



REQUEST FOR BOARD ACTION

ITEM NO. 19

DATE OF MEETING: July 5, 2016

REQUESTED BY: Trey Thurman, County Attorney

SHORT TITLE: Resolution to Approve Interlocal Agreement and Leases between Pender County and Board of Education for School Bond Projects.

BACKGROUND: This is a process where the BOE will deed the initial 4 projects to Pender County, and Pender County will then lease those same properties to the Board of Education for the duration of the construction process. The leases for each of the four properties are identical, except that the property description is different. Attached is one Master Lease, with each of the four school projects being listed as a separate exhibit. This reduces the number of pages involved, without changing the effect of the leases.

SPECIFIC ACTION REQUESTED: To Approve the attached Interlocal Agreement and the attached Special Warranty Deed and Lease for Burgaw Middle School, Cape Fear Elementary and Middle Schools, Pender High School, and West Pender Middle School.

RESOLUTION

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

the Board approves the Interlocal Agreement and the attached Special Warranty Deed and Lease for Burgaw Middle School, Cape Fear Elementary and Middle Schools, Pender High School, and West Pender Middle School. 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 ___ Keith ___ Piepmeyer ___ Williams ___

George R. Brown, Chairman 11/23/2015
Date

ATTEST 11/23/2015
Date

NORTH CAROLINA

AGREEMENT

PENDER COUNTY

**Agreement by and between Pender County (the County Commissioners) and the
Pender County Board of Education (the School Board)**

NORTH CAROLINA
PENDER COUNTY

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____ by and between Pender County ("the County Commissioners") and the Pender County Board of Education, a county board of education organized and existing pursuant to N.C. Gen. Stat. §115C et seq. ("the School Board").

WHEREAS, the Pender County Schools has substantial need for new and improved buildings and equipment;

WHEREAS, it is the intent of the County Commissioners to assist the School Board in obtaining these buildings and equipment within the constraints imposed by limited financial resources;

WHEREAS, the County Commissioners and the School Board seek to construct, repair or renovate a number of schools located in Pender County: Burgaw Middle School, Cape Fear Elementary and Middle Schools, Pender High School, Penderlea School, Surf City K-8 School, and West Pender Middle School (collectively, "the Construction Projects");

WHEREAS, the County Commissioners and the School Board shall be co-developers of the Construction Projects;

WHEREAS, as part of the co-development of the identified projects, the School Board shall convey by lease or special warranty deed the relevant school sites to the County Commissioners in order to enable the County to reclaim sales and use taxes paid by the various contractors and vendors;

WHEREAS, the County Commissioners shall transfer or release the school sites back to the School Board at the completion of the Construction Projects as provided herein;

WHEREAS, the County Commissioners desire to designate the School Board as its agent to carry out the Construction Projects, and the School Board is willing to accept the appointment pursuant to the terms of this Agreement;

WHEREAS, as part of the co-development of the projects, the County Commissioners shall after adopting a project Ordinance provide the funding for the identified projects;

WHEREAS, the County Commissioners are authorized by legislation to reclaim sales and use taxes paid to the State of North Carolina, to acquire real and personal property for the use by the School Board, and to construct, equip, expand, improve, and renovate property for use by the School Board;

WHEREAS, the County Commissioners intend to claim the sales and use tax refunds on the Construction Projects, and utilize the refunds as an additional source of funding for the

Construction Projects, and for the School Capital Fund to the extent not needed for the Construction Projects;

WHEREAS, the School Board and the County Commissioners are authorized to enter into an interlocal agreement and to establish a joint agency pursuant to N.C. Gen. Stat. § 160A-461 et seq.;

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the parties agree as follows:

1. Agency Created. The County Commissioners irrevocably appoint the School Board as its sole agent to carry out all phases of any construction or renovation project undertaken pursuant to this Agreement. The School Board, as the County Commissioners' agent, assumes all of the County Commissioners' rights, duties, and responsibilities regarding any construction or renovation project undertaken pursuant to this Agreement. Notwithstanding previous arrangements, this Agency shall govern all phases of any construction or renovation project undertaken pursuant to this Agreement. Further, the County Commissioners ratify any actions taken by the School Board of which the County is aware as of the effective date of this Agreement.

a. Negotiate and Execute Contracts. The School Board, as agent for the County Commissioners, shall have sole and exclusive authority to negotiate and execute on behalf of the County all contracts for the construction or renovation of school sites undertaken pursuant to this Agreement, as long as the funds to be expended pursuant to those contracts are within the project budget established by the School Board and approved by the County Commissioners.

b. Supervise Construction and Renovation Projects. The School Board, as agent for the County Commissioners, shall be solely responsible for carrying out and maintaining the construction and renovation projects, and the School Board shall have all rights to supervise the construction and renovation projects. The County shall have no supervisory authority or duty for the construction and renovation projects.

c. Administer Contracts. The School Board, as agent for the County Commissioners, shall issue any required purchase orders and preaudit certification for the identified projects. The School Board shall have authority to approve and enter into any change orders for any and all identified projects as long as the funds are within the project budget established by the School Board and approved by the County Commissioners, including change orders establishing the Guaranteed Maximum Price on CM At Risk projects. The School Board shall have exclusive control of the content of such contracts. The School Board shall act as the County Commissioners' designated representative for administering the contracts, and all contracts shall comply with the public procurement laws and any other State laws applicable to either the School Board or the County Commissioners. The School Board shall ensure that all contractors provide applicable sales and use tax certificates.

d. Enforce Contracts. The School Board shall have the right to enforce in its own name or in the County Commissioners' name such purchase orders, contracts, or change orders entered into in the County Commissioners' name or the School Board's name for the identified construction and renovation projects.

e. Easements, Roadway Dedications, and Rights of Way. The School Board, for itself and as agent for the County Commissioners, shall have the right to negotiate and execute any easement contract or dedication, or right of way contract or dedication upon a portion of the Premises that it deems in its best interest to provide access for public infrastructure over the Premises. Should the School Board require the County Commissioners' execution of any document for easements or other partial interests, the School Board, as agent for the County Commissioners, shall have the authority to execute any easements, rights of way, and roadway dedications it deems necessary. The School Board shall disclose to the Pender County Finance Director the amount of any compensation received by the School Board for any interests conveyed pursuant to this section.

2. Implementation of Agreement. The County Manager and Superintendent or their designees shall establish policies and procedures to implement this Agreement not inconsistent with the terms of this Agreement.

3. Property Affected. The schools to which this Agreement shall apply are: Burgaw Middle School, Cape Fear Elementary and Middle Schools, Pender High School, Penderlea School, Surf City K-8 School, and West Pender Middle School.

4. Ownership of Property. The School Board shall convey the property or properties identified pursuant to Paragraph 3 to the County on such date or dates as are agreed upon in writing by the Superintendent and the County Manager.

a. Conveyance by Deed. Conveyance by the School Board to the County may be by special warranty deed. The County Commissioners shall retain ownership of the identified site(s) until the project budget has been closed out by the School Board. The County Commissioners shall reconvey the identified school site to the School Board within sixty (60) days of the receipt of a written request from the School Board following close out of the project budget for a nominal amount not to exceed one hundred dollars (\$100.00). Reconveyance by the County Commissioners to the School Board shall be by special warranty deed excepting any easements, roadway dedications and rights of way granted by the School Board pursuant to this Agreement.

b. Conveyance by Lease. In the alternative, conveyance by the School Board to the County may be by execution and delivery of a lease. The County Commissioners shall retain a leasehold interest in the identified site(s) until the project budget has been closed out by the School Board, acceptable to the Pender County Finance Director.

5. Obligations and Rights of the School Board.

a. Board as Agent. The School Board shall act as the County's sole agent for the construction and renovation projects as provided in Paragraph 1 of this Agreement.

b. Insurance. The School Board shall ensure that the contractors maintain builders risk and general liability insurance on any identified projects during the construction of the project. Notwithstanding any provision of this Agreement, the School Board shall retain the sole power to control and direct the application and distribution of insurance proceeds applicable to the Construction Projects and affected property.

c. Use of Site. During the term of this Agreement, the School Board shall have the exclusive rights to possess, use, occupy, and improve any properties identified pursuant to Paragraph 3 for public school purposes, including without limitation the right to conduct surveys, soil borings and other necessary testing upon the property prior to construction, and the right to use, operate, maintain, and repair said property for such public school purposes thereafter until termination as hereinafter provided, subject to any rights of use or possession granted to the County Commissioners in the respective lease(s). In addition to the above, the School Board shall have the right to authorize the use of any properties identified in Paragraph 3 by third parties for non-school use pursuant to School Board policies.

d. Indemnity. To the extent allowed by law, the School Board shall indemnify, defend and hold harmless the County Commissioners from and against all claims, suits, actions and proceedings whatsoever which may be brought or instituted on account of, growing out of, occurring from, incident to or resulting from, directly or indirectly any and all damages, claims or losses arising from any injuries or damages (including without limitation, death) to persons or property arising out of the construction, use, and/or management of any contracts and/or properties under this Agreement, and the negligent or willful acts and omissions of the School Board and those for whom it is legally liable, and all losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees), unless and to the extent such injuries or damages (including, without limitation, death) result from, or are claimed to have resulted from the negligent acts or omissions of the County Commissioners or those for whom the County Commissioners are legally liable. School Board shall assume, on behalf of the County Commissioners, and conduct with due diligence and in good faith, the defense of all such claims, suits, actions and proceedings against the County Commissioners whether or not the School Board is joined therein, even if such claims, suits, actions or proceedings be groundless, false or fraudulent, and School Board shall bear the costs of all judgments and settlements in connection therewith; provided, however, the County Commissioners may defend or participate in the defense of any or all of such claims, suits, actions or proceedings.

6. Obligations and Rights of the County.

a. Contracts. In accordance with the School Board's recommendations, the County Commissioners shall promptly approve and execute all contracts necessary to carry out the Construction Projects. The School Board shall have sole authority to approve and execute change orders to any contracts approved and executed by the County Commissioners.

b. Payments. The School Board shall prepare all requests for payment and forward the same to the County's Finance Officer for review and payment. The School Board shall provide the County Commissioners with such information in the School Board's

possession as the County Commissioners may request. The County Commissioners shall promptly make all requested payments. Provided that, if the County Commissioners have questions regarding particular invoices, the School Board shall promptly provide information or coordinate the provision of information to the County Commissioners to address the questions, and the County Commissioners may defer payment of a questioned invoice pending reasonable explanation of the invoice. A delay in payment shall not exceed ten (10) business days beyond the date the County Commissioners receive a reasonable explanation of the invoice.

c. Right to Inspect. The County Commissioners and their representatives and agents shall have the right to enter upon the site and inspect any identified construction or renovation project from time to time during construction. The County Commissioners and their representatives and agents shall also have the right to review and inspect any change orders or other contract amendments approved by the School Board or its authorized employees.

d. Sales Tax Refunds. The County Commissioners shall promptly take all steps to obtain the sales and use tax refund from the State of North Carolina, and further, shall provide the School Board with timely notice of its efforts and receipts. Any sales and use tax refunds received by the County as a result of the Construction Projects shall be held by the County in the school construction projects funding accounts, and shall be used solely for such Construction Projects. Upon completion of the Construction Projects, any sales and use refunds remaining will be placed by the County in the School Capital Fund to be used exclusively to provide supplemental funding for school construction, renovation and repair projects. The intent of this Agreement is to provide additional resources for the Pender County Schools, and the County Commissioners shall not supplant annual appropriations that would otherwise be made.

e. Taxing Power. Nothing contained in this Agreement shall be deemed to limit the County Commissioners' authority to set or control the tax rate or allocations for school capital funding or current expenses, nor to approve or allocate funds in excess of those expressly authorized by the County Commissioners. Further, nothing contained herein shall be deemed a pledge of the County's taxing power without a vote of the Citizens of the County.

7. Amendment. This Agreement may not be amended without the mutual written consent of both parties.

8. Consideration. The County Commissioners and the School Board acknowledge that this Agreement is supported by mutual and adequate consideration.

9. Termination of Agency. The Agency created by Paragraph 1 shall terminate for each property identified pursuant to Paragraph 3 as subject to this Agreement when all construction or repairs and renovations are completed and all payments to contractors are made for the same. If the North Carolina Legislature restores the ability of local School Boards to receive a full refund of sales taxes, the Agency created by Paragraph 1 shall, at the option of the School Board, terminate and the County Commissioners shall promptly re-convey or release the Construction

Projects to the School Board and assign all pending contracts for construction to the School Board. The termination of the Agency shall not affect the County Commissioners' obligations regarding sales tax refunds under Paragraph 6(d). Upon Termination of the Agency created by Paragraph 1 for each school, the County Commissioners shall assign to the School Board all warranties pertaining to each school. In the event that any such warranty is not assignable, or in the event that any cause of action is created in favor of the County Commissioners against a third party arising out of the Construction Projects and such cause of action is not assignable to the School Board, then the Agency created by Paragraph 1 shall remain insofar as is necessary to allow such warranties or causes of action to be pursued and enforced in the name of the County Commissioners or in the name of the School Board. All causes of action which arise in favor of the County Commissioners against a third party arising out of the Construction Projects shall be assigned to the School Board upon request of the School Board and the School Board shall be allowed to pursue such causes of action in its own name or in the name of the County Commissioners.

10. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

In the event any portion of this Agreement is rendered invalid or unenforceable by a court of competent jurisdiction or by an act of the Legislature, or in the event the School Board determines that the County has materially breached the terms of this Agreement, the School Board shall have the right to purchase any identified site transferred to the County Commissioners pursuant to this Agreement from the County Commissioners for the purchase price of Ten Dollars. The School Board shall notify the County Manager of an occurrence of one of the situations noted above, and within forty-five (45) days of the receipt of such notice, the County shall execute and deliver all necessary documents conveying the identified sites to the School Board.

11. Governing Law. North Carolina law shall govern this Agreement.

12. Register of Deeds. This agreement shall be recorded with the Register of Deeds as soon as practicable following its execution.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]

THE COUNTY OF PENDER

ATTEST:

Melissa Long
Clerk, Board of Commissioners

By: _____
George Brown
Chair, Board of Commissioners

[SEAL]

THE PENDER COUNTY BOARD OF
EDUCATION

ATTEST:

Terri Cobb, Ed.D., Secretary

By: _____
Karen Rouse
Chair, Board of Education

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

Finance Officer
The County of Pender

Finance Officer
The Pender County Board of Education

This instrument has been approved as to form only.

Trey Thurman
County Attorney
The County of Pender

STATE OF NORTH CAROLINA

PENDER COUNTY

_____, a Notary Public of Said State and County, do hereby certify that George Brown and Melissa Long personally came before me this day and acknowledged that they are the Chairman and Clerk, respectively, of the Board of Commissioners of Pender County, North Carolina, and that by authority duly given and as the act of The County of Pender, the foregoing instrument was signed in the County's name by the Chairman of its Board of Commissioners, sealed with its corporate seal and attested by such Clerk.

Witness my hand and official seal this ____ day of _____, 2016.

Notary Public

(Printed Name of Notary)

My Commission expires:

STATE OF NORTH CAROLINA

PENDER COUNTY

_____, a Notary Public of said State and County, do hereby certify that Terri Cobb, Ed. D., with whom I am personally acquainted, who, being by me duly sworn, says that she is the Secretary of The Pender County Board of Education and that Karen Rouse is the Chair of such Board of Education, the Board described in and which executed the foregoing instrument; that she knows the common seal of said Board; that the seal affixed to the foregoing instrument is said common seal, and the name of the Board was subscribed thereto by the said Chair; and that said Chair and Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board and that the said instrument is the act and deed of said Board.

Witness my hand and official seal this ____ day of _____, 2016.

Notary Public

(Printed Name of Notary)

My Commission expires

NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax \$

Parcel Identifier No. _____

Mail after recording to

This instrument was prepared by: Brian Shaw, Schwartz & Shaw, PLLC, Raleigh, NC
Brief description for the Index: Burgaw Middle School; Cape Fear Elementary and Middle Schools; Pender High School; and West Pender Middle School.

THIS DEED made this ____ day of _____, 2016, by and between:

GRANTOR	GRANTEE
Pender County Board of Education	Pender County, a body politic

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lots or parcels of land situated in Pender County, North Carolina, and more particularly described as follows (the "Property"):

Those tracts referred to as Burgaw Middle School; Cape Fear Elementary and Middle Schools; Pender High School; and West Pender Middle School as more particularly described on Exhibits A, B, C, and D attached hereto and incorporated herein.

TO HAVE AND TO HOLD the Property and all privileges and appurtenances thereto belonging to Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, and under or through Grantor, except for the exceptions hereinafter stated.

Title to the Property is subject to the following exceptions:

Utilities physically located on the Property, ad valorem taxes for the current year and subsequent years, easements and restrictions of record, and any local, county, state, or federal laws, ordinances, or regulations relating to zoning, environment, subdivision, occupancy, use, construction, or development of the subject property, including existing violations of said laws, ordinances, or regulations.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its corporate name by its duly authorized officer by authority of its Board of Education, the day and year first above written.

Pender County Board of Education

Karen Rouse, Chairperson (SEAL)

Brad George, Vice Chairperson (SEAL)

ATTEST: _____
Terri Cobb, Ed. D, Secretary

STATE OF NORTH CAROLINA
COUNTY OF PENDER

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document in the capacity indicated: Karen Rouse, Chairperson of the Pender County Board of Education, Brad George, Vice Chair of the Pender County Board of Education and Dr. Terri Cobb, Secretary of the Board of Education.

Date: _____

Notary Public

PLACE NOTARY SEAL INSIDE THIS BOX ONLY!

(Printed Name of Notary)
My Commission Expires: _____

STATE OF NORTH CAROLINA
PENDER COUNTY

_____, a Notary Public of Said State and County, do hereby certify that George Brown and Melissa Long personally came before me this day and acknowledged that they are the Chairman and Clerk, respectively, of the Board of Commissioners of Pender County, North Carolina, and that by authority duly given and as the act of The County of Pender, the foregoing instrument was signed in the County's name by the Chairman of its Board of Commissioners, sealed with its corporate seal and attested by such Clerk.

Witness my hand and official seal this _____ day of _____, 2016.

Notary Public

(Printed Name of Notary)

My Commission expires:

STATE OF NORTH CAROLINA
PENDER COUNTY

_____, a Notary Public of said State and County, do hereby certify that Terri Cobb, Ed. D., with whom I am personally acquainted, who, being by me duly sworn, says that she is the Secretary of The Pender County Board of Education and that Karen Rouse is the Chair of such Board of Education, the Board described in and which executed the foregoing instrument; that she knows the common seal of said Board; that the seal affixed to the foregoing instrument is said common seal, and the name of the Board was subscribed thereto by the said Chair; and that said Chair and Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board and that the said instrument is the act and deed of said Board.

Witness my hand and official seal this _____ day of _____, 2016.

Notary Public

(Printed Name of Notary)

My Commission expires:

EXHIBIT A

Burgaw Middle School

Legal Description

The property referred to as Burgaw Middle School, Such property includes:

The Burgaw Middle School tract described in Exhibit E to the North Carolina Special Warranty Deed dated September 30, 1999, and recorded in Pender County Registry Book 1522, Page 254, from Grantor Pender County to Grantee Pender County Board of Education.

= EXHIBIT B

Cape Fear Elementary and Middle Schools

Legal Description

The property referred to as Cape Fear Elementary and Middle Schools, and more fully described as follows:

Located in Rocky Point Township, Pender County, North Carolina adjacent to and North of North Carolina Highway No. 133 and being more fully described as follows, to wit:

Beginning at a point in the paved portion of North Carolina Highway No. 133, said point being located North 60 degrees 27 minutes 18 seconds East 3.84 feet from an existing nail and cap in the paved centerline of said road that marks the Southwestern corner of Tract No. 4 of the Charles Raymond Rogers and James F. Rogers Division and shown on a map of same duly recorded in Map Book 26 at Page 72 of the Pender County Registry; and running thence, from the Beginning, so located,

(1) north 23 degrees 25 minutes 49 seconds West 1880.63 feet (passing over existing concrete monument at 1034.77 feet) to an existing concrete monument inline; thence,

(2) South 72 degrees 35 minutes 30 seconds East 204.93 feet passing over an existing inline iron pipe at 5.00 feet) to an existing iron pipe inline; thence,

(3) South 84 degrees 32 minutes 13 seconds East 597.75 feet to an existing iron pipe inline; thence,

(4) North 18 degrees 40 minutes 43 seconds East 1821.91 feet to an existing iron pipe inline; thence,

(5) South 46 degrees 06 minutes 25 seconds East 2456.99 feet to an iron pipe in a ditch; thence,

(6) with said ditch South 48 degrees 52 minutes 34 seconds West 264.16 feet to an existing iron pipe at a bend in said ditch; thence,

(7) continuing with said ditch south 67 degrees 45 minutes 14 seconds West 658.57 feet to an iron stake inline; thence,

(8) continuing with said ditch South 49 degrees 00 minutes 43 seconds West 48.32 feet to an existing iron pipe in the intersection of said ditch with a cross ditch; thence,

(9) along said cross ditch South 36 degrees 32 minutes 22 seconds East 474.13 feet to an existing iron stake at a bend in said ditch; thence,

(10) continuing with and beyond said ditch South 60 degrees 29 minutes 53 seconds West 1547.18 feet to an existing iron pipe that marks the Northeast corner of Tract No. 4 of the Charles Raymond Rogers and James F. Rogers Division duly recorded in Map Book 26 at Page 72 of the Ponder County Registry; thence,

(11) with the Northern line of the above said tract North 28 degrees 34 minutes 15 second West 212.44 feet to an existing iron pipe inline; thence,

(12) with the Western line of, said tract no. 4 South 60 degrees 27 minutes 18 seconds West 443.55 feet to the Beginning, containing 114.769 acres more or less and is as surveyed by Thompson Surveying Company, P.A. of Burgaw, North Carolina during April 1999.

As a reference to the above described tract see Tracts 1 and 2 - Deed Book 607 at Page 83 of the Ponder County Registry.

The same being all of the property shown on that certain map recorded in Map Book 32 of Page 106 of the Pender County Registry.

Being the same property conveyed to the Pender County Board of Education, Grantee, by Ernest J. Puskas, Jean Puskas, and Julia Puskas, Grantors, by Deed dated July 19, 1999, recorded in Pender County Registry Book 1496, page 011.

EXHIBIT C

Pender High School

Legal Description

The property referred to as Pender High School, and more fully described as:

Parcel A: That certain track or parcel of land

Lying and being in Burgaw Township, Pender County, North Carolina. Adjoining the lands of Gene B. Lanier and wife, Mary S. Lanier and others and being more fully described as follows, to wit:

BEGINNING at an iron pipe in the center of N. C. Highway No. 53 at its point of intersection with the center of Secondary Road No. 1336; running thence from said beginning so located with the center of N. C. Highway No. 53 South 77 degrees, 31 minutes 00 seconds East 1666.62 feet to an iron pipe, Gene B. Lanier and wife, Mary S. Lanier's corner; thence with Gene B. Lanier and wife, Mary S. Lanier's line North 00 degrees 52 minutes 54 seconds East 471.49 feet to an iron pipe in a ditch, Gene B. Lanier and Wife, Mary S. Lanier's corner; thence with Gene B. Lanier and wife, Mary S. Lanier's line and said ditch North 07 degrees 59 minutes 21 seconds West 659.37 feet to an iron pipe at a turn in said ditch; Gene B. Lanier and wife, Mary S. Lanier's corner; thence continuing with Gene B. Lanier and wife, Mary S. Lanier's line and said ditch North 14 degrees 43 minutes 06 seconds West 251.62 feet_ to an iron pipe at a turn in said ditch, Gene B. Lanier and wife, Mary S. Lanier's corner; thence continuing with Gene B. Lanier and wife, Mary S. Lanier's line with said ditch and beyond North 47 degrees 18 minutes 47 seconds West 453.16 feet to an iron pipe in the center of Secondary Road No. 1336, Gene B. Lanier and wife, Mary S. Lanier's corner; thence with the center of Secondary Road No. 1336 as it curves a chord of which is South 39 degrees 37 minutes 06 seconds West 221.51 feet to an iron pipe at the P. T. of said curve; thence continuing with the center of said Secondary Road No. 1336 South 41 degrees 16 minutes. 48 seconds West 1522.55 feet to the BEGINNING containing 32.71 acres more or less after exclusion of road right-of-way areas as surveyed during February 1973 by Salmon-Matthis and Associates, P. A.

Being the same property conveyed to the Pender County Board of Education, Grantee, by Cora Carlton, Grantor, by Warranty Deed dated February 8, 1973, recorded in Pender County Registry Book 456, page 149.

Parcel B: That certain track or parcel of land

Lying and being in Burgaw Township, Pender County, North Carolina. Adjoining the lands of the Pender County Board of Education (Carlton Tract) and others and being more fully described as follows, to wit:

BEGINNING at an iron pipe in the center of N. C.-Highway No. 53 Pender County Board of Education (Carlton Tract) corner, said pipe being located South 77 degrees 31 minutes 00 seconds East 1666.62 feet from an iron pipe in the center of N. C. Highway No. 53 at its point of intersection with the center of Secondary Road No. 1336;

running thence from said beginning so located with the Pender County Board of Education's (Carlton Tract) line North 00 degrees 52 minutes 54 seconds East 471.49 feet to an iron pipe in a ditch Pender County Board of Education's (Carlton Tract) corner; thence with the Pender County Board of Education's (Carlton Tract) lines and said ditch North 07 degrees 59 minutes 21 seconds West 659.37 feet to an iron pipe at a turn in said ditch; thence continuing with said ditch and the Pender County Board of Education's (Carlton Tract) line North 14 degrees 43 minutes 06 seconds West 251.62 feet to an iron pipe at a turn in said ditch; thence continuing with said ditch and the Pender County Board of Education's (Carlton Tract) line North 47 degrees 18 minutes. 47 seconds West 460.21 feet to an iron pipe in the center of Secondary Road No. 1336 Pender County Board of Education's (Carlton Tract) corner; thence with the center of Secondary Road No. 1336 as it curves a chord of which is North 36 degrees 05 minutes 54 seconds East 451.24 feet to an iron pipe at the approximate P. C. of said curve; thence continuing with the center of Secondary Road No, 1336 North 34 degrees 09 minutes 36 seconds East 663.71 feet to an iron pipe a new corner; thence to with and beyond a ditch South 56,degrees 41 minutes 42 seconds East 804.91 feet to a concrete monument a new corner; thence South 12 degrees 29 minutes 00 seconds West 2279.01 feet to an iron pipe in the center of N. C. Highway No. 53 a new corner; thence with the center of N. C. Highway No. 53 North 77 degrees 31 minutes 00 seconds West 340.07 feet to the BEGINNING containing 40.00 acres more or less after exclusion of road right-of-way areas as surveyed during February 1973 by Salmon-Matthis and Associates, P. A. Registered Land Surveyors.

Being the same property conveyed to the Pender County Board of Education, Grantee, by Gene Lanier and Mary Jane S. Lanier, Grantors, by Warranty Deed dated March 2, 1973, recorded in Pender County Registry Book 456, page 234.

EXHIBIT D

West Pender Middle School

Legal Description

The property referred to as West Pender Middle School. Said property includes all that property described in:

Deed dated July 24, 1956 from Allison M. Alderman and wife, Mary R. Alderman, to the Pender County Board of Education recorded in Book 333 Page 200 of the Pender County Registry.

Deed dated July 24, 1956 from Bessie Alderman (Single) to the Pender County Board of Education recorded in Book 333 Page 220 of the Pender County Registry.

Deed dated July 24, 1956 from Jerry Bland and wife, Quillie Bland, to the Pender County Board of Education recorded in Book 333 Page 222 of the Pender County Registry

Deed dated March 4, 1998 from George Malcolm Kelly (Unmarried) and Thomas Alderman Kelly and wife, Brenda E. Kelly, to the Pender County Board of Education recorded in Book 1316 Page 014 of the Pender County Registry.

Said property includes the West Pender Middle School tract described in Exhibit C to the North Carolina Special Warranty deed dated September 30, 1999, and recorded in Pender County Registry Book 1522, Page 254, from Grantor Pender County to Grantee Pender County Board of Education.

**LEASE AGREEMENT
FOR
VARIOUS PROPERTIES**

BY AND BETWEEN

**PENDER COUNTY
(AS LANDLORD)**

AND

**PENDER COUNTY BOARD OF EDUCATION
(AS TENANT)**

STATE OF NORTH CAROLINA

PENDER COUNTY

THIS LEASE is made and entered into this _____ day of _____, 2016 by and between Pender County ("the County Commissioners") and the Pender County Board of Education, a county board of education organized and existing pursuant to N.C. Gen. Stat. §115C *et seq.* ("the School Board"),

WHEREAS, the County Commissioners and the School Board seek to repair and/or renovate the following schools located in Pender County: Burgaw Middle School, Cape Fear Elementary and Middle Schools, Pender High School and West Pender Middle School ("the Schools").

WHEREAS, the School Board shall convey the Schools to the County Commissioners by special warranty deed, and the School Board shall lease the same from the County Commissioners, in order to enable the County to reclaim sales and use taxes paid;

NOW THEREFORE, for and in consideration of the mutual promises contained in this lease, the parties agree as follows:

1. Lease. The County Commissioners hereby lease the Schools to the School Board, and the School Board hereby leases the same from the County Commissioners, in accordance with the provisions of this lease.
2. Lease Term. The lease term for Schools shall commence on the date School Board conveys the properties more particularly described in Exhibits A, B, C, and D to the County Commissioners by special warranty deed. The lease term shall expire six years after substantial completion of the work on the construction, repair or renovation project, or as otherwise provided in Paragraph 7.
3. Quiet Enjoyment. The County Commissioners hereby covenant that the School Board shall, during the Lease Term, peaceably and quietly have and hold and enjoy the School without hindrance from the County. The County Commissioners shall not interfere with the School Board's quiet use and enjoyment of the School during the Lease Term. The County Commissioners shall, at the School Board's request and the County's cost, join and cooperate fully in any legal action in which the School Board asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the School.
4. Consideration. In consideration for its acquisition of rights to use the School during the Lease Term, the School Board hereby agrees to use the school for public education in fulfillment of its obligation, shared by the County, to provide for educational services in the County.

5. Insurance. The School Board acknowledges that it is responsible for maintaining property insurance during the Lease Term and liability coverage through the North Carolina School Boards Trust or otherwise. The School Board shall retain the sole power to control and direct the application and distribution of insurance proceeds applicable to the school.

6. Board's Subleasing and Assignment. The School Board may not sublease the School, in whole or in part, or assign any of its rights or obligations under this lease, without the prior written consent of the County Commissioners. This provision, however, shall not preclude the Schools Board's entering into temporary joint-use agreements pursuant to N.C. Gen. Stat. § 115C-524.

7. Expiration and Termination. Either party may terminate this Lease with provision of sixty (60) days' notice of termination to the other party, upon (a) the completion of the construction, repair or renovation project for which sales tax refunds are sought as determined by the closing out of the project budget by the School Board, or (b) the effective date of legislation enacted by the North Carolina General Assembly that provides authority for school districts or school systems to reclaim sales and use taxes paid to the State of North Carolina.

8. Notices. All communications under this lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed as follows:

(a) If intended for the County, addressed as follows:

Ponder County Manager
Post Office Box 5
Burgaw, North Carolina 28425

(b) If intended for the School Board, addressed as follows:

Superintendent of Pender County Schools
925 Penderlea Highway
Burgaw, North Carolina 28425

9. Amendments. This lease may not be amended without the mutual written consent of both parties.

10. Severability. If any provision of this lease, or the lease itself, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

11. Applicable Law. This lease shall be governed by and construed in accordance with North Carolina law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]

THE COUNTY OF PENDER

ATTEST:

Melissa Long
Clerk, Board of Commissioners

By:

George Brown
Chair, Board of Commissioners

[SEAL]

THE PENDER COUNTY BOARD OF
EDUCATION

ATTEST:

Terri Cobb, Ed.D., Secretary

By:

Karen Rouse
Chair, Board of Education

STATE OF NORTH CAROLINA
PENDER COUNTY

_____, a Notary Public of Said State and County, do hereby certify that George Brown and Melissa Long personally came before me this day and acknowledged that they are the Chairman and Clerk, respectively, of the Board of Commissioners of Pender County, North Carolina, and that by authority duly given and as the act of The County of Pender, the foregoing instrument was signed in the County's name by the Chairman of its Board of Commissioners, sealed with its corporate seal and attested by such Clerk.

Witness my hand and official seal this _____ day of _____, 2016.

Notary Public

(Printed Name of Notary)

My Commission expires:

STATE OF NORTH CAROLINA
PENDER COUNTY

_____, a Notary Public of said State and County, do hereby certify that Terri Cobb, Ed. D., with whom I am personally acquainted, who, being by me duly sworn, says that she is the Secretary of The Pender County Board of Education and that Karen Rouse is the Chair of such Board of Education, the Board described in and which executed the foregoing instrument; that she knows the common seal of said Board; that the seal affixed to the foregoing instrument is said common seal, and the name of the Board was subscribed thereto by the said Chair; and that said Chair and Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board and that the said instrument is the act and deed of said Board.

Witness my hand and official seal this _____ day of _____, 2016.

Notary Public

(Printed Name of Notary)

My Commission expires:

EXHIBIT A

Burgaw Middle School

Legal Description

The property referred to as Burgaw Middle School, Such property includes:

The Burgaw Middle School tract described in Exhibit E to the North Carolina Special Warranty Deed dated September 30, 1999, and recorded in Pender County Registry Book 1522, Page 254, from Grantor Pender County to Grantee Pender County Board of Education.

EXHIBIT B

Cape Fear Elementary and Middle Schools

Legal Description

The property referred to as Cape Fear Elementary and Middle Schools, and more fully described as follows:

Located in Rocky Point Township, Pender County, North Carolina adjacent to and North of North Carolina Highway No. 133 and being more fully described as follows, to wit:

Beginning at a point in the paved portion of North Carolina Highway No. 133, said point being located North 60 degrees 27 minutes 18 seconds East 3.84 feet from an existing nail and cap in the paved centerline of said road that marks the Southwestern corner of Tract No. 4 of the Charles Raymond Rogers and James F. Rogers Division and shown on a map of same duly recorded in Map Book 26 at Page 72 of the Ponder County Registry; and running thence, from the Beginning, so located,

(1) north 23 degrees 25 minutes 49 seconds West 1880.63 feet (passing over existing concrete monument at 1034.77 feet) to an existing concrete monument inline; thence,

(2) South 72 degrees 35 minutes 30 seconds East 204.93 feet passing over an existing inline iron pipe at 5.00 feet) to an existing iron pipe inline; thence,

(3) South 84 degrees 32 minutes 13 seconds East 597.75 feet to an existing iron pipe inline; thence,

(4) North 18 degrees 40 minutes 43 seconds East 1821.91 feet to an existing iron pipe inline; thence,

(5) South 46 degrees 06 minutes 25 seconds East 2456.99 feet to an iron pipe in a ditch; thence,

(6) with said ditch South 48 degrees 52 minutes 34 seconds West 264.16 feet to an existing iron pipe at a bend in said ditch; thence,

(7) continuing with said ditch south 67 degrees 45 minutes 14 seconds West 658.57 feet to an iron stake inline; thence,

(8) continuing with said ditch South 49 degrees 00 minutes 43 seconds West 48.32 feet to an existing iron pipe in the intersection of said ditch with a cross ditch; thence,

(9) along said cross ditch South 36 degrees 32 minutes 22 seconds East 474.13 feet to an existing iron stake at a bend in said ditch; thence,

(10) continuing with and beyond said ditch South 60 degrees 29 minutes 53 seconds West 1547.18 feet to an existing iron pipe that marks the Northeast corner of Tract No. 4 of the Charles Raymond Rogers and James F. Rogers Division duly recorded in Map Book 26 at Page 72 of the Ponder County Registry; thence,

(11) with the Northern line of the above said tract North 28 degrees 34 minutes 15 second West 212.44 feet to an existing iron pipe inline; thence,

(12) with the Western line of, said tract no. 4 South 60 degrees 27 minutes 18 seconds West 443.55 feet to the Beginning, containing 114.769 acres more or less and is as surveyed by Thompson Surveying Company, P.A. of Burgaw, North Carolina during April 1999.

As a reference to the above described tract see Tracts 1 and 2 - Deed Book 607 at Page 83 of the Ponder County Registry.

The same being all of the property shown on that certain map recorded in Map Book 32 of Page 106 of the Pender County Registry.

Being the same property conveyed to the Pender County Board of Education, Grantee, by Ernest J. Puskas, Jean Puskas, and Julia Puskas, Grantors, by Deed dated July 19, 1999, recorded in Pender County Registry Book 1496, page 011.

EXHIBIT C

Pender High School

Legal Description

The property referred to as Pender High School, and more fully described as:

Parcel A: That certain track or parcel of land

Lying and being in Burgaw Township, Pender County, North Carolina. Adjoining the lands of Gene B. Lanier and wife, Mary S. Lanier and others and being more fully described as follows, to wit:

BEGINNING at an iron pipe in the center of N. C. Highway No. 53 at its point of intersection with the center of Secondary Road No. 1336; running thence from said beginning so located with the center of N. C. Highway No. 53 South. 77 degrees.31 minutes 00 seconds East 1666.62 feet to an iron pipe, Gene B. Lanier and wife, Mary S. Lanier's corner; thence with Gene B. Lanier and wife, Mary S. Lanier's line North 00 degrees 52 minutes 54 seconds East 471.49 feet to an iron pipe in a ditch, Gene B. Lanier and Wife, Mary S. Lanier's corner; thence with Gene B. Lanier and wife, Mary S. Lanier's line and said ditch North 07 degrees 59 minutes 21 seconds West 659.37 feet to an iron pipe at a turn in said ditch; Gene B. Lanier and wife, Mary S. Lanier's corner; thence continuing with Gene B. Lanier and wife, Mary S. Lanier's line and said ditch North 14 degrees 43 minutes 06 seconds West 251.62 feet to an iron pipe at a turn in said ditch, Gene B. Lanier and wife, Mary S. Lanier's corner; thence continuing with Gene B. Lanier and wife, Mary S. Lanier's line with said ditch and beyond North 47 degrees 18 minutes 47 seconds West 453.16 feet to an iron pipe in the center of Secondary Road No. 1336, Gene B. Lanier and wife, Mary S. Lanier's corner; thence with the center of Secondary Road No. 1336 as it curves a chord of which is South 39 degrees 37 minutes 06 seconds West 221.51 feet to an iron pipe at the P. T. of said curve; thence continuing with the center of said Secondary Road No. 1336 South 41 degrees 16 minutes. 48 seconds West 1522.55 feet to the BEGINNING containing 32.71 acres more or less after exclusion of road right-of-way areas as surveyed during February 1973 by Salmon-Matthis and Associates, P. A.

Being the same property conveyed to the Pender County Board of Education, Grantee, by Cora Carlton, Grantor, by Warranty Deed dated February 8, 1973, recorded in Pender County Registry Book 456, page 149.

Parcel B: That certain track or parcel of land

Lying and being in Burgaw Township, Pender County, North Carolina. Adjoining the lands of the Pender County Board of Education (Carlton Tract) and others and being more fully described as follows, to wit:

BEGINNING at an iron pipe in the center of N. C.-Highway No. 53 Pender County Board of Education (Carlton Tract) corner, said pipe being located South 77 degrees 31 minutes 00 seconds East 1666.62 feet from an iron pipe in the center of N. C. Highway No. 53 at its point of intersection with the center of Secondary Road No. 1336;

running thence from said beginning so located with the Pender County Board of Education's (Carlton Tract) line North 00 degrees 52 minutes 54 seconds East 471.49 feet to an iron pipe in a ditch Pender County Board of Education's (Carlton Tract) corner; thence with the Pender County Board of Education's (Carlton Tract) lines and said ditch North 07 degrees 59 minutes 21 seconds West 659.37 feet to an iron pipe at a turn in said ditch; thence continuing with said ditch and the Pender County Board of Education's (Carlton Tract) line North 14 degrees 43 minutes 06 seconds West 251.62 feet to an iron pipe at a turn in said ditch; thence continuing with said ditch and the Pender County Board of Education's (Carlton Tract) line North 47 degrees 18 minutes 47 seconds West 460.21 feet to an iron pipe in the center of Secondary Road No. 1336 Pender County Board of Education's (Carlton Tract) corner; thence with the center of Secondary Road No. 1336 as it curves a chord of which is North 36 degrees 05 minutes 54 seconds East 451.24 feet to an iron pipe at the approximate P. C. of said curve; thence continuing with the center of Secondary Road No. 1336 North 34 degrees 09 minutes 36 seconds East 663.71 feet to an iron pipe a new corner; thence to with and beyond a ditch South 56,degrees 41 minutes 42 seconds East 804.91 feet to a concrete monument a new corner; thence South 12 degrees 29 minutes 00 seconds West 2279.01 feet to an iron pipe in the center of N. C. Highway No. 53 a new corner; thence with the center of N. C. Highway No. 53 North 77 degrees 31 minutes 00 seconds West 340.07 feet to the BEGINNING containing 40.00 acres more or less after exclusion of road right-of-way areas as surveyed during February 1973 by Salmon-Matthis and Associates, P. A. Registered Land Surveyors.

Being the same property conveyed to the Pender County Board of Education, Grantee, by Gene Lanier and Mary Jane S. Lanier, Grantors, by Warranty Deed dated March 2, 1973, recorded in Pender County Registry Book 456, page 234.

EXHIBIT D

West Pender Middle School

Legal Description

The property referred to as West Pender Middle School. Said property includes all that property described in:

Deed dated July 24, 1956 from Allison M. Alderman and wife, Mary R. Alderman, to the Pender County Board of Education recorded in Book 333 Page 200 of the Pender County Registry.

Deed dated July 24, 1956 from Bessie Alderman (Single) to the Pender County Board of Education recorded in Book 333 Page 220 of the Pender County Registry.

Deed dated July 24, 1956 from Jerry Bland and wife, Quillie Bland, to the Pender County Board of Education recorded in Book 333 Page 222 of the Pender County Registry

Deed dated March 4, 1998 from George Malcolm Kelly (Unmarried) and Thomas Alderman Kelly and wife, Brenda E. Kelly, to the Pender County Board of Education recorded in Book 1316 Page 014 of the Pender County Registry.

Said property includes the West Pender Middle School tract described in Exhibit C to the North Carolina Special Warranty deed dated September 30, 1999, and recorded in Pender County Registry Book 1522, Page 254, from Grantor Pender County to Grantee Pender County Board of Education.