
 - ii. The price for the Board of Education's exercise of the option (i.e. the purchase of the Berkeley Remainder Tract) shall be the payment to the City of \$350,000, plus the conveyance to the City of a +/- 1.0 acre tract that is a portion of the Board of Education administrative offices property, located at 414 4th Avenue West, Hendersonville, NC, having a PIN of 9568676778, said 1.0 acre tract being substantially as shown on Exhibit B, attached hereto and incorporated by reference. The City's option to purchase shall be subject to Henderson County's statutory right of first

refusal. In the event Henderson County elects to exercise its statutory right of first refusal, thereby precluding the Board of Education's conveyance of the +/- 1.0 acre tract to the City, the Board of Education shall pay to the City the fair market value of the +/- 1.0 acre tract. The fair market value shall be determined according to paragraph 11 below.

- iii. The Board of Education shall be entirely responsible for all maintenance and upkeep of the Berkeley Remainder Tract from and after the date of the conveyance. The maintenance requirement shall survive closing on the conveyance of the Berkeley Remainder Tract
 - iv. The City shall have the right to reserve a 30 foot greenway easement around the entire perimeter of the Berkeley Remainder Tract. The greenway easement shall be dual purpose, and shall also be permitted to be used pursuant to the same terms and conditions as 30 foot greenway easement in paragraph 2a ii above. Additionally, the City shall have an additional 10 foot construction easement having one of its boundaries running coincident with the inner boundary of the 30 foot greenway easement to be available for use by the City during periods of time that active construction, maintenance or repair activities of the City are occurring within the 30 foot greenway easement. The City shall grant concurrent use of the greenway easement to the Board of Education for use by the Henderson County public schools for cross-country athletics purposes; provided, however, that construction of a greenway within the greenway easement by the City shall be subject to available funding.
 - v. The City shall retain an access easement across the entirety of the Berkeley Remainder Tract for the purposes of exercising all of its rights with respect to the utility easement, the greenway easement, and maintenance of the meter on both the Berkeley Remainder Tract and the +/- 16.0 Acre Tract.
 - vi. The Board of Education shall be responsible for procuring at its expense the survey and subdivision plat required for the conveyance of the Berkeley Remainder Tract to the Board of Education, if required. The survey and subdivision plat shall be subject to the approval of the City, prior to its finalization and recordation, such approval to not be unreasonably withheld.
 - vii. The +/- 1.0 acre tract shown on Exhibit B shall be restricted to use as a park or green space available for public use between the hours of 7 am and 7 pm only. The City of Hendersonville may hold supervised events after 7 pm upon advanced notice to the Superintendent of the Board of Education.
- e. At no cost to the public, the Board of Education will grant the public access to the +/- 16.0 Acre tract, and if conveyed, the Berkeley Remainder Tract, including but not limited to any tennis courts constructed, but specifically excluding the historic

baseball stadium and any athletic fields constructed by or on behalf of the Board of Education. The terms of this paragraph shall survive all closings.

- f. The City will grant a right of first refusal to the Board of Education for Edwards Park and the 1.0 acre tract shown on Exhibit B.
 - g. The Board of Education will grant a right of first refusal to the City for the +/- 16.0 acre tract and, if conveyed, the Berkeley Remainder Tract. Any right of first refusal granted by the Board of Education will be subject to Henderson County's statutory right of first refusal.
 - h. With respect to an Exchange Property, the party obligated to convey title to the Exchange Property will be referred to as the "Conveying Party," and the party receiving title will be referred to as the "Acquiring Party" in this Agreement
- 3. CONVEYANCES INCLUDES HEREDITAMENTS. The conveyances of the Exchanged Properties between the parties hereto shall be by Special Warranty Deed and shall include all improvements, easements, appurtenances and hereditaments pertaining to the Exchanged Properties.
 - 4. EXISTING ENCUMBRANCES. The conveyances of the Exchanged Properties shall be subject to all existing easements, restrictions, and other encumbrances of record, except as otherwise required by the terms of this Agreement.
 - 5. POSSESSION. Each Conveying Party shall provide possession to the Acquiring Party at the Closing of the property being conveyed and received.
 - 6. CLOSING DATE. The closing ("Closing") shall occur not later than 30 days after the effective date of this Agreement at a location and time to be agreed upon by both parties hereto.
 - 7. AS-IS EXCHANGE. Both the City and the Board of Education agree that the Exchanged Properties are being conveyed to the other party, AS-IS, with no warranties, guarantees as to title (except as set forth in the special warranty deeds and other documents to be delivered at Closing), nor as to the condition of the Exchanged Properties, nor as to their fitness for any particular purpose or use. Nothing in this paragraph shall be interpreted so as to remove or lessen the obligations of the parties under this Agreement.
 - 8. CLOSING COSTS AND EXPENSES. Each party shall bear its own closing costs and expenses, including attorney's fees, and recording fees. The Board of Education shall pay all revenue stamps for its deed conveying the Edwards Park to the City, if applicable. The Board of Education shall pay the cost of preparing the deed conveying the Edwards Park to the City. The City shall pay the cost of preparing the deed conveying the +/- 16.0 Acre Tract to the Board of Education.
 - 9. BROKERS. There are no realtors or brokers involved in this transaction, and therefore each party represents that no realtors' or brokers' fees or commissions are owed.

10. SURVEYS. Except as otherwise provided herein, the Conveying Party shall be responsible for securing such surveys (as the selling party's expense) as may be needed to convey the Exchanged Property they are conveying pursuant to this Exchange Agreement. The survey shall be subject to the approval of the Acquiring Party, prior to the finalization and recordation of the survey, such approval to not be unreasonably withheld.
11. DETERMINATION OF FAIR MARKET VALUE. For purposes of this Agreement, fair market value shall be determined by an appraisal, performed by an MAI appraiser, to be selected and paid jointly by the City and the Board of Education. In the event the parties are unable to agree on the selection of the appraiser, the parties will each select an appraiser at their own expense, and the appraised values determined by of each parties' appraisers would be averaged together to determine the fair market value of the property being valued.
12. ASBESTOS ABATEMENT. The Board of Education grants to the City permission to begin asbestos abatement activities for any of the existing buildings located on Edwards Park property prior to closing. The City shall indemnify, defend and hold the Board of Education harmless from all losses, costs (including reasonable attorneys' and consultants' fees), damages, obligations, claims and liabilities (collectively, "Losses") arising out of the acts or omissions of the City, its employees, agents, contractors or representatives, on the Edwards Park property, including those Losses arising out of liens, injury or death to persons, except that the City shall have no obligation to indemnify the Board of Education to the extent such Losses arise from the acts or omissions of the Board of Education.
13. CLOSING CONDITIONS. Both the City's and the Board of Education's obligation to close on the Exchanged Properties is subject to the satisfaction of the following conditions as of Closing, any of which may be waived in writing by the Board of Education or the City:
- (a) If a subdivision plat is required to create the parcels comprising the Exchanged Properties and/or Berkeley Remainder Tract, then that subdivision plat has been approved by the applicable governmental authorities and recorded in the Henderson County Registry.
 - (b) From and after the Effective Date until the Closing, neither party shall not create or suffer any additional easements, restrictions, claims, rights-of-way, encroachments or other encumbrances or other matters affecting the property they are conveying whatsoever without the other party's prior written approval, which approval shall not be unreasonably withheld.
14. ASSIGNMENT. Neither party shall be authorized to assign this Agreement without the consent of the other party.
15. ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties, and all prior agreements are deemed to be superseded hereby.

16. AMENDMENT. This Agreement may be amended only by a written amendment, signed by both parties hereto.
17. LIEN WAIVER AFFIDAVITS. If requested by the other party, each party shall furnish at Settlement an affidavit and indemnification agreement in form satisfactory to the other executed by the party and any person or entity who has performed or furnished labor, services, materials or rental equipment as described in [N.C.G.S. § 44A-8](#) to their respective properties within 120 days prior to the date of Settlement verifying that each such person or entity has been paid in full and agreeing to indemnify the Acquiring Party and their title insurer against all loss from any cause or claim arising therefrom.
18. LIENS. All deeds of trust, liens, judgments and other such charges against the Conveying Party's Exchange Property must be paid and satisfied by the Conveying Party as of the date of Closing such that cancellation may be promptly obtained following Closing. Alternatively, the Conveying Party may obtain a release of its Exchange Property from the beneficiary of such deed of trust, lien, judgments or other such charges. The Conveying Party shall remain obligated to obtain any such cancellations following Closing. The terms of this paragraph shall survive all closings.
19. BINDING OBLIGATION. This Agreement shall not be binding on the parties hereto until it has been duly authorized by the City Council and the Board of Education at a properly called public meeting, and the Agreement has been signed by both parties and pre-audited in that manner required by the Local Government Budget and Fiscal Control Act.
20. HEADINGS. The use of headings, captions and numbers in this Exchange Agreement is solely for the convenience of identifying and indexing the various provisions in this Exchange Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Exchange Agreement.
21. APPLICABLE LAW, VENUE. This Exchange Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina. The sole and exclusive venue for any suit, claim or action shall be in a state or federal court having jurisdiction in Henderson County, North Carolina. Nothing herein shall be deemed to confer jurisdiction upon the federal courts, except as may be otherwise provided by law. This paragraph shall survive the closing of the Exchanged Properties, and shall also survive any termination of this Exchange Agreement.
22. ENTIRE OFFER; MODIFICATION. This Exchange Agreement supersedes all prior discussions and agreements among the City and Board of Education with respect to all matters contained herein, and this Exchange Agreement contains the sole and entire understanding among the City and Board of Education with respect thereto. This Exchange Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of the City and Board of Education.
23. AUTHORITY. Each party hereto warrants and represents that such party has full and complete authority to enter into this Exchange Agreement, and each person executing this Exchange Agreement on behalf of a party warrants and represents that he/she has been fully authorized to execute this Exchange Agreement on behalf of such party and that such party is bound by the signature of such representative. These representations and warranties shall

survive the closing of the purchase and sale of the Exchanged Properties, and shall also survive any termination of this Exchange Agreement.

24. COUNSEL. Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with this Exchange Agreement and has had ample opportunity to read, review, and understand the provisions of this Exchange Agreement. These representations and warranties shall survive the closing on the Exchanged Properties and shall also survive any termination of this Exchange Agreement.
25. NO CONSTRUCTION AGAINST PREPARER. No provision of this Exchange Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision. This paragraph shall survive the closing on the Exchanged Properties, and shall also survive any termination of this Exchange Agreement.
26. NO LIEN. This Exchange Agreement is not and shall not be deemed or considered to convey or be an interest in or lien against any of the Exchanged Properties.
27. TIME; DATES. Anywhere a day certain or time period is stated for payment or for performance of any obligation, the day certain or time period so stated enters into and becomes a part of the consideration for this Exchange Agreement. Any time period stated shall refer to consecutive calendar days. If any date set forth in this Exchange Agreement shall fall on, or any time period stated in this Exchange Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Exchange Agreement or any deadline under this Exchange Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date. All references to the "Effective Date," if any, shall be deemed to refer to the date the council for the City and the Board of Education issues a final approval of this Exchange Agreement, whichever occurs last.
28. E-VERIFY. Each party hereto shall comply with, and require all contractors and subcontractors performing the obligations under this Agreement to comply with, the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, "Verification of Work Authorization," sometimes known as E-verify for all contractors and subcontractors.
29. IRAN CONTRA. With the execution hereof, the Board of Education certifies that it is not on the Iran Final Divestment List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.58, and will not contract with anyone on such List in performance of the obligations hereunder.
30. DUPLICATE ORIGINALS. This Agreement shall be executed in duplicate originals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

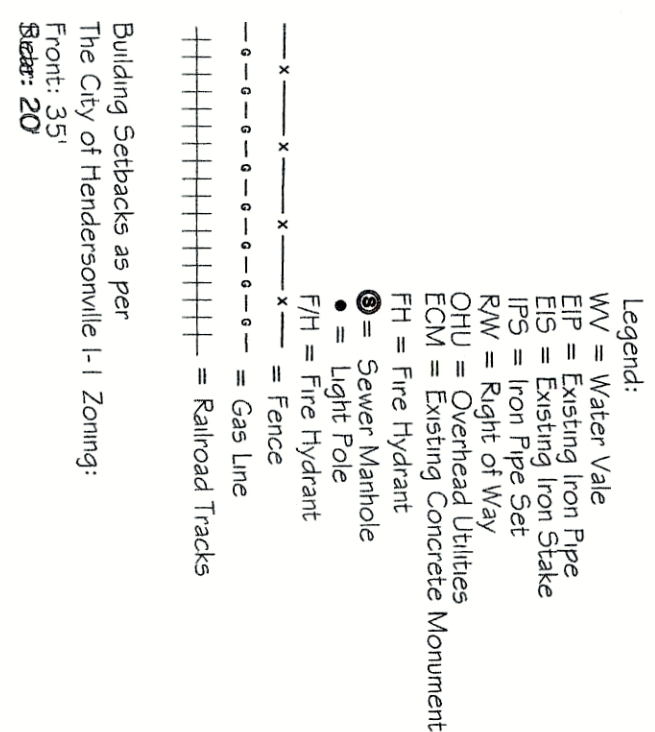
**THE HENDERSON COUNTY BOARD OF PUBLIC
EDUCATION**

By: _____ (SEAL)
Print Name and Title:

CITY OF HENDERSONVILLE

By: _____ (SEAL)
Print Name and Title:

DRAFT



Curve	Radius	Length	Chord	Chord Bear.
C1	140.00'	86.95'	87.46'	5.48°25'02" W
C2	1500.00'	245.29'	245.52'	5.71°18'50" W
C3	1000.00'	38.06'	38.06'	5.42°55'05" W
C4	382.34'	361.18'	347.90'	5.46°25'56" W
C5	275.00'	140.11'	138.60'	N 21°15'01" W

Course	Rating	Distance
5.65327.11.W	1.82.74	
5.65203.22.W	1.79.98	
5.73436.33.W	78.87	
5.69340.05.W	41.57	
5.67940.05.W	50.68	
5.11717.31.E	176.68	
5.55595.15.E	57.12	
5.68920.01.E	289.88	
5.59552.01.W	1081.8	
5.55325.25.W	87.01	
5.66919.32.W	81.35	
N.06339.15.W	217.16	
N.3551.02.W	26.07	

State of North Carolina
County of Henderson

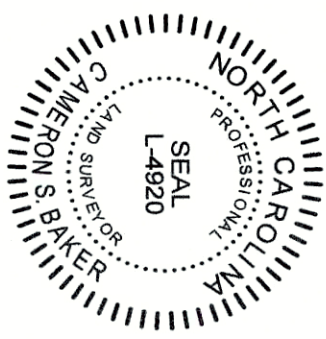
Review Officer of Henderson County

I, _____, certify that the map or plan to which this certification is affixed
meets all statutory requirements for recording.

I hereby certify that this plat meets applicable requirements as contained in the zoning ordinance and subdivision ordinance of the city of Hendersonville, North Carolina.

Planning Director Date

Exhibit A



Cameron S. Baker
I am drawn under my supervision from an actual survey that was my
supervision, (deed description recorded in Book 1353
Page 227) that the ratio of precision as calculated
latitudes and departures does not exceed 1:10,000 and that
this map was prepared in accordance with G.S. 47-30 as amended
Witness my original signature, license number and seal
this 20 day of SEP 20 22
[Signature]
[Seal]
(Professional Land Surveyor No. 1-9290)

I, Camron S. Baker, certify that this survey is of another category, such as the recombination of existing parcels, a court ordered survey, or other exception to the definition of subdivision such as an easement.

Professional Land Surveyor No. L-4920

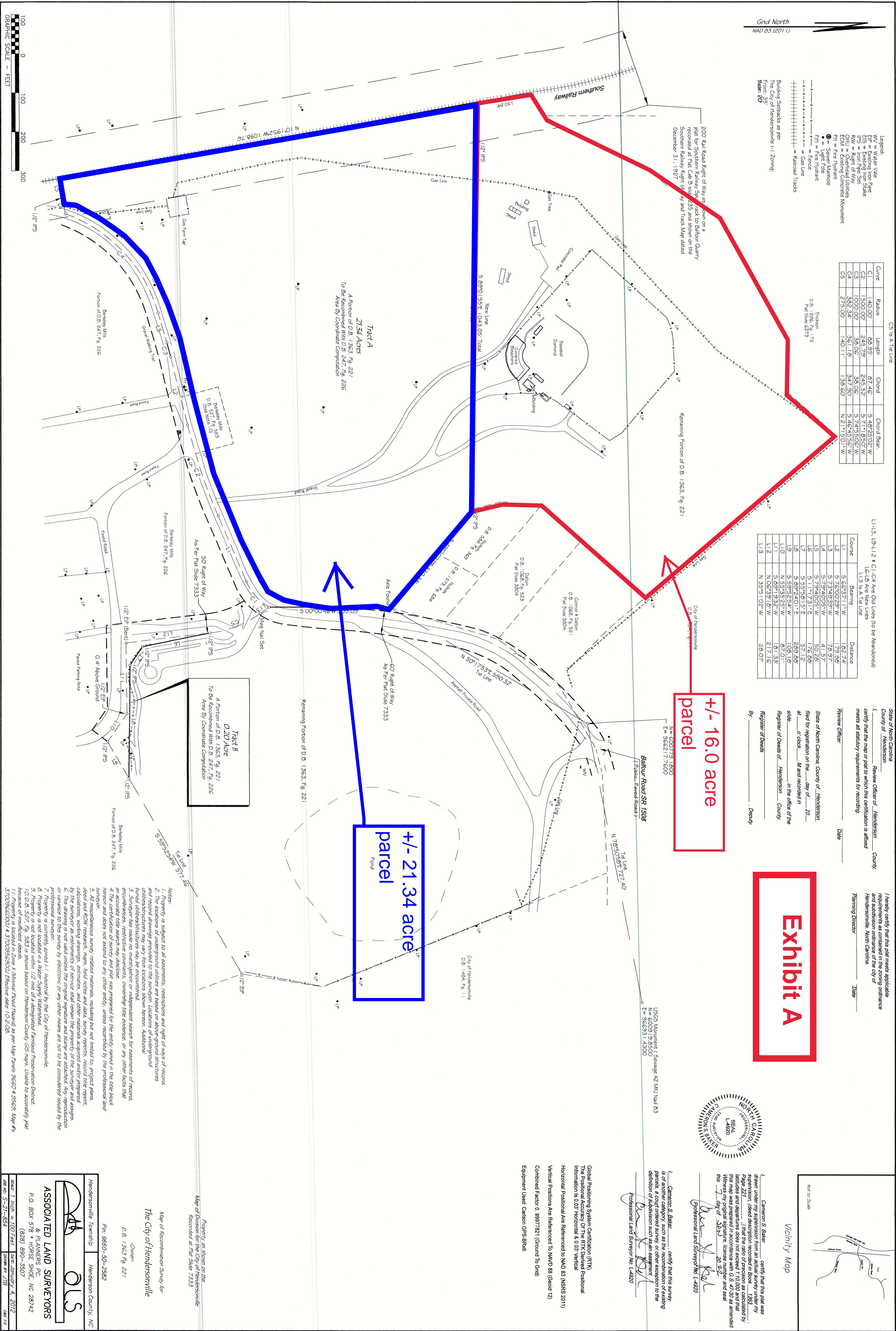
Global Positioning System Certification (RTX)
The Positional Accuracy Of The RTX Derived Positional Information Is 0.03 Horizontal & 0.03 Vertical

Horizontal Positional A/c Referenced To NAD 83 (NARS 2011)

Vertical Positions A/c Referenced To NAVD 88 (Geoid 12)

Combined Factor 0.09977821 (Ground To Grid)

Equipment Used: Carlson GPS-BR66



Bd of Ed Admin Bldg



July 27, 2022

Streets and Highways

- FREEWAY
- INTERSTATE
- BOULEVARD

- THOROUGHFARE
- COLLECTOR
- Local Roads
- Parcels

THIS IS NOT A SURVEY.

All information or data provided, whether subscribed, purchased or otherwise distributed, whether in hard copy or digital media, shall be at the user's own risk. Henderson County makes no warranties or guarantees, including the warranties of merchantability or of fitness for a particular purpose. Map data is not appropriate for, and is not to be used as, a geodetic, legal, or engineering base system. The data is not intended as a substitute for surveyed locations such as can be determined by a registered Public Land Surveyor, and does not meet the minimum accuracy standards of a Land Information System/Geographic Information System Survey in North Carolina (21 NCAC 56.1608).

