



REQUEST FOR BOARD ACTION

ITEM NO. 13.

DATE OF MEETING: January 7, 2013

REQUESTED BY: Trey Thurman, County Attorney/Board of Education

SHORT TITLE: Resolution Approving Settlement with Jamestown Properties

BACKGROUND: As part of the purchase contract for the land for the new Topsail High School, wastewater treatment was to be provided by the Seller. If the Seller failed to construct a wastewater treatment plant, the Board of Education was granted the right to construct a wastewater treatment package plant on the remainder property owned by the Seller, using a portion of the purchase price held in escrow by the Board of Education. When the Seller failed to construct the wastewater treatment facility, the Board of Education built a package plant for use by Topsail High School. In order to be able to recover sales taxes related to the construction of the new Topsail High School, the Board of Education transferred the school site and its rights to the wastewater package plant to Pender County. In return, the County has leased the property to the Board of Education for operation of Topsail High School.

The Seller conveyed its remainder property to a development company, and the current owners are Jamestown Pender Commercial, LLP and Jamestown Pender Residential, LLP. A dispute arose regarding the rights to the remainder property and the disposition of the escrowed portion of the purchase price. The Board of Education has negotiated a settlement of the issues in dispute with Jamestown which provides for continued wastewater availability to Topsail High School. The settlement documents are attached. Jamestown has requested that Pender County, as the current owner of the Topsail High School site, join in and approve the settlement.

SPECIFIC ACTION REQUESTED: To consider a resolution to review and approve the Settlement Agreement with Jamestown Properties.

COUNTY MANAGER'S RECOMMENDATION

Deferred to County Attorney.

Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Settlement Agreement among and between Jamestown Pender Commercial, LLP, Jamestown Pender Residential, LLP, the Pender County Board of Education and Pender County is approved. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Brown ___ McCoy ___ Tate ___ Ward ___ Williams ___

George R. Brown, Chairman

07/01/13
Date

ATTEST

01/07/13
Date

TERMINATION OF EXISTING EASEMENTS, LICENSES, AND AGREEMENTS AND
GRANT OF NEW EASEMENT AGREEMENT

THIS TERMINATION OF EXISTING EASEMENTS, LICENSES, AND AGREEMENTS AND GRANT OF NEW EASEMENT ("Agreement") is made as of this _____ day of _____, 2012 by and between PENDER COUNTY, a North Carolina body politic and corporate ("Pender County"); PENDER COUNTY BOARD OF EDUCATION, a North Carolina body politic and corporate ("School Board"); and JAMESTOWN PENDER COMMERCIAL, L.P., a Delaware limited partnership ("Owner"); and

WITNESSETH:

WHEREAS, Owner is the fee title owner of the parcel of real property shown and depicted as the "Waste Water Treatment System Easement Area" on the map entitled "Map of Survey for Pender County Board of Education" recorded in Map Book 43, Page 44, Slide 578 in the office of the Register of Deeds of Pender County, North Carolina ("Map"), said parcel containing fifteen (15.00) acres, more or less (hereinafter referred to as the "Easement Area"); and,

WHEREAS, School Board is the former owner of the parcel of real property shown and depicted on the Map as "Tract 1" containing twenty-six and seven hundred eleven thousandths (26.711) acres, more or less ("Former School Board Parcel"); and,

WHEREAS, School Board conveyed the Former School Board Parcel to its current owner, Pender County, by a General Warranty Deed dated February 23, 2007 and recorded on the same date in Book 3169, Page 220 in the office of the Register of Deeds of Pender County, North Carolina; and,

WHEREAS, Pender County has leased the Former School Board Parcel to the School Board pursuant to the Lease Agreement recorded in Book 3253, Page 229; and,

WHEREAS, School Board is the current owner of the parcel of real property shown and depicted on the Map as lying between the Former School Board Parcel and the

Easement Area and identified as "Pender County Board of Education" ("Current School Board Parcel"). (The Former School Board Parcel and the Current School Board Parcel are hereinafter sometimes referred to collectively as the "Parcels"); and,

WHEREAS, Owner and its predecessors in title to the Easement Area have granted to the School Board, as owner of the Former School Board Parcel, certain licenses and easements, and entered into certain agreements with School Board, all relating to wastewater treatment which licenses, easements, and agreements benefit the Former School Board Parcel, but not the Current School Board Parcel, and burden the Easement Area, including, but not limited to, the Agreement recorded in Book 3083, Page 27 and rerecorded in Book 3083, Page 41; Assignment of Construction Documents and Development Rights (and Creation of Easements) recorded in Book 3083, Page 1 and rerecorded in Book 3114, Page 282; Agreement recorded in Book 3083, Page 79; Wastewater and Development Agreement recorded in Book 3082, Page 326; Assignment and Assumption of Contracts and Agreement to Amend the Contracts recorded in Book 3083, Page 33; and the Access Easement recorded in Book 3085, Page 195 (collectively, the "Wastewater Treatment Rights"), the aforesaid documents all being recorded in the office of the Register of Deeds of Pender County, North Carolina; and,

WHEREAS, even though the Current School Board Parcel is not benefited by an easement over, or license to use, the Easement Area for the treatment of wastewater generated upon the Current School Board Parcel, the School Board has been using the Easement Area for treatment of said wastewater; and,

WHEREAS, Owner has requested that Pender County and School Board agree to terminate all licenses, easements, and agreements benefitting the Former School Board Parcel and the Current School Board Parcel and burdening the Easement Area, upon the terms and conditions set forth herein, so that the wastewater treatment facilities located on the Easement Area may be decommissioned, removed, and the Easement Area be made available to Owner for use free and clear of all licenses, easements, and agreements burdening the Easement Area and benefiting either or both of the Parcels in return for Owner assisting Pender County and School Board in obtaining alternative wastewater treatment service for all wastewater generated on, and flowing from, both the Former School Board Parcel and the Current School Board Parcel, and Pender County and School Board have agreed with Owner to so terminate said licenses, easements, and agreements; and,

WHEREAS, Owner, Pender County, and School Board desire to hereby enter into and execute this Agreement for the purpose of evidencing in writing their agreements and the terms and conditions thereof.

NOW, THEREFORE, for and in consideration of the mutual representations, covenants, and agreements set forth herein; for Ten and No/100 Dollars (\$10.00) paid by each party hereto to each other party hereto, the receipt of the same being acknowledged by each party; and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Pender County, School Board, and Owner do hereby agree as follows:

A. TERMINATION OF EXISTING LICENSES, EASEMENTS, AND AGREEMENTS

1. Owner, School Board, and Pender County agree that the aforesaid premises are true and accurate and are hereby incorporated by reference into this Agreement as a part thereof.
2. Pender County and School Board hereby agree that all licenses, easements, and agreements, including, but not limited to, the Wastewater Treatment Rights, burdening the Easement Area and benefitting the Former School Board Parcel and the Current School Board Parcel, if any, or either of them, are hereby terminated and extinguished, and Owner and its successors and assigns shall hereafter, and do, hold title to the Easement Area free and clear of all such licenses, easements, and agreements.

B. GRANT OF NEW EASEMENT

1. Subject to the provisions of Section C. below, Owner hereby grants, bargains, and conveys to Pender County and School Board and their successors and assigns in title ownership of the Former School Board Parcel and the Current School Board Parcel, a nonexclusive easement which shall benefit, be appurtenant to, and run with the title to, the Former School Board Parcel and the Current School Board Parcel, over, under, and upon the Easement Area ("New Easement") for the following purposes:
 - (a) To repair, maintain, replace, and use the existing improvements and wastewater treatment facilities currently located on the Easement Area and used for the treatment of wastewater generated upon the Former School Board Parcel and the Current School Board Parcel, including, but not limited to, all pipes, pumps, ponds, pools, and related fixtures ("Existing Facilities");
 - (b) To access the Easement Area to perform the aforesaid repair, maintenance, replacement, and use of the Existing Facilities and to disassemble and remove all portions of the Existing Facilities from the Easement Area as provided herein; and,
 - (c) To remediate, both before and after the removal of the Existing Facilities as required herein or otherwise, any violation of any applicable

environmental law, regulation, or ordinance on, under, or affecting the Easement Area resulting from the installation, operation, use, decommissioning, and removal of the Existing Facilities, as required by Section E below, including, but not limited to, any survey, assessment, or investigation necessary to identify any condition requiring remediation.

- (d) To conduct testing of the soil and groundwater beneath the Easement Area, prior to the termination of the New Easement, for compliance with all applicable environmental law, regulations and ordinances. Such testing shall be conducted by an engineer or environmental professional agreeable to the Owner, Pender County, and School Board, which agreement shall not be unreasonably withheld, conditioned, or delayed, with the initial tests being conducted within six (6) months from the date of this Agreement and repeated annually thereafter. The costs of such tests shall be borne by Pender County and School Board and the results provided in a written report to Owner in a timely manner following each series of tests.

C. TERMINATION OF NEW EASEMENT

The New Easement shall automatically terminate as provided in Section C.1 or C.2 below, as the case may be, as follows:

1. The New Easement shall automatically terminate upon the last to occur of all of the following matters:
 - (a) The availability to both of the Parcels of alternative wastewater treatment services provided by a public utility regulated by the North Carolina Utilities Commission or a wastewater treatment authority created by Pender County or by the governing board of any other North Carolina municipal corporation or political subdivision established under the North Carolina Water and Sewer Authorities Act ("New Facilities").
 - (b) The receipt by Pender County and School Board of written notice from the owner or operator of the New Facilities that the New Facilities have the ability to provide the Parcels with wastewater treatment capacity in an amount not less than the capacity of the Existing Facilities.
 - (c) The connection, at no cost or expense to Pender County or School Board, of the New Facilities to existing wastewater infrastructure located on the Parcels sufficient to provide for the discharge of wastewater generated on

the Parcels to the New Facilities ("Connection"); provided, however, that once the Connection is made and approved by all applicable governmental agencies for use, Pender County and School Board shall thereafter be solely responsible for all repair and replacement of the connected wastewater treatment infrastructure located on the Parcels. Notwithstanding the foregoing, Owner will, to the extent Owner is contractually and legally able to do so, assign any and all warranties from contractors and material suppliers providing services or materials to Owner for the construction of the Connection.

- (d) The approval by the North Carolina Division of Water Quality of the "as-built" plans for the New Facilities and the Connection if such approval is required by law.
 - (e) The payment by Owner of all "tap on" and similar fees and charges necessary to initiate the use of the New Facilities by the Parcels, but Pender County and School Board shall thereafter be responsible for all subsequent user fees, usage deposits, or charges imposed by the owner or operator of the New Facilities for the on-going use, maintenance, repair, and replacement of the New Facilities and the Connection.
2. Notwithstanding the provisions of Section C.1 above, and regardless of whether or not all of the requirements set forth therein have occurred, the New Easement shall automatically terminate in the event the School Board and Pender County shall cease at any time to use the Existing Facilities for wastewater treatment for a period of one (1) year. School Board and Pender County covenant and agree with Owner that if, for any reason or no reason, they cease to use the Existing Facilities for wastewater treatment for thirty (30) consecutive days, within ten (10) days after said thirtieth (30th) consecutive day of non-use, School Board and Pender County will notify Owner in writing that they have not so used the Existing Facilities setting forth in said notice the last date they so used the Existing Facilities.
3. Notwithstanding the automatic nature of the termination of the New Easement as set forth above in Section C.1 and Section C.2, Pender County and School Board agree that, upon written request of Owner, Pender County and School Board will execute a recordable Termination of New Easement Agreement prepared and recorded at the sole cost and expense of Owner, and acceptable to Pender County and School Board, said acceptance not to be unreasonably delayed, conditioned, or withheld.

D. GRANT OF TEMPORARY EASEMENTS

1. School Board and Pender County hereby grant a temporary access and construction easement ("Temporary Construction Easement") to Owner, and its employees, agents, or contractors, over the Former School Board Parcel and the Current School Board Parcel for the purpose of the installation and construction of the Connection, including, but not limited to, all pipes, pumps, access points, and other facilities necessary to connect all improvements on the Former School Board Parcel and the Current School Board Parcel to the New Facilities.
2. The Temporary Construction Easement shall automatically expire and terminate upon the approval of all governmental agencies of the Connection and the discharge of wastewater generated on the Parcels to the New Facilities.
3. Notwithstanding the automatic nature of the termination of the Temporary Construction Easement as set forth above, Owner agrees that, upon written request by Pender County and/or School Board, Owner will execute a recordable Termination of Temporary Construction Easement Agreement prepared and recorded at the sole cost and expense of the requesting party, and acceptable to Owner, said acceptance not to be unreasonably delayed, conditioned, or withheld.

E. OBLIGATIONS OF PENDER COUNTY AND SCHOOL BOARD UPON TERMINATION OF THE NEW EASEMENT

1. Upon receipt of written notice that all of the requirements set forth in Section C.1 above have been completed ("Availability Notice") or that the New Easement has been terminated pursuant to Section C.2 above ("Termination Notice"), Pender County and School Board shall, at their sole cost and expense:
 - (a) Within thirty (30) days after receipt of the Availability Notice or Termination Notice, as the case may be, commence the decommissioning of the Existing Facilities and the removal of all components of the Existing Facilities ("Components") from the Easement Area. Owner hereby waives and relinquishes any right of ownership or title to the Components that Owner has or may have and Owner will, upon written request of Pender County or School Board, execute in recordable form a Quitclaim Bill of Sale containing no warranties of title prepared and recorded at the sole cost and expense of the requesting party, and acceptable to Owner, said acceptance not to be unreasonably delayed, conditioned, or withheld. The removal of all of the Components from the Easement Area shall be completed within ninety (90) days after the receipt

by Pender County and School Board of the Availability Notice or the Termination Notice.

- (b) Upon the completion of the removal of the Components from the Easement Area, cause an environmental engineer ("Engineer") licensed by the State of North Carolina and acceptable to Owner, which acceptance shall not be unreasonably delayed, conditioned, or withheld, (i) to conduct all environmental assessments, surveys, and investigations of the Easement Area necessary to determine if the construction, use, operation, or removal of the Existing Facilities have complied with all applicable environmental laws, regulations, and ordinances so that the Easement Area meets all applicable residential soil standards and ground water standards; and, (ii) in the event the Engineer determines that there has been any failure to comply with all the applicable standards, to identify the remedial steps that will be necessary to cure such failures and cause the Easement Area to thereafter meet all applicable residential soil standards and ground water standards ("Remedial Actions"). The report by the Engineer of the results of such survey and investigation ("Report") shall be in writing and shall be certified to Pender County, School Board, and Owner, and shall be delivered to Pender County, School Board, and Owner within thirty (30) days after the completion of the removal of the Components from the Easement Area.
- (c) In the event that the Report indicates that Remedial Actions are required, Pender County and School Board shall, at their sole cost and expense, cause the Remedial Actions to be performed by a contractor or contractors licensed by the state of North Carolina and acceptable to Owner, which acceptance shall not be unreasonably delayed, conditioned, or withheld, to perform such Remedial Actions.
- (d) Within ninety (90) days after the delivery of the Report to Pender County, School Board, and Owner, Pender County and School shall:
 - (i) Cause all Remedial Actions necessary to cure all environmental violations resulting from the installation, use, operation, or removal of the Existing Facilities and the Components to be completed and certified by all applicable governmental agencies to be satisfactorily completed; and,

- (ii) Cause the Existing Facilities to be certified in writing by all applicable governmental agencies to be decommissioned.
- 2. Owner hereby grants a temporary access and removal easement ("Temporary Removal Easement") to Pender County and School Board, and their employees, agents, or contractors, over the Easement Area for the purpose of (i) the removal of the Components; (ii) the conduct of the environmental assessments, surveys, and investigations by the Engineer; and (iii) the performance of the Remedial Actions, if necessary, which Temporary Removal Easement shall automatically terminate upon the approval of the removal of the Components by Owner and, if necessary, the certification of the satisfactory completion of all required Remedial Actions by all applicable governmental agencies.
- 3. Notwithstanding the automatic nature of the termination of the Temporary Removal Easement as set forth above, Pender County and School Board agree that, upon written request by Owner, Pender County and School Board will execute a recordable Termination of Temporary Removal Easement Agreement prepared and recorded at the sole cost and expense of Owner, and acceptable to Pender County and School Board, said acceptance not to be unreasonably delayed, conditioned, or withheld.

F. FAILURE OF PENDER COUNTY, SCHOOL BOARD, OR OWNER TO EXECUTE EASEMENT TERMINATION AGREEMENTS

In the event Pender County or School Board shall fail or refuse to execute a Termination of New Easement Agreement as provided in Section C.3 above or a Termination of Temporary Removal Easement Agreement as provided in Section E.3 above, or in the event Owner shall fail or refuse to execute a Termination of Temporary Construction Easement as provided in Section D.3 above, Pender County, School Board, and Owner hereby agree that the aforesaid easements shall be conclusively deemed terminated and of no further force or effect if:

- (a) The owner of the real property burdened by said easement ("Burdened Owner") records in the office of the Register of Deeds of Pender County, North Carolina, an Affidavit stating that the relevant easement has been terminated as set forth herein; and,
- (b) Attaches to said Affidavit a copy of a written notice from said Burdened Owner to the party or parties to whom the relevant easement was granted herein and who is benefited by said easement ("Benefited Party") stating

that the relevant easement has terminated and the reason for the termination ("Easement Termination Notice"); and,

- (c) Also attaches to said Affidavit a registered or certified mail receipt showing that the Easement Termination Notice had been delivered to the Benefited Party or Parties, or the fact that delivery was refused by the Benefited Party or Parties;
- (d) Provided, however, that said Easement Termination Notice shall not be effective if, within thirty (30) days after the recording of said Affidavit by the Burdened Owner, the Benefited Party or Benefited Parties, as the case may be, records an Affidavit stating that the relevant easement has not been terminated as set forth in the Easement Termination Notice and that it remains in full force and effect.

G. MISCELLANEOUS PROVISIONS

- 1. **Notice.** Any notice or communication required or permitted in connection with this Agreement shall be in writing and transmitted by any of the following methods: (i) by personal delivery (including a national company's overnight courier service), addressed to the respective party at the address specified herein, or (ii) by telecopier addressed to the respective party at the telecopier number specified herein. Notices or communications sent by personal service, including notices sent by a national overnight courier service, shall be deemed received upon receipt or refusal of receipt. Notices or communications sent by telecopier shall be deemed received twenty-four (24) hours after their transmission from a telecopier machine with the capability to specify whether the communication was received by the receiving telecopy machine and to print a report stating its receipt if such report is, in fact, printed. The addresses and telecopier numbers to use are as follows:

If to School Board:

Attention: _____
Telephone: _____
Telecopier: _____

With a copy to:

If to Pender County:

Attention: _____
Telephone: _____
Telecopier: _____

With a copy to:

If to Owner:

JAMESTOWN PENDER COMMERCIAL, L.P.

Attention: _____
Telephone: _____
Telecopier: _____

With a copy to:

Ward and Smith, P.A.
Attention: Alex Dale
University Corporate Center
127 Racine Drive
Post Office Box 7068
Wilmington, NC 28406-7068

2. **Exhibits.** All exhibits referred to in this Agreement are incorporated herein by reference.
3. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns.
4. **Governing Law.** This Agreement shall be performed in the State of North Carolina. Notwithstanding the principles of conflicts of law, the laws of the State of North Carolina shall govern and control the validity, interpretation, performance and enforcement of this Agreement. Further, any action relating to this Agreement shall be instituted and prosecuted in the courts of Pender County, North Carolina. Seller and Buyer each consent to the jurisdiction of said courts and waive any right or defense relating to such jurisdiction and venue.
5. **Construction.** This Agreement is the result of negotiations among the parties hereto and their respective counsel. This Agreement shall not be construed more strictly against one party than the other because it may have been drafted by one of the parties or its counsel and each of the parties hereto hereby acknowledge and agree that each party hereto has contributed substantially and materially in the negotiation and drafting of this Agreement.
6. **Severability; Survival.** In the event that any term or condition of this Agreement or the application thereof to any circumstance or situation shall be invalid or unenforceable in whole or in part, the remainder hereof and the application of said term or condition to any other circumstance or situation shall not be affected thereby and each term and condition of this Agreement shall be valid and enforceable to the full extent permitted by law.
7. **Section Headings.** The Section headings used in this Agreement are for convenience of reference only and shall not be considered terms of this Agreement.
8. **Waiver.** Failure by Seller or Buyer to insist upon or enforce any of its rights hereunder shall not constitute a waiver thereof.
9. **Amendments.** This Agreement and all documents and instruments executed in connection herewith may be amended, modified or supplemented only by a written instrument executed by both parties.

(Signatures appear on the following pages)

PENDER COUNTY, NORTH CAROLINA
a North Carolina Municipal Corporation and Body Politic

By: _____

STATE OF NORTH CAROLINA
COUNTY OF PENDER

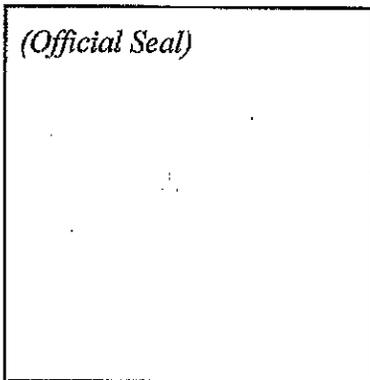
I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: _____

Date: _____

Signature of Notary Public

Notary's printed or typed name

My commission expires: _____



Notary seal or stamp must appear within this box.

PENDER COUNTY BOARD OF EDUCATION
a North Carolina Municipal Corporation and Body Politic

By: _____

STATE OF NORTH CAROLINA

COUNTY OF PENDER

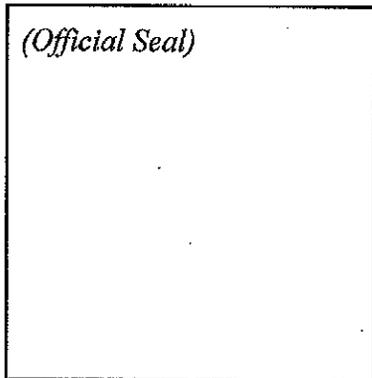
I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: _____

Date: _____

Signature of Notary Public

Notary's printed or typed name

My commission expires: _____



Notary seal or stamp must appear within this box.

JAMESTOWN PENDER COMMERCIAL, L.P.

By: _____

STATE OF _____

COUNTY OF _____

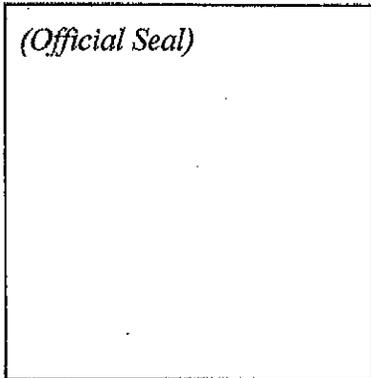
I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: _____

Date: _____

Signature of Notary Public

Notary's printed or typed name

My commission expires: _____



Notary seal or stamp must appear within this box.

081034-00001
ND: 4825-0383-5920, v. 5

STATE OF NORTH CAROLINA

COUNTY OF PENDER

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS ("Agreement"), entered into on the ___ day of _____, 2012, by and between the PENDER COUNTY BOARD OF EDUCATION and PENDER COUNTY, parties of the first part; and JAMESTOWN PENDER COMMERCIAL, L.P. and JAMESTOWN PENDER RESIDENTIAL, L.P. (collectively, "Jamestown Pender"), parties of the second part;

WITNESSETH:

WHEREAS, the Pender County Board of Education ("BOE") is a county board of education organized and existing pursuant to Chapter 115C of the North Carolina General Statutes in Pender County, North Carolina;

WHEREAS, Pender County ("County") is a county organized and existing pursuant to Chapter 153A of the North Carolina General Statutes;

WHEREAS, Jamestown Pender Commercial, L.P. ("JP Commercial") is a limited partnership organized and existing under the laws of the State of Delaware, and JP Commercial is licensed to do business in the State of North Carolina;

WHEREAS, Jamestown Pender Residential, L.P. ("JP Residential") is a limited partnership organized and existing under the laws of the State of Delaware, and JP Residential is licensed to do business in the State of North Carolina;

WHEREAS, Hampstead 504, LLC ("H504") and Movies One, LLC ("Movies One") instituted an action in the Superior Court of Pender County, North Carolina, entitled Movies One, LLC and Hampstead 504, LLC, Plaintiffs v. ABZ, LLC, Jamestown Pender Commercial, L.P., Jamestown Pender Residential, L.P., and Pender County Board of Education, Defendants, bearing Civil Action File No. 08-CVS-499, in which H504 and Movies One sought damages from JP Commercial and JP Residential (the "Lawsuit");

WHEREAS, JP Commercial and JP Residential filed counterclaims against Movies One and H504 on the basis of fraud, fraudulent misrepresentation, breach of contract, and other claims in the Lawsuit;

WHEREAS, the BOE asserted a counterclaim against H504 and Movies One and a crossclaim against Jamestown Pender on the basis of breach of contract concerning the construction of a wastewater treatment facility ("Current Facility") on real property owned by JP Commercial;

WHEREAS, the BOE built and operates the Current Facility on real property owned by JP Commercial to service all three school campuses near the Jamestown Pender property, which are Topsail Elementary, Topsail Middle, and Topsail High School;

WHEREAS, the BOE conveyed to the County the 26.711 acre parcel acquired by the BOE in October 2006 ("New High School Tract") by General Warranty Deed dated and recorded February 23, 2007 in the Pender County Registry ("County's New High School Tract Deed");

WHEREAS, the County's New High School Tract Deed provides, in addition to conveyance of the New High School Tract, that it conveys "[a]ll interests in real property, including easements," in a "Wastewater Development and Service Agreement recorded in Book 3082, Page 326" and in three other recorded documents;

WHEREAS, the BOE leased from the County, and the County leased to the BOE, the New High School Tract pursuant to a lease agreement titled "New Topsail High School Lease" dated January 16, 2007, as amended, and recorded in Book 3253, Page 299 of the Pender County Registry;

WHEREAS, a dispute has arisen between the BOE and the County, on the one part, and Jamestown Pender, on the other part, concerning the operation of the Current Facility on the JP Commercial real property that services, among others, the New High School Tract, including whether any easement exists for the operation of the Current Facility and, if so, whether the operation of the Current Facility overburdens such easement ("Easement Dispute");

WHEREAS, the parties to this Agreement (collectively, "Parties" or individually, "Party") have resolved all matters between them and desire to settle all matters and controversy between and among them in regards to the issues alleged in the Lawsuit or that could have been alleged in the Lawsuit, as well as all issues concerning the Easement Dispute, in accordance with terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the execution of this document, the dismissal of claims, the releases hereinafter set forth, the mutual promises set forth herein, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. Preamble. The recitals and provisions of the preamble set forth above are incorporated herein by reference as if fully set forth.

2. Execution and Recordation of Termination of Easements, Licenses, and Agreements and Grant of New Easement. On the date of this Agreement, the County, BOE, and JP Commercial shall sign, execute, and enter into the Termination of Easements, Licenses, and Agreements and Grant of New Easement agreement ("Easement Termination and Grant Agreement"), an unsigned copy of which is attached and incorporated herein as Exhibit A, and shall authorize their attorneys to proceed with recording of this document with the Pender County Registry to effectuate the terms therein.

3. Dismissal of Lawsuit Claims. On the date of this Agreement, the BOE shall instruct its attorneys to execute and file on the same date a Notice of Voluntary Dismissal, dismissing all of the BOE's claims against all parties in the Lawsuit with prejudice, in the form attached and incorporated hereto as Exhibit B to this Agreement.

4. BOE's Release. The BOE, for itself and on behalf of all of its agents, attorneys, members, employees, representatives, successors, and assigns, does hereby release and forever discharge JP Residential, JP Commercial, H504, Movies One, East Coast Development II, LLC, and their partners, members, managers, officers, employees, insurers, agents, attorneys, successors, and assigns, and any and all entities affiliated in any manner with JP Residential or its partners, or JP Commercial or its partners ("Released Parties"), of and from any and all actions, causes of action, complaints, allegations, claims for relief, damages, costs, liabilities, claims for payment, and other claims and/or demands of whatsoever kind or nature, known and unknown, suspected and unsuspected, whether arising out of contract, tort, or otherwise, based upon, arising out of, or in any way connected with any transactions or other occurrences from the beginning of time until the date of this Agreement, including, but not limited to, any and all claims concerning the Easement Dispute, any and all claims and any and all matters or things set

forth in the Lawsuit or that could have been set forth in the Lawsuit, and any costs or attorneys' fees incurred in connection with the same. Provided, further, that the BOE hereby releases and hereby acknowledges that no obligation is owed to it by, and no rights are held by it against, the Released Parties, separately or collectively, concerning any agreements entered into prior to the date of this Agreement, including, but not limited to, (i) the April 14, 2006 Agreement between ABZ, LLC, H504, and Movies One, as amended by a First Amendment dated September 14, 2006 and a Second Amendment dated October 20, 2006; (ii) the September 8, 2006 Purchase and Sale Contract between H504, Movies One, and the BOE; (iii) the September 15, 2006 Agreement between the BOE, ABZ, LLC, Movies One, and H504 recorded in Book 3083, Page 27 of the Pender County Registry; (iv) the Escrow Agreement dated October 25, 2006, between BOE, H504, Movies One, and The Title Company of North Carolina, Inc.; (v) the Assignment and Assumption of Contracts and Agreement to Amend Contracts dated October 26, 2006, including its exhibits, recorded in Book 3083, Page 33 of the Pender County Registry; (vi) the Assignment and Assumption of Construction Documents and Development Rights dated October 25, 2006, including its exhibits, recorded in Book 3083, Page 1 of the Pender County Registry; (vii) the Wastewater Development and Service Agreement dated October 27, 2006, recorded in Book 3082, at Page 326 of the Pender County Registry; (viii) the Agreement between the BOE, Cooperative Bank, and Frederick Willetts, III, as Trustee, dated September 29, 2006, recorded in Book 3083, at Page 79 of the Pender County Registry; (iv) any agreement not heretofore listed that arises out of the closing between the BOE, on the one part, and H504 and Movies One, on the other part, on or about October 30, 2006; or (v) any agreement not heretofore listed that arises out of the closing between H504 and Movies One, on the one part, and Jamestown Pender, on the other part, on or about November 1, 2006. The BOE acknowledges and agrees that, upon execution of this Agreement by all Parties, there shall be no binding agreement in any form or nature between the BOE and Jamestown Pender, separately or collectively, other than this Agreement and the Easement Termination and Grant Agreement, and the BOE acknowledges and agrees that any easement that may have existed, under any agreement or other document, on real property owned by JP Commercial prior to the date of this Agreement, for the construction, operation, or maintenance of the Current Facility, or for any other purpose concerning any

wastewater treatment facility, has been fully and finally terminated by virtue of the Easement Termination and Grant Agreement. Provided, however, that this Paragraph and the release herein does not apply to this Agreement, the Easement Termination and Grant Agreement, or the terms and conditions therein and herein.

5. County's Release. The County, for itself and on behalf of all of its agents, attorneys, officers, commissioners, employees, representatives, successors, and assigns, does hereby release and forever discharge the Released Parties of and from any and all actions, causes of action, complaints, allegations, claims for relief, damages, costs, liabilities, claims for payment, and other claims and/or demands of whatsoever kind or nature, known and unknown, suspected and unsuspected, whether arising out of contract, tort, or otherwise, based upon, arising out of, or in any way connected with any transactions or other occurrences from the beginning of time until the date of this Agreement, including, but not limited to, any and all claims concerning the Easement Dispute, any and all claims and any and all matters or things set forth in the Lawsuit or that could have been set forth in the Lawsuit, and any costs or attorneys' fees incurred in connection with the same. Provided, further, that the County hereby releases and hereby acknowledges that no obligation is owed to it by, and no rights are held by it against, the Released Parties, separately or collectively, concerning any agreements entered into prior to the date of this Agreement, including, but not limited to, (i) the April 14, 2006 Agreement between ABZ, LLC, H504, and Movies One, as amended by a First Amendment dated September 14, 2006 and a Second Amendment dated October 20, 2006; (ii) the September 8, 2006 Purchase and Sale Contract between H504, Movies One, and the BOE; (iii) the September 15, 2006 Agreement between the BOE, ABZ, LLC, Movies One, and H504 recorded in Book 3083, Page 27 of the Pender County Registry; (iv) the Escrow Agreement dated October 25, 2006, between BOE, H504, Movies One, and The Title Company of North Carolina, Inc.; (v) the Assignment and Assumption of Contracts and Agreement to Amend Contracts dated October 26, 2006, including its exhibits, recorded in Book 3083, Page 33 of the Pender County Registry; (vi) the Assignment and Assumption of Construction Documents and Development Rights dated October 25, 2006, including its exhibits, recorded in Book 3083, Page 1 of the Pender County Registry; (vii) the Wastewater Development and Service Agreement dated October 27, 2006, recorded in

Book 3082, at Page 326 of the Pender County Registry; (viii) the Agreement between the BOE, Cooperative Bank, and Frederick Willetts, III, as Trustee, dated September 29, 2006, recorded in Book 3083, at Page 79 of the Pender County Registry; (iv) any agreement not heretofore listed that arises out of the closing between the BOE, on the one part, and H504 and Movies One, on the other part, on or about October 30, 2006; or (v) any agreement not heretofore listed that arises out of the closing between H504 and Movies One, on the one part, and Jamestown Pender, on the other part, on or about November 1, 2006. The County also acknowledges and agrees that any and all easements obtained by the County by virtue of the County's New High School Tract Deed, and any easements of any kind that the County may have held on real property owned by JP Commercial or JP Residential prior to the date of this Agreement, have been fully and finally terminated by the Easement Termination and Grant Agreement. Provided, however, that this Paragraph and the release herein does not apply to this Agreement, the Easement Termination and Grant Agreement, or the terms and conditions therein and herein.

6. JP Commercial's and JP Residential's Release. JP Commercial and JP Residential, separately and collectively for themselves, and on behalf of all of their agents, officers, partners, representatives, successors, and assigns, do hereby release and forever discharge the BOE and the County and their officers, agents, employees, attorneys, representatives, successors, and assigns, of and from any and all actions, causes of action, complaints, allegations, claims for relief, damages, costs, liabilities, claims for payment, and other claims and/or demands of whatsoever kind or nature, known and unknown, suspected and unsuspected, whether arising out of contract, tort, or otherwise, based upon, arising out of, or in any way connected with any transactions or other occurrences from the beginning of time until the date of this Agreement, including, but not limited to, any and all claims concerning the Easement Dispute, any and all claims and any and all matters or things set forth in the Lawsuit or that could have been set forth in the Lawsuit, and any costs or attorneys' fees incurred in connection with the same. Provided, further, that JP Commercial and JP Residential hereby releases and hereby acknowledges that no obligation is owed to them by, and no rights are held by them against, the BOE or the County, separately or collectively, concerning any agreements entered into prior to the date of this Agreement, including, but not limited to, (i) the April 14,

2006 Agreement between ABZ, LLC, H504, and Movies One, as amended by a First Amendment dated September 14, 2006 and a Second Amendment dated October 20, 2006; (ii) the September 8, 2006 Purchase and Sale Contract between H504, Movies One, and the BOE; (iii) the September 15, 2006 Agreement between the BOE, ABZ, LLC, Movies One, and H504 recorded in Book 3083, Page 27 of the Pender County Registry; (iv) the Escrow Agreement dated October 25, 2006, between BOE, H504, Movies One, and The Title Company of North Carolina, Inc.; (v) the Assignment and Assumption of Contracts and Agreement to Amend Contracts dated October 26, 2006, including its exhibits, recorded in Book 3083, Page 33 of the Pender County Registry; (vi) the Assignment and Assumption of Construction Documents and Development Rights dated October 25, 2006, including its exhibits, recorded in Book 3083, Page 1 of the Pender County Registry; (vii) the Wastewater Development and Service Agreement dated October 27, 2006, recorded in Book 3082, at Page 326 of the Pender County Registry; (viii) the Agreement between the BOE, Cooperative Bank, and Frederick Willetts, III, as Trustee, dated September 29, 2006, recorded in Book 3083, at Page 79 of the Pender County Registry; (ix) any agreement not heretofore listed that arises out of the closing between the BOE, on the one part, and H504 and Movies One, on the other part, on or about October 30, 2006; or (x) any agreement not heretofore listed that arises out of the closing between H504 and Movies One, on the one part, and Jamestown Pender, on the other part, on or about November 1, 2006. JP Commercial and JP Residential acknowledge and agree that, upon execution of this Agreement by all parties, there shall be no binding agreement in any form or nature between the BOE and Jamestown Pender, separately or collectively, other than this Agreement and the Easement Termination and Grant Agreement, and Jamestown Pender acknowledges and agrees that any easement that may have existed, under any agreement or other document, on real property owned by JP Commercial prior to the date of this Agreement, for the construction, operation, or maintenance of the Current Facility, or for any other purpose concerning any wastewater treatment facility, has been fully and finally terminated by virtue of the Easement Termination and Grant Agreement. Provided, however, that this Paragraph and the release herein does not apply to this Agreement, the Easement Termination and Grant Agreement, or the terms and conditions therein and herein.

7. Attorneys' Fees, Costs, and Taxes. The Parties agree to pay and bear their own attorneys' fees and other costs and expenses expended by them in connection with the Lawsuit and the matters addressed therein and herein. Each of the Parties also shall be separately and solely responsible for any and all state and federal tax consequences resulting from its respective conduct and from the Settlement Payment made pursuant to this Agreement.

8. Entire Agreement. This Agreement, along with its attached exhibits and any agreements referenced herein, constitutes the entire agreement between the Parties pertaining to the subject matter contained herein. The terms of this Agreement are contractual and not mere recitals.

9. Governing Law and Venue. The validity, construction, interpretation, and administration of this Agreement shall be governed by the substantive laws of the State of North Carolina. Venue shall be in Pender County, North Carolina.

10. No Admissions. The Parties agree that this is a compromised settlement of disputed claims and that acceptance of any benefits pursuant to this Agreement is intended merely to terminate any and all claims and that the acceptance of benefits under this Agreement or payment of such benefits is not to be construed as an admission of liability or acquiescence by any party to the claims and contentions of any other party. The Parties specifically acknowledge that there are pending claims asserted by and between H504, Movies One, JP Commercial, and JP Residential, and the Parties agree that this Agreement has no impact or bearing on any pending claims of H504, Movies One, JP Commercial, and JP Residential against each other.

11. Assumption of Risk. The Parties expressly waive and assume the risk of any and all claims for damages or other relief which exist as of this date, but of which the Parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Parties' decision to execute this Agreement. The Parties further agree that the acceptance of the consideration as agreed to by the Parties shall act as a complete compromise of matters involving disputed issues of law and fact. The Parties assume the risk that the facts or law may be other than he or she believes.

12. Waivers. The failure of a Party to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver by a Party of any breach of any of the

terms and conditions of this Agreement, shall not be construed as thereafter waiving any terms and conditions, but the same shall continue and remain in full force and effect as if no forbearance or waiver had occurred. No such waiver shall be enforceable unless in writing and signed by the Party to be charged therewith.

13. Interpretation. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Agreement have the meanings assigned to them in this Agreement, words denoting the singular number include the plural and vice versa, and words importing one gender include the other gender; (ii) a reference to any agreement or other instrument shall, subject to any contrary provision herein, be deemed to include a reference to that agreement or other instrument as amended or replaced from time to time; (iii) a reference to a paragraph without further reference to a specific paragraph number is a reference to the paragraph in which the reference appears, and this rule also shall apply to sentences; and, (iv) the words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular provision.

14. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties' respective successors and assigns. The Parties shall not assign or delegate this Agreement or any of their obligations or rights under this Agreement, except as may be expressly authorized in this Agreement or with the written consent of all Parties to this Agreement.

15. Authority. The representative executing this Agreement for each of the Parties hereby represents and warrants that he or she is authorized to enter into this Agreement and that this Agreement shall be the legal, valid, and binding obligation of each of the Parties.

16. Amendment. It is expressly understood and agreed that the terms of this Agreement may not be amended orally. The terms of this Agreement may not be amended, modified, or waived except by written agreement duly executed by the Parties.

17. No Single Drafter. The Parties agree and acknowledge that no one Party shall be determined to be the sole drafter of this Agreement, and it is acknowledged that the Parties have had equal input in the drafting of this Agreement.

18. Further Action. The Parties shall execute such further documents and take such further actions as reasonably may be required to effectuate the terms and intent of this Agreement.

19. Severability of Provisions. If, after the date hereof, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws in effect during the term of this Agreement, such provision shall be fully severable.

20. Section Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

21. Multiple Counterparts. This Agreement may be executed in multiple counterparts which, when taken together, shall form the entire Agreement.

22. Knowledge and Execution. All Parties represent and state that they have fully and carefully read this Agreement, along with its exhibits, and the Parties acknowledge that they have had the advice of counsel and that no promise or representation of any kind, other than as contained herein, has been made by the Parties or the persons hereby released or anyone acting for them; that they have relied upon the advice of their attorneys concerning the legal consequences of this Agreement; that the terms of this Agreement and the compromise settlement that it reflects have been completely read and explained to them by their attorneys; that they know the contents thereof; and that they have signed the same of their own free and voluntary act.

IN WITNESS WHEREOF, the Parties hereto have put their hands and seals, as of the day and year first written above. Each party signing below affixes his or her seal adjacent to his or her signature. It is the intention of the Parties that this Agreement be executed as a sealed instrument.

PENDER COUNTY BOARD OF EDUCATION

By:

Ms. Karen Rouse, Chairwoman

PENDER COUNTY

By: _____
Mr. George Brown, Chairman

JAMESTOWN PENDER COMMERCIAL, L.P.

By: Pender G.P., LLC

By: _____
Authorized Person

JAMESTOWN PENDER RESIDENTIAL, L.P.

By: Pender G.P., LLC

By: _____
Authorized Person

PENDER COUNTY, NORTH CAROLINA

I certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document on behalf of the PENDER COUNTY BOARD OF EDUCATION: Karen Rouse.

Date _____

(Official Seal)

Notary Public

My commission expires:

PENDER COUNTY, NORTH CAROLINA

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document on behalf of PENDER COUNTY: George Brown.

Date _____

(Official Seal)

Notary Public

My commission expires:

_____ COUNTY, _____

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document on behalf of JAMESTOWN PENDER COMMERCIAL, L. P.: _____

Date _____

(Official Seal)

Notary Public

My commission expires:

_____ COUNTY, _____

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document on behalf of JAMESTOWN PENDER RESIDENTIAL, L.P.: _____

Date _____

(Official Seal)

Notary Public

My commission expires:

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